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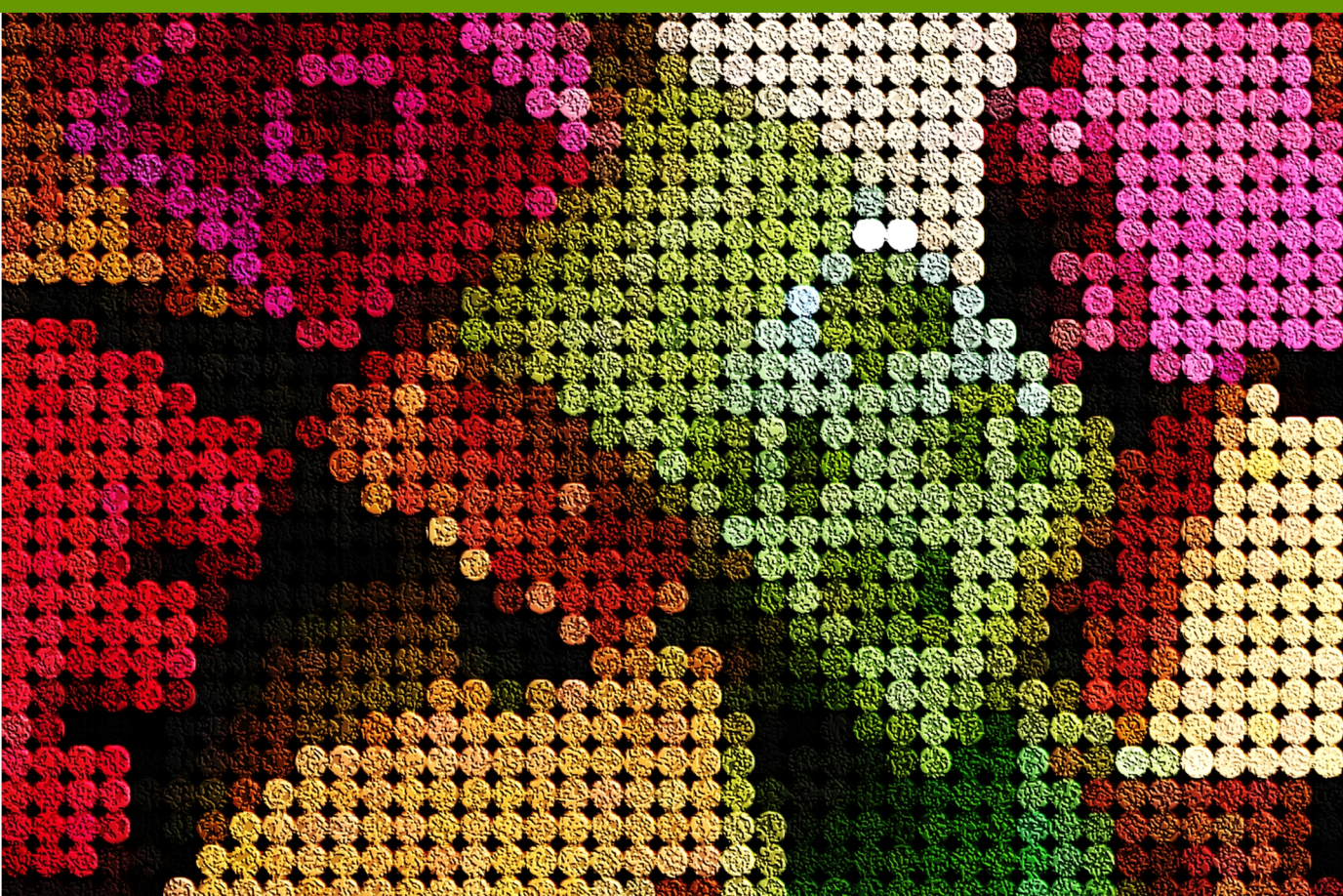
REVISTA DE ŞTIINŢE POLITICE.
REVUE DES SCIENCES POLITIQUES

No. 45 • 2015



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Website:http://cis01.central.ucv.ro/revistadestiintepolitice/

The Journal is published quarterly.
(Online) - ISSN 2344 – 4452
ISSN–L 1584 – 224X

No. 45 • 2015

Revista de Ştiinţe Politice.
Revue des Sciences Politiques

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NOTE of the EDITORIAL BOARD
Revista de Ştiinte Politice. Revue des Sciences Politiques
is abstracted by / indexed in:

EBSCO
Political Sciences Complete ● Situation January-February 2015
http://www.ebscohost.com/titleLists/poh-coverage.pdf (page 45/ 54)

ProQuest Central
Proquest Title List, Accurate as of 1 April 2015 (position 179734) and also ProQuest Political Sciences, ● Professional Proquest Central ● Proquest Research Library ● ProQuest 5000 International ● Proquest Central K12

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Revista de Ştiinţe Politice. Revue des Sciences Politiques

RSP • No. 45 • 2015

(Re)loading Borders, Bounderies & Bounds – Sheltered Reflections on Power and Influence

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EDITORS' NOTE

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

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

An element of reflection and perception entered the political sciences analysis and research understanding of borders, boundaries and bounds for the last two decades and continues to shelter theoretical considerations and remarks. What we consider is missing is not a work hypothesis or a method, but an intellectual appeal of reflection on power and influence linking numerous fields from political sciences to social history to political economy to social security, an interdisciplinary approach which we have enabled in the inaugural issue of the Revista de Ştiinţe Politice. Revue des Sciences Politiques (hereinafter **RSP**) no. 45/ 2015. Also, we are pleased to present an issue that we consider squares the old and new perspectives on the study of interest and memory facilitating an inclusive approach between governance, security, justice and politics and creating an open scientific dialogue among regional, national and local levels.

Our first four articles report the research results on institutional traditions and developments reaching regional strategies. The first article by Liviu Marius Ilie describes the communist and non-communist historiography of the early modernity labeling a possible analytical mechanism of discourse and chronology. The second, by Cezar Avram, points the key point of the security of the European Union reaching military autonomy. The third, by Sonia Drăghici, catalogues Romanian constitutional historical bounds to assess its adoption and amendments. George Gîrleşteanu explores the principle of the "governance by the rule of law" allowing the research community to capture the perspectives of the Romanian parliamentarism topicality.

The next three articles review the sociological, legal and historical enhancements of migration theories (Alexandra Porumbescu), case law current debates (Raluca Lucia Cismaru) and political history conditionalities (Elena Steluţa Dinu). We also present three

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articles discussing the overlap between the intellectual analysis and the core themes and debates in recognition and independence (Ionuț Virgil Șerban), military aggression, peace selection and intelectual law (Adrian Bogdan) and intervention and realism (Ylber Aliu, Hasan Jashari). Bianca Mitu reviews and frames the social implications of the international protests on the Romanian News Portals, while Mihaela Bărbieru investigates the presidential voting outcomes focusing on the new Romanian Electoral Code and electronic vote. Georgeta Ghionea explaines the European elections voters' choice from a completion insight analysis and screening, while Narcisa Mitu defines the electoral boundaries depending on the local convergence proof of policing in a local area. The next three articles by Lavinia Elena Stuparu, Adrian Cristian Moise and Narcis Mitu endeavor to contribute to the development of the policy and legal-level research related to the modernization of the Romanian legislation and the implementation gap at European level. The last three articles by Michael Stojanov, Roxana Cristina Radu and Alina-Maria Văduva et al. enable research patterns to register the features and policy bounds in the field of vending and housing.

The authors of the articles in **RSP** issue 45/2015 reload the intellectual analysis of borders, bounderies and bounds from various perspectives identifying different research methods and working hypotheses concerning the current debates, the proper conditionalities on power and influence. This embrace of an interdisciplinary approach seeks to comprehend the self-making linkage between academics, professionals, experts and practitioners.

Finally, we would like to present our sincere thanks to all the authors of our journal in all its 45 issues. We hope you enjoy the first issue of RSP in 2015!

Sincerely,

RSP Editors

RSP • No. 45 • 2015: 11-20

ORIGINAL PAPER

Communist and Non-Communist Historiography about the Seventeenth Century: Discourse, Chronology, Labels

Liviu Marius Ilie*

Abstract
The 17th century was both complex and complicated. Consequently, the historiographical opinions regarding this period were diverse and the labels that were put on these hundred years took different shapes and colours. The European historiography used many concepts for defining this century, such as diversity, crisis, absolutism, modern state etc. For the Romanian historiography, the main issue regarding the 17th century was the transition from the Middle Ages to the Modern Era. Different historians – from the 19th to the 21st century – expressed different ideas, their vision being presented as a result of the main research themes.

Keywords: seventeenth century, historiography, diversity, crisis, absolutism

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Introduction

For describing a century, a historian has two main options: to present it from a chronological point of view, beginning with the year 1 and finishing with the year 100 or to depict it as a result of an event or events that characterized that century. For example, the 18th century in the Romanian history lasts from 1701 to 1800; if it is analysed as the phanariote century, it starts in 1711/1715 (the phanariote regime began in 1711, in Moldavia, respectively in 1715, in Wallachia) and ends in 1821 (Cernovodeanu, Edroiu, Bălan, 2002: 975, 978).

How was the 17th century seen by the modern historiography, in general, and by the Romanian modern historiography, in particular? This is the main question of the present Article. A very interesting opinion was offered by Joseph Bergin, the editor of the volume dedicated to *Seventeenth Century* from *The Short Oxford History of Europe*: "The sixteenth century is instinctively yoked to the Protestant Reformation, the eighteenth to the Enlightenment, since both phenomena loom large in most explanations of how the modern world took the shape it did. But what, one may ask, about the century in between, separating or connecting – depending on one's point of view – these two great «peaks» of early modern history? […] Relatively few historical surveys of the century have succeeded in finding a title that encapsulates a widely-shared view of the century's essence" (Bergin, 2001:1). This opinion creates the background of an opened research for analysing the diversity of views regarding the seventeenth century.

The diversity

As it was very well underlined, "the outstanding characteristic of the European political system in 1600 was diversity" (Bergin, 2001: 80). One must possess a very large vocabulary to describe the most important events that defined the seventeenth century; it is enough to remind words as "crisis", "absolutism", "early modern period", "religious wars", "revolution" etc. in order to have a wide picture of this century.

What is the image of Europe during the period taking into account? A possible answer can be found at Eric John Hobsbawm: "It is perfectly clear that there was a good deal of retrogression in the 17th century. For the first time in history the Mediterranean ceased to be a major centre of economic and political, and eventually of cultural influence and became an impoverished backwater. The Iberian powers, Italy, Turkey were plainly on the downgrade: Venice was on the way of becoming a tourist centre. […] The Baltic States Poland, Denmark and the Hanse were on the way down. Though the power and influence of Habsburg Austria increased (perhaps largely because others declined so dramatically), her resources remained poor, her military and political structure rickety even at the period of her greatest glory in the early 18th century. On the other hand in the Maritime Powers and their dependencies – England, the United Provinces, Sweden, and Russia and some minor areas like Switzerland, the impression is one of advance rather than stagnation; in England, of decisive advance. France occupied an intermediate position, though even here political triumph was not balanced by great economic advance until the end of the century, and then only intermittently" (Hobsbawm, 1954: 33-34).

From a methodological point of view, this diversity increases the research choices, the hundred years that is taking into account being investigated from different perspectives. The abundance of sources give the historian various means of interpretation: "few centuries offer such rich possibilities for comparative history as the seventeenth – richly documented in many areas, displaying important elements of political, commercial and cultural interchange among all high civilizations, while lacking the tremendous

obstacles to comparison raised by the revolutionary changes in Europe from the eighteenth century on" (Gately, Lloyd Moote and Wills, 1971: 63).

The age of crisis and transformation

In a well-known study, the historian H.R. Trevor-Roper wrote about the discontinuity of the 17th century, underlining that "it is broken in the middle, irreparably broken and at the end of it, after the revolutions, men can hardly recognise the beginning. Intellectually, politically, morally, we are in a new age, a new climate" (Trevor-Roper, 1959: 33-34). It can be said that the British historian observes the 17th century from a triangular evolution, following the model crisis–break–transformation. The general crisis that dominated this century determined a break in its middle part, the breach causing a transformation at its end.

What kind of crisis dominated the 17th century? "If the crisis of the seventeenth century, then, though general in Western Europe, is not a merely constitutional crisis, nor a crisis of economic production, what kind of a crisis was it?" (Trevor-Roper, 1959: 38). As Trevor-Roper suggested, "it was something both wider and vaguer than this: in fact, it was a crisis in the relations between society and the state […] We must look, here too, at the whole *ancien régime* which preceded the crisis: the whole form of state and society which we have seen continually expanding, absorbing all shocks, growing more self-assured throughout the sixteenth century, and which, in the mid-seventeenth century, comes to an end: what for convenience we may call the state and society of the European Renaissance" (Trevor-Roper, 1959: 38).

Refering to the same hundred years, Eric John Hobsbawm also wrote about "the general crisis", his Article being dedicated to a narrow research – the evolution of economy. "The European economy – Hobsbawm wrote – passed through a «general crisis» during the 17th century, the last phase of the general transition from a feudal to a capitalist economy" (Hobsbawm, 1954: 33). From the Marxist perspective of constructing the text, it can be said that Hobsbawm saw the 17th century as a final transition from Middle Ages to Modern Era.

An excellent synthesis of the political events from the middle of the 17th century can be found in a recent Article written by Geoffrey Parker; the author uses the superlative in his description for underlining the fact that the scourge of crisis touched many of the important countries of the world. The whole passage of the text will be quoted, the expressivity of the discourse replacing other comments: "The mid-seventeenth century saw more cases of simultaneous state breakdown around the globe than any previous or subsequent age: something historians have called «The General Crisis». In the 1640s, Ming China, the most populous state in the world, collapsed; the Polish-Lithuanian Commonwealth, the largest state in Europe, disintegrated; much of the Spanish monarchy, the first global empire in history, seceded; and the entire Stuart monarchy rebelled—Scotland, Ireland, England, and its American colonies. In addition, just in the year 1648, a tide of urban rebellions began in Russia (the largest state in the world), and the Fronde Revolt paralyzed France (the most populous state in Europe); meanwhile, in Istanbul (Europe's largest city), irate subjects strangled Sultan Ibrahim, and in London, King Charles I went on trial for war crimes (the first head of state to do so). In the 1650s, Sweden and Denmark came close to revolution; Scotland and Ireland disappeared as autonomous states; the Dutch Republic radically changed its form of government; and the Mughal Empire, then the richest state in the world, experienced two years of civil war following the arrest, deposition, and imprisonment of its ruler" (Parker, 2008: 1053).

This unstable climate defines the "far lands", such as Russia or China. The end of 16th century and the first decades of the 17th century were characterised by dynastic problems in both of these countries. "The death of Tsar Theodore in 1598 and the extinction of the Kalita line provoked an extraordinary dynastic crisis in Russia; successive and rival claimants to be the «true Tsar» saw their legitimacy as persons «blessed by Heaven» repeatedly questioned." On the other hand, „in China, the transfer of legitimation from one dynasty to another was sanctioned by the ancient idea of the Mandate of Heaven, which implicitly encouraged rebellion or acquiescence in revolt when the old dynasty seemed to be losing its grip, as the Ming was after about 1627" (Gately, Lloyd Moote, Wills, Jr., 1971: 67). Wallachia also passed through dynastic changes. The old dynasty (the family of Basarab I, the founder of the state in the 14th century) was gradually replaced by a new dynasty, represented by a noble family from Wallachia (Craiovescu); during the 17th century and at the beginning of the 18th century, one can count six Wallachian princes from Craiovescu family – Radu Șerban, Matei Basarab, Constantin Șerban, Șerban Cantacuzino, Constantin Brâncoveanu and Ștefan Cantacuzino (Ilie, 2013: 76).

What did the same century mean for the Ottoman Empire? A possible answer can be found in a book coordinated by Robert Mantran: "As compared to the glorious epoch of the 16th century, the one that includes the 17th century offers a less shining aspect, in spite of some personalities that were decided to maintain the authority and the reputation of the state" (Mantran, 2001: 194). For the Ottoman state, the 17th century represented an age of regression, an era that was far from what Soliman the Magnificent did a hundred years ago. The wars against Persia or the siege of Vienna are maybe the best examples that describe the situation of the Turks during that period; the decline of the sultans' power and the increase of the Grand Viziers' prerogatives completes the historical background of the Ottoman Empire.

Trevor-Roper emphasizes another transformation of the 17th century, a transformation which he describes as "the general mood of puritanism". "In the 1620's puritanism – this general mood of puritanism – triumphs in Europe. Those years, we may say, mark the end of the Renaissance. The playtime is over. The sense of social responsibility, which had held its place within the Renaissance courts of the sixteenth century – we think of the paternalism of the Tudors, the «collectivism» of Philip II – had been driven out in the early seventeenth century, and now it had returned, and with a vengeance. War and depression had made the change emphatic, even startling. We look at the world in one year, and there we see Lerma and Buckingham and Marie des Medicis. We look again, and they have all gone. Lerma has fallen and saved himself by becoming a Roman cardinal; Buckingham is assassinated; Marie des Medicis has fled abroad. In their stead we find grimmer, greater, more resolute figures: the Count Duke of Olivares, whose swollen, glowering face almost bursts from Velazquez's canvases; Strafford and Laud, that relentless pair, the prophets of Thorough in Church and State; cardinal Richelieu, the iron-willed invalid who ruled and re-made France" (Trevor-Roper, 1959: 49-50).

At the end of all these historiographical considerations, it is obvious that the best characterization of the 17th century crisis can be made by using the concept "general". The crisis was so wide-spread and influenced so many domains that when historians tried to define it narrowly, they described it in general terms, such as the relationship between society and state (Trevor-Roper). The crisis was completed by various transformations, such as dynastic problems or religious and political changes as puritanism.

The absolutism and the parliamentarianism

The absolutism represented a remarkable component of the French 17th century. In a work dedicated to French monarchy from Renaissance to Revolution, Joël Cornette saw this century as a period chronologically limited by religious wars and Enlightenment, an era that created the favourable atmosphere for the birth of the absolute monarchy. "The political history of the 17th century can be inscribed in a very simple scheme: bordered upstream by the violence of the religious wars and downstream by the less bloody but unstable debates of the Enlightenment, The Great Century, from Henry IV to Louis XIV, is, first of all, marked by the affirmation of what it will be later called absolutism" (Cornette, 2000: 137). More than extending the 17th century beyond the limit of one hundred years, in a longer period (1589-1715), one can observe the author's wish to systemize a very important part of the French history, trying to put it in "a very simple scheme".

Suzanne Pillorget began the description of the 17th century with the notion of absolutism; the concept was reinterpreted from a historical evolution, that began in the 17th century and ended in the 20th century. The view of absolutism was modified after the First World War; beginning with that moment, "our contemporaries had and still have under their eyes the show of the single party dictatorships". "In the eyes of the Occidental historians before 1914, who were most of them liberals, the 17th and 18th centuries represented the age of absolutism. […] The events that happened after 1914 modified the perspectives" (Riché et al., 2009: 571).

For the same 17th century, some historians tried to depict an English parliamentarianism opposed to the European absolutism: "During the age of Stuarts – G.M. Travelyan wrote – the Englishmen developed for themselves and without a foreign participation or example, a system of parliamentary government, local administration and freedom of expression, in an obvious contradiction with the predominant trends on the European continent, which led very fast to the monarchic absolutism, the centralized bureaucracy and the individual's enslavement by the state" (Travelyan, 1975: 432). Written in a nationalist manner, the text seems to describe a common place of the British world – the English insular destiny vs. the European continentalism.

Europe, the state and the territory

An interesting image of the 17th century can be found at Pierre Chaunu, who included it in the classical Europe, a cultural paradigm that, in his opinion, lasted from 1620-1640 to 1750-1760 (Chaunu, 1989: 22-25). The French historian underlined the discontinuity of the concept he used: "The one hundred twenty – one hundred thirty years of the classical Europe do not begin and end everywhere at the same time" (Chaunu, 1989: 16).

It is useful to remember two notions from Chaunu's work – "Europe" (as a political and geographical territory) and "the state" (as a political structure), both of them being described with reference to a third concept, "the Christendom" (as an old political and religious structure). During the 17th century, Europe "gradually conquers the current utilization" and replaces "the Christendom", which had "on its side one thousand years of use, seven centuries of crusades, a rich affective heritage and the euphony". (Chaunu, 1989: 18). The conceptual differences seem to have a chronological background: "The Christendom" comes from far away, from the Middle Ages and brings with it not only the millennial existence, but also the saint wars that almost transform it in what today we call a political doctrine. "Europe" is a new and modern concept, which imposes with the new

era and establishes a well-defined space: "Around 1620, «Europe» […] is an exception. Around 1750, «the Christendom» is an archaism. Its sense was modified and it ceased to be equivalent with «Europe»" (Chaunu, 1989: 18).

The other concept analysed by the French historian is "the state": "The state was not born in the 17th century, but at that moment it receives in the whole Europe its authentic height.[…] It does not accept anything else above him, either «the Christendom» or «the Empire»"; the modern state is the territorial state, "one of the great successes of classical Europe" (Chaunu, 1989: 30), a construction that dominated the next centuries.

During the last years, Marian Coman debated the relation between territorial state and social state in Wallachia, from the 14th to the 16th century (Coman, 2013: 17-32).

The Romanian 17th century

It is necessary to come back in the first part of the 19th century in order to begin the description of the 17th century in the Romanian historiography. As many Romanian historians did, the scholars who wrote during the first decades after 1800 included the discourse about this century in a larger research – the relation between medieval and modern or the transition from Middle Ages to Modern Era. Regarding the upper border of Romanian medievalism, it is very useful to analyse the opinions expressed by two Romanian intellectuals (Florian Aaron and Mihail Kogălniceanu) at the end of the 1830s and at the beginning of the 1840s.

In an attempt to write a synthesis of the Romanian history, Florian Aaron divided it in three periods – "the old history, the middle history and the new history". Refering to the Middle Ages ("the middle history" in Aaron's view), the author wrote that this period lasted "from Radu the Black to Stephen Cantacuzen [Cantacuzino], the last of the Romanian princes, or from the year 1290 to the year 1716" (Aaron, 1839: 39). Therefore, the end of the Middle Ages in Wallachia and the transition to a "new" epoch, as Aaron called it, or "modern" epoch, as it was named later, happened at the same time with the beginning of the phanariote period – "the coming of the foreign princes from Constantinople" (Aaron, 1839: 131).

A similar opinion was expressed by Mihail Kogălniceanu in the opening discourse, held at the beginning of "the course of national history", within the "Academia Mihăileană", on November, 24th, 1843 (Brătianu, 1944: 49-78). Kogălniceanu divided the history in the same three parts as Aaron did ("old, middle and new history") and noticed that the end of the Middle Ages was linked to the beginning of the phanariote period. "The old history begins with the first historical period of Dacia and ends at the foundation of the states Wallachia (1290) and Moldavia (1350). […] The middle history begins with the setting up of these principalities and ends with their total fall under the phanariote princes (1716)." (Brătianu, 1944: 70-71). It is obvious that, for Kogălniceanu, the Romanian middle epoch did not represent a dark age, but it was "the real history of the Romanians" (Brătianu, 1944: 71), in contrast with "the new history", which began with "the most terrible century that ever pressed upon our countries" (Brătianu, 1944: 74). Kogălniceanu's discourse is nationalist, characteristic for the 19th century, "the Romanian history" ending when the pahanariote (Greek) history starts. Therefore, for both Florian Aaron and Mihail Kogălniceanu, the Romanian Middle Ages finishes with the long 17th century.

Another image of the 17th century was depicted by A.D. Xenopol, the author of the first large synthesis of Romanian history. When he presented that century, Xenopol was also concerned with the transition from Middle Ages to modernity; more specific, the

period when Matei Basarab and Vasile Lupu reigned – 1632-1654 (the first one) and 1634-1653 (the last one) – was presented as the border between "the Slavonian epoch" and "the Greek influence". The historian divided the history of the Romanians in four periods, two of them being very important for the image of the 17th century: "2nd. The middle history, lasted from the foundation of the states (descălecare) to Matei Basarab and Vasile Lupu, 1290-1633: the Slavonian epoch; 3rd. The modern history, lasted from Matei Basarab and Vasile Lupu to the Greek revolution, 1633-1821: the Greek influence" (Xenopol, 1985: 39).

A descriptive vision was adopted by Xenopol in another fragment of the same book, a larger text, where he developed the context of transition from medievalism to modernity: "With the years 1633-1634, we finish the medieval history of the Romanian people, characterised by the prevalence of Slavonism and, from that point on, we begin a new period when the domination of the Greek element in developing its life. The great epoch of independence fights is gone; the Romanian people, broken in its energy and inner virtue, lays at the feet of the foreign powers and, especially, the Turks" (Xenopol, 1988: 531). Thus, in Xenopol's opinion, the 17th century, or more precisely, the 1630s represented the period when "the thinking of the Romanian people" gave up "the Slavonic form" and put on "the Greek mantle" (Xenopol, 1988: 394). Such a hypothesis, with all its background, is controversial at the beginning of the 21st century. One must take into account that A.D. Xenpol was one of the pioneers in writing large historical works about Romanians and, more important, that his books were first published at the end of the 19th century. As a matter of fact, Nicolae Stoicescu, one of the editors of Xenopol's synthesis, underlined the reserves that some historians had regarding the periodization proposed, as well as the Slavonic and Greek influence for the history of the Romanians (Xenopol, 1993: 495-498).

Another image of the relation medieval–modern regarding the 17th century can be found in a history of the Romanians, published in the 1970s. The text presents the cleavage between the two epochs, not only in time, but also in space; the 17th century is seen as a transition from the Middle Ages to the Modern Era in the Western Europe and as a medieval century in the Eastern Europe. The profoundly Marxist structure of the fragment can be found in almost every construction of the historiographical discourse: "During this century the whole European society is a witness of some structural transformations. These are neither uniform, nor parallel. While in the countries of the Western and Central Europe the capitalist relations are opening a hard and unstoppable way, in the Eastern Europe the feudal domain, based on the enslaved work of the peasants, is still predominant. While in the Western part of the continent the development of the capitalist relations was made by the peasants' expropriation of their land, in the East the peasant is in a state of serfdom and works for his lord. While in the Western Europe the process of centralization of the states and the emergence of the nations is generalized, in the East the characteristic phenomenon is the political division and anarchy. While in the West the national states appear, in the East the multinational empires are maintained" (Pascu, 1974: 164).

The text is full of direct and indirect references to the Marxist speech: feudalism vs. capitalism; feudal division vs. centralization of the states; productive forces vs. relations of production etc. It is obvious that the whole fragment that refers to the 17th century has an "antagonistic" construction: temporal – medievalism vs. modernity (feudalism vs. capitalism, in the text) and spatial – East vs. West (Eastern European vs. Western Europe, in the text).

Răzvan Theodorescu considered that the transition of the Romanians from medievalism to modernity corresponded to a vast period – a quarter of a millennium, "between the middle of the 16th century and the end of the 19th century" (Theodorescu, 1987: 6), this period including, obviously, the 17th century. In a recent book, Violeta Barbu contradicted this opinion, underlining that Theodorescu "brought many arguments that were not critically analysed" and put together Transylvanian elements of "certain Renaissance and Baroque origin" with "shy attempts" from Wallachia and Moldova, the last of them being previously considered as "«medieval» cultural facts" (Barbu, 2008:14).

It can also be added that Răzvan Theodorescu tried to conciliate two different positions regarding the end of the Middle Ages and the beginning of the Modern Era. By quoting different Occidental historians, such as Henri Hauser, Pierre Chaunu, Robert Mandrou, Henry Kamen, José-Antonio Maravall (Theodorescu, 1987: 9), Theodorescu admitted their opinion that the medieval period ended at the beginning or at the middle of the 16th century. On the other hand, the communist Romanian historiography considered that the border between Middle Ages and Modern Era was "the revolution" led by Tudor Vladimirescu (Oțetea, 1970: 5), which took place in 1821, in other words, at the beginning of the 19th century. The "solution" proposed by Theodorescu was a long period of transition, which put together, without any contradiction, both the European and the Romanian hypotheses regarding the end of the Middle Ages.

For Florin Constantiniu, the 17th century was placed under the sign of "weakening of the Ottoman power" (Constantiniu, 1997: 143). Beyond the chapters that divide this century in well-known images, such as *Two Shining Reigns* (Matei Basarab and Vasile Lupu), *Under the Walls of Vienna and after…* or *Baroque Sensibility in Culture and Art*, an interesting part of the book is *The Proto-phanariote Experiment*. During the 8th and 9th decades in Moldavia and during the 9th decade in Wallachia, the Ottomans "created" a new political strategy, which will become a rule in the next century. By the reigns of Dumitrașco Cantacuzino, Antonie Ruset and Gheorghe Duca in Moldavia and the same Gheorghe Duca in Wallachia, the Turks brought the Greek princes on the throne of Romanian countries. What seems to be interesting is that the 8th and 9th decades of the 17th century are regarded as a preamble of the phanariote century; thus, this 17th century, or a part of it, is no longer defined by its characteristic events, but is seen as a century that precedes another century. Another Romanian historian, Vlad Georgescu, determined a relation of causality between the 17th and the 18th century: "The failure of the 17th century opened the way for the phanariote epoch" (Georgescu, 1992: 83). Pompiliu Teodor saw the same century as an extension of the one that preceded it, the 17th century "being under the sign of Michael the Brave's heritage" (Bărbulescu, Deletant, Hitchins, Papacostea, Teodor, 2002: 194-195). It is obvious that in all these three cases (Constantiniu, Georgescu, Teodor) the tendency is to reduce the autonomy of the 17th century and to define it with reference to the century that precedes or succeeds it.

The authors of the fifth volume of the synthesis *The History of the Romanians*, published by the Romanian Academy during the last two decades, presented the 17th century from a double perspective – the European one (as the age of crisis) and the Romanian one (as a transition from the Middle Ages to the Modern Era). On the one hand, "the 17th century – Constantin Rezachevici wrote – was considered by the Occidental historiography as an era of different crises. […] Although the Romanian countries were not mechanically included in this scheme […], that does not mean the crisis phenomena did not exist on their territory, even if those did not appear in Western forms" (Cândea, Rezachevici and Edroiu, 2012: 3-4). On the other hand, "the 17th century […] – Virgil

Cândea underlined – was very differently appreciated in our historiography: as an end of the Middle Ages, as a prelude of the Modern Era or, more comfortable, as period of transition between these two epochs" (Cândea, Rezachevici and Edroiu, 2012: XV).

During the last years, Bogdan Murgescu brought to the Romanian historiography a concept that is used very often in the Occident – "the early modern age", "a distinct epoch, in relation with the Middle Ages and the Modern Era", a period that lasted from 1500 to 1800 (Murgescu, 2001: 13). Thus, the 17th century is a part of this new-born era.

Conclusions

The seventeenth century was characterized by diversity. Crisis and transformation, absolutism and parliamentarianism, Middle Ages and Modern Era are some elements that complete a general picture of a period that changed Europe and the world. The diversity of the events and phenomena was transmitted to the diversity of historiographical opinions and views, both in European and Romanian history. A short description of some of these historiographical hypotheses can be used as a beginning for more elaborated studies about the 17th century.

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Article Info

Received: December 8 2014
Accepted: March 10 2015

RSP • No. 45 • 2015: 21-30

ORIGINAL PAPER

What's the Point of the Security of the European Union? Institutional Developments and Regional Strategies Reaching Military Autonomy

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Abstract
In the current context, many phenomena brought about by globalization affect the balance of the security policy of the European space and even of the global scene: economic and monetary crisis, regional conflicts, religious fanaticism, terrorism, organized crime etc. After a brief overview of developments in EU policy on security and defence, the author of this article presents new threats to European security, the current configuration of the relations between the EU, NATO, USA, the Russian Federation and China, possible options and responsibilities of both international organizations and states, in order to maintain international balance.

Keywords: defence, strategy, member state, power, alliance

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Introduction

If the 20th century was the "century of extremes" (Hobsbawm, 1994), it seems that the 21st century will fit perfectly in the phrase of Eric Hobsbawm. Moreover, it seems that the unpredictable economic, monetary, seismic and climatic factors provide benchmarks that are to be improved by correct and predictable measures of decision makers. Regional conflicts, religious fanaticism, terrorism promoted in the name of faith, as well as violations of fundamental freedoms sketched the first decade of the third Millennium. Political developments relating to the national security and defence of the European Union (Avram and Bărbieru, 2009: 57) and NATO, reflected by the decisions of the summits of these organisms, also marked the beginning of the period in which Europe has become more stable, and relations with other international bodies have become essential for the stability of the area and today's security environment. A meaningful political process from the beginning of the Millennium is shaping by the alert territorial development of the European Union, which imposed a European Policy on Security and Defence, active and dynamic (Vicol, 2009: 16).

The history of the European Union reminds us that, since 1950, has been proposed by Churchill the creation of a United European army controlled by European democratic system and in full collaboration with the USA and Canada. In France, on October 24th the same year, has been released the plan for a European Defence Community (EDC) providing the creation of a European army consisted of units of the ECSC Member States. It was coordinated by a European Minister of Defence with common budget and under the control of the European Parliamentary Assembly. The Treaty by which the EDC was constituted was signed in Paris on 25 May 1952 by the ECSC Member States with additional protocols with NATO. The EDC Treaty, although ratified by five Member States, was rejected by the French National Assembly. It marked the beginning of the adaptation of the European Community to the internal problems of States, particularly to political issues, as well as to the international crisis marked by conflicts and strategic reassessment. After this point, the European process emphasized diversification. Pierre Hassner appreciate that European defence should not be considered as an "immediate response to urgent and precise military threat" but as a "test, renewed all the time, of the respective priorities of the Europeans, of their will for unity, of their will and their ability to reject external veto" (Avram, 2006: 171-172).

What's the point of the common defence policy?

In the 70s of last century, Belgian politician Leo Tindemans shows that the EU would remain incomplete as long as there would not be a common defence policy. A number of causes, not entirely annihilated today, have been major impediments in the organization of a solid defence. The causes could be grouped according to their nature in: constitutional in nature (the creation of a European nuclear force was regarded as distant as the choice of a European federal Chairman); technological and legal difficulties due to the prohibition of transfers of military nuclear technology; diplomatic divisions; economic and psychological constraints, in particular for increasing annual military spending and persuading public opinion. The UN Charter, Security Council resolutions and the need for redefinition of the concept of the nation forced and still forces the perceptions of international law in general, and the definition of the European Union as a federated body with obligations in strengthening ties with the Member States, in particular.

The possibilities offered by nuclear guarantee of the treaties concluded between the former USSR and the United States, the possibility of installation of anti-missile shield

in Europe, economic and technological advantages of the USA, Great Britain, France and Germany against Russia, China, Iran and other countries with conflictual potential were sources of imbalance both during the cold war, and in the present existence marked by conflicts in the East of Ukraine, in Syria and Iraq, etc. (Frunzeti, 2013: 40-51; Tudor, 2014: 273). The threat posed by separatist forces in Eastern Ukraine to trigger this spring a new offensive to a territorial rapt as consistent as was Crimea for the sovereign State Ukraine, the actions of the Islamic State and of Al-Qaeda groups etc. have prompted the United States of America to develop new strategies concerning NATO duties. At the same time, due to terrorist acts, some of them foiled by security forces in the last period in continental countries like Spain, England, France, Belgium, the EU States are required to initiate new forms of strengthening the safety of both the States and their citizens. Among the proposed measures are the intent on a stationary tank and armoured divisions in Eastern Europe towards the end of the year 2015. It could be stationed in Romania, Poland or the Baltic States and constitutes, in the vision of Ben Hodges, Commander of the US Armed Forces in Europe, the argument by which the attacking pro-Russian and separatist forces in Eastern Ukraine could be halted. Another measure that Russia has annoyed is, of course, the missile shield.

What's the point of the strategy for the Black Sea?

Deveselu and Kogălniceanu constitute important points in the NATO Defence plan in Romania, a border both of the European Union and the North Atlantic Alliance. Romania's decision to strengthen the defence system and to modernize military equipment becomes possible due to the increase of the percentage of GDP allocated to the army. Participation of Romania's in the actions in the Balkans, Iraq, Afghanistan have prompted the political factor in Romania, a country of the European Union, to reassess and, of course, to improve the defence potential of its citizens.

The strategy for the Black Sea, forming a new chance for Romania, disgruntled Russia, and, in the first phase, neighbouring Ukraine. The treaty with Ukraine, considered by the Romanian National Civic Forum "a big political mistake" (Frunzeti, 2013: 40-51; Tudor, 2014: 273), has limited Romania's territorial waters, giving the possibility of drawing up a strategy for exploiting oil and gas resources of the maritime platform. The problems of Moldova regarding Tiraspol enclave and this country's desire to join the EU constitute a flaw in the security politics of Romania, in our country's relations with Russia, reverted in recent years among the great powers of the world.

There is the need to complete the recent developments of the European security system architecture for the adoption of new strategies for the protection and safety of EU Member states and of states in North Atlantic Organization. The treaties on economic, cultural and social cooperation and collective self-defence and the signing of the North Atlantic Treaty regarding the military field are just a few highlights of defence policy conceived in the years of the European construction.

The current European security architecture reflects the essential traits of the geopolitical environment in which it operates: the transition to a multipolar international system, the competition between powers in the Euro-Atlantic space for redistribution of roles; depth of integration into the EU; the Russian Federation's attempts to maintain the status of a great power on the world arena and to occupy key positions in the European security structures. Security is based on both political, but also military stability, these being complementary conditionings. A mobile system of European security will be raised only if both components will be consolidated. Security policy, based on cooperation

(specific for OSCE), rejects any idea of imposing stability by means of confrontation. The aim is to promote cooperation in order to prevent conflicts in policy and reducing the danger of armed confrontation. It also aims at avoiding the escalation of potential conflicts, putting special emphasis on the promotion of openness and transparency.

Defence and collective security, on the one hand, and security based on cooperation, on the other hand, are fundamentally different, but complementary tools, of international security policy. Application of the principle of subsidiarity in the European security supposes taking into consideration a system for multi-floor security: NATO, EU, OSCE and the UN. Engaging in one or more of these levels depends on the specifics of security tasks considered. The need for correlations, for optimisation in the co-operation between the various security institutions became more evident than ever. Developments in the EU, the competition between EU and NATO, the possibility that the national interests of some Western States prevail over the common ones, security assessment on the ideological and financial positions, the lack of a proper division of labour among participating States, are the main factors that influence the building of an efficient system of European security.

Institutional developments, recorded especially after modifying the Lisbon Treaty in 2009, gave a concrete form to the contribution of Europeans to the Euro-Atlantic security. The level of interoperability that is at the basis of EU-NATO relations give content to European collective capacity of crisis management.

A limitation of the sovereignty of EU Member States operates in the field of defence (Portelli, 1994: 160-162), initially resulting as consequence of the accession of European States to the Atlantic Alliance (1949), which put the European troops under the command of the United States. Immediately after the signing of the North Atlantic Treaty, on military level, operational structures and the general staff of the forces of the Western European Union (WEU), from Fontainebleau and Versailles, have been transferred to the Alliance, in 1951. In fact, the modified content of the Brussels Treaty confirms the option for crucial proximity to NATO: "in the execution of the Treaty, the High Contracting Parties and organizations created by them in the framework of the Treaty will cooperate closely with the North Atlantic Treaty Organization" (Păun, 1999: 514). This transfer of sovereignty to NATO (still currently in force) has raised numerous obstacles to building a European defence policy because "it is difficult to transfer to Europe what already belongs to NATO" (Păun, 1999: 161). Because of this, security and defence issues were initially excluded from the cooperation domains.

Starting with the Single European Act (1986), Member States have declared themselves ready to coordinate positions on "political and economic aspects of security", but in the Treaty of Maastricht referred for the first time to the issue of security and defence, only in very vague terms, aiming at arriving at a compromise between the partisans of defence within the Atlantic Alliance and the partisans of a European identity of defence. Under the same Treaty, the common foreign and security policy (CFSP) (Dinan, 2000: 83) constitutes one of the pillars of the EU, together with European Community, internal affairs and justice. The Maastricht Treaty has established numerous ties between the EU and the WEU (Western European Union), raising the status of WEU at the status of "an integral part of the development of the EU", while maintaining its institutional autonomy, however. In 1991, the EU (through The Declaration of the WEU Member States that are also members of the EU, about the role of WEU and its relations with EU and NATO, Maastricht, 10 December 1991) declares itself "ready to develop close working relations between the WEU and the Alliance and to strengthen the role,

responsibilities and contribution of WEU Member States in the Alliance", which means a balancing of "burden sharing" (a division of the burden) between USA and Europe, desired by Americans for budgetary reasons and by Europeans for political reasons. Two main directions are identified in the first instance, considered by Europeans: removing dependency towards NATO in the military field and increasing EU responsibility by enhancing national forces interoperability; implementation of a programme of military drills and workouts together with NATO and eliminating any shortcomings in terms of communications and satellite observation.

The alliance has discovered that the technological gap between US armed forces and those of the European nations became increasingly larger. This fact is connected with the technological know-how and also with the fact that, after the Cold War, European nations have reduced military forces, knowing that there is no longer an immediate danger coming from the Soviet Union (Avram, Radu and Gaicu, 2006: 233). But the air campaign in Kosovo has outlined clearly in the minds of Europeans that, in addressing in a modern manner of crisis management and in ensuring a modern manners "of developing a campaign in such difficult areas, the Europeans have a big deficit before the Americans" (Klaus P. Klaiber, head of the "Political Problems" Division of NATO). The list of difficulties that have confronted the allies in Kosovo have convinced Europeans that they have to work very quickly in solving the problems of modern capabilities of crisis management: communications, fast air operations, aerial reconnaissance operations (Dufour, 2002: 195; Pond, 2003: 76-81).

What's the point of establishing a joint reaction force?

The Treaty of Amsterdam (1997) has not included any explicit reference to the common defence policy, however after the Kosovo conflict has emerged the need for coagulation of a common European policy of security and defence (Avram, 2003: 161-162). At the Helsinki European Council (December 1999), Member States have decided to develop their military capabilities and to build new political and military structures for the purpose of investing the Union with an autonomous capacity to decide to launch and lead military operations under its direct management where and to the extent that NATO is not engaged, in the case of an outbreak of international crises (Dony, 2001: 283). It was noted, however, that this process does not involve the creation of an European army. The Lisbon Treaty, through Article 3ª, introduced the rule according to which "any jurisdiction which is not attributed to the Union by the treaties belongs to the Member States". Membership in the European Union should not affect the equality of the Member States with respect to treaties, as well as their national identities, inherent to their fundamental political and constitutional structures. The Union is bound by respect for local and regional autonomy of the Member States, the essential functions of the State and, in particular, those that have the purpose of ensuring its territorial integrity, maintaining law and public order and safeguarding national security. For these reasons, national security remains one of the areas of exclusive competence of each Member State in order that this matter will not be and is not intended to be regulated at European level because the EU could not manage this process better than the States themselves. The Lisbon Treaty provides that Member States can make available to Union civil and military resources for its operations in the field of the common security and defence. However, any Member State shall be entitled to oppose such operations because all its contributions can be made only on a voluntary basis. A group of Member States will be able to carry out disarmament operations, humanitarian and evacuation missions, missions of advice on issues of military

and peacekeeping operations. No Member State can be obliged to participate in such operations.

An important issue for both organizations, but also for the countries of Central Europe, remains the enlargement of the two organizations. It was desirable and it is desirable that the enlargement process to be compatible and to strengthen each other, due to the cumulative effect of security guarantees stipulated in Article 5 of the modified Brussels Treaty and Article 5 of the Washington Treaty. For putting into force the Article 5 of the modified Brussels Treaty, all countries concerned have to be NATO members. When WEU still worked, the United States opposed to the admission of new countries in the WEU, with the status of full members, provided that they are not NATO members. Therefore, it is possible that EU enlargement will depend on the future on the one of the Alliance, in order to avoid, as it appreciates, obtaining security guarantees from NATO through "occult" means.

European decision establishing a joint rapid reaction force, with distinct, separate military planning bodies, deeply displeased Washington, which considers that, therefore, its dominant position in the Atlantic Alliance, determined by the massive financial contribution including, will be greatly weakened. This dissatisfaction has found clear expression in the harsh judgments of the American Minister of defence, William Cohen: "there can be a separate group of EU interests in NATO", there must not be "parallel or redundant structures, because it will weaken the Alliance".

Expressing doubt that the EU could develop military autonomy, the prestigious political scientist Zbigniew Brzezinski has released ten tips for American policy toward Europe: Europe must remain the natural and main ally of America; essential for achieving a sustainable balance in Eurasia is an Atlantic Europe; USA should not oppose to the creation of an autonomous European defence capability, even if it is unlikely to be realized in the near future; the political Union between the allies is more important than to strengthen NATO's capabilities; no decision must be taken about a missile shield until the consensus of NATO allies is obtained on this issue; US need to support the expansion of the Alliance in Europe, but not beyond this area; the stakes of European enlargement are more important to US than those of the progress made in the direction of European unification; expansion of NATO and the EU must be made in concert; it must be taken in view the perspective of Turkey and Israel of joining both NATO and EU; no country should be ruled out a priori from the possibility of joining the North Atlantic Alliance and the EU (Lumea Magazin, 2000: 49).

In the field of European and Atlantic security took place two complementary processes, "separable, but not separate", regarding the use of forces and means: making the EISD (European Identity on Security and Defence) in NATO, outlined in the second half of the 1980s, and the FCSP (Foreign and Common Security Policy) within the EU (Banciu, 2006: 269; Avram, Radu and Gaicu, 2006: 223), a concept born in the European Council from Köln in 1999. The new strategic concept of the North Atlantic Alliance considers that developing a foreign and common security policy, including the progressive framing of a common defence policy, as provided for in the Amsterdam Treaty, is compatible with the common security and defence policy, established in the Treaty of Washington. Enhancing the security environment is directly proportional to the increase in responsibilities and capacities of European allies, with a focus on security and defence.

Security, as well as other areas of social, economic and political life, cannot avoid the effects of globalisation and the whole train of new technologies it brings with itself and which have radically changed the world of diplomacy and international relations.

Globalization does not mean just free trade, associated with welfare population growth, the free movement of goods, capital and persons (with certain limits and restrictions laid down by law), but also terrorism, drugs and people trafficking, organized crime, the spread of disease, uncontrollable pollution. Of all these negative phenomena spread widely by the "wind" of globalisation, terrorism is the one who has contributed the most to the failure of the State to ensure the safety of its citizens. Dangers and threats associated with terrorism are in a continual evolution, external risks (proliferation and development of terrorist networks, spread of the phenomenon of transnational organised crime, enhancing international traffic of people or drugs, development of weapons of mass destruction, nuclear materials and technologies, unconventional lethal arms and means) conjugated with internal risks (issues related to national ethnic and religious minorities, setting up small terrorist cells, individual attacks or assaults, etc.).

Bearing in mind the indissoluble link between economic and military power of a State, the effects of economic problems are not neglected (for example, the global economic crisis triggered in 2008) that are amplified in conditions of globalization, due to increasing competition, spread of illegal trade, rising inflation and unemployment, etc.: "there is no economic power where there is no economic security nor economic security where there is no economic power" (Năstase, 2009: 88). In fact, one of the worst effects of the economic crisis that we still feel is that resulted in some reduction in military spending and a shift in priorities of national defence and military security of the main actors of the international scene. In order to minimize these effects, the researchers stressed that special "activities are necessary to help strengthen national security: 1. increasing national security generating resources; 2. Development, at regional level, of cooperative defence; 3. reducing economic, social, political, military and environmental vulnerabilities; 4. development of viable mechanisms for regulation and control; 5. increasing the efficiency of collective security systems; 6. enhancing economic cooperation, easing through joint efforts, the negative effects of globalization; 7. development of management and combating asymmetric threats; 8. increasing concerns for global security" (Tureac, Curteanu and Filip, 2009: 148).

In a multipolar world, "a world of states and alliances of states", it is worth considering, on the one hand, that the decisive role in the adoption of security decisions belongs to the UN Security Council, and, on the other hand, that the EU, US, Russian Federation and China have defined their spheres of interest (Frunzeti and Oprescu, 2013: 15). In the vast and intricate network of international relations, Europe remains a major ally of NATO and, therefore, of the United States, supporting the admittance of Turkey into the European Union and the strengthening of the European partnership with the Russian Federation, given its huge energy and commercial potential.

Tensions arising in EU-NATO relations are due to the difference arising between the strategic priorities of the two organizations: "on the one hand, an increasingly integrated Europe, concerned with its own security and stability and at most Mediterranean; on the other hand, a more global America, involved in Middle East and Asia and in the accomplishment of a policy of «international gendarme»" (Hotea, 2005: 122).

With strong trade relations, strengthened by Russia's accession to the World Trade Organization (WTO) in August 2012, the EU relied on its main partner only commercially but could not be ignored, however, Moscow's attempts to remove the Union off the American camp. Moscow's ambitious projects to create an Eurasian common marked and strengthen Collective Security Treaty Organization (CSTO), which covered

the sphere of influence targeted by Russian military doctrine, are in contradiction with the trends of expansion of the EU and the North Atlantic Organization to the East, with China's increasing power not only in Central Asia but also globally, with the rise of Japan and the "rebirth" of military, cultural and political Islam (Postevka, Zodian and Oprescu, 2013: 260-261).

A sticking point in European security remains Ukraine, even if its people support a third of its foreign trade with the EU trade partnership (Zodian and Oprescu, 2013: 164), has shifted political and military orientation shortly after the conflict in Georgia (2008), abandoning the policy of accession to NATO and of integration in the EU (Postevka, Zodian and Oprescu, 2013: 263).

An imbalance factor is the ethnic and inter-religious conflicts, the ones in the North and South Caucasus standing out in bloody episodes and serious violations of human rights, exacerbated by the political interference of the Russian Federation. While there will still be countries with poor governance, with ethnic, cultural or religious tensions, economically underdeveloped and with permeable borders, the UN, NATO, EU and other regional organizations will continue to be involved in managing internal conflicts as "strong Members wish to minimize their direct involvement, in particular by supporting one of the parties (especially by providing the necessary weapons)" (Badea, 2009: 75).

External interference, coupled with the inefficiency of states to ensure the security of their citizens will increase internal conflicts and international instability and security threat: "The internal conflict is the most lethal form of violence that erupted after the Cold War and produced more victims among civilians than inter-state wars and terror in one place" (Badea, 2009: 75).

American involvement in "orange revolutions" in Georgia, Ukraine and Romania, Georgia and Ukraine's attempts to join NATO and the installation of US military bases in Romania, Bulgaria and Georgia, were hit by the vehement opposition of the Russian Federation, faced with the huge gap between its own military and economic potential and the one owned by the NATO-EU partnership (2,200 billion dollars GDP and 140 million inhabitants respectively 16,000 billion dollars GDP and 500 million inhabitants) (Postevka, Zodian and Oprescu, 2013: 262). These steps were taken by NATO to strengthen strategic positions in South-eastern Europe and the Black Sea. Recognizing the importance of strategic cooperation with Russia, NATO stresses, in the New Strategic Concept launched in 2010, that it does not see the Russian state as a provider of threats, but insists on "the need for reciprocity for building a truly equitable and sustainable partnership" (Cenușă, 2010: 30). The Strategy Paper and the NATO-Russia Joint Declaration signed at the meeting in Lisbon on 20 November 2010, refers to the fact that both NATO and Russia "will develop relations with the respect of sovereignty, independence and territorial integrity of states in the Euro-Atlantic area, reaffirming the importance of trust, transparency and mutual predictability" in the Strategic Concept for the Defence and Security of the Members of the North Atlantic Treaty Organisation.

Conclusions

In a Post Cold War fictional scenario, which describes the possible effects that globalization may have on international security, "political tensions between the US and Europe will increase, transatlantic relations will deteriorate, the US will withdraw their troops from the old continent, while the European Union will withdraw into their own borders, while allocating significant resources to close neighbourhood stability by

engaging more actively Community institutions" (Badea, 2009: 78). Simultaneously, the crises in Latin America (Venezuela, Colombia, Mexico and Panama) will attract US attention on the region. Normalization of Korean relations and the possible *de facto* unification of the two countries in the peninsula could attract the support of China and Japan, while the US would decide to withdraw their forces from the region. At the same time, national rivalries between Asian powers would increase military preparations to resume weapons programs, including increased production of weapons of mass destruction. Given the inability of regional and global institutions to effectively manage conflict situations in the outskirts of Europe, Eurasia, Middle East, Asia and sub-Saharan Africa, many countries would end up being marginalized, fact which will have major implications for state security, stability, democracy, human rights and prosperity. Obviously fictional, this scenario is dreamed, but "helps us to organize our ideas so do not be surprised by tangential reality and identify the most effective methods and tools for conflict prevention" (Badea, 2009: 78). Cooperation and collaboration between the various international organizations active in the field of security can provide resources and opportunities, but ultimately the responsibility for maintaining international balance and for it to be further supported – and the benefits of it benefit to all – belongs not only to international organizations, but also to all States, whether developed or developing, big powers or small states under the strong influence of the former.

The world today is not that of 25 years ago, even the few years ago, nor the last year, a month or a week. Radicalisation of options and pace of impoverishment are factors that determine the change, along with globalization, religious fundamentalism and the struggle to preserve national identity. The far right and far left shake hands, upsetting the European Union. Elections in Greece, attacks in France, pressures of far right in Britain, France and Germany, most of the far left in Spain and Italy, refusal, becoming more visible, to be accepted allogeneic form developed EU countries, closeness of Hungary to Russian Federation and expansionist tendencies manifested by Putin questioning the future of Europe, the peace and security of Romania.

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Article Info

Received: December 10 2014
Accepted: March 15 2015

RSP • No. 45 • 2015: 31-42

ORIGINAL PAPER

Is the Constitution Unbounded? Overlapping Adoption and Amendament Assessments

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Abstract
The present article presents the contemporary constitutional theory as a commonplace understanding that the procedures for the adoption and revision of the Constitution concern a certain type of society and political thought, properly described by the trend of constitutionalism aiming at the limitation and organization of the political power in order to protect freedom and human rights (Dănișor, 2014: 30). Viewed within this relation, the procedures for the adoption and revision of the Constitution must contribute to the organization of a society of *freedom* (Alexandru, 2013: 61). The methods of achieving this objective vary according to the country where they are applicable, therefore one can talk about a British, French, American, German constitutionalism and so on, with the possibility of checking whether a constitution or another falls within the paradigm described by constitutionalism, whether there is a real protection of personal freedom by specific political mechanisms for the adoption and revision of fundamental laws or interaction of state powers.

Keywords: Constitution, adoption, amendament, legitimacy, theory

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Constitutionalism, synonymous with the emergence of written constitutions, dictates certain rules for their adoption and revision: to have a constitution adopted under the umbrella of constitutionalism, it needs to be the work of a *free constituent power*, that is capable of self-organization, and of a *constituent assembly* or constitutional convention that comes to close the circle by the adoption of a constitution as a document connecting and ordering the entire society within a certain pattern of political interaction. For the Romanians, similarly to the Americans, the Constitution is the symbol of the national state; Romania was built as an independent political entity around the debate and evolution of its Constitution, i.e. the constituent power and authority, as elements accompanying any constitution of constitutionalism.

The procedures for the adoption and revision of the Constitution are but mere manifestations of the constituent power, of its will, and in the case of Romania, measures for its independence and freedom (Andreescu, 2013: 50). The article includes the analysis of the procedures for the adoption and revision of the Constitution in Romania, in the trend of constitutionalism and highlights the connection between the adoption and revision procedures and the independence and freedom of the constituent power in Romania. This was an evolutionary path to independence and political unity for the study of the procedures for adopting and revising Constitutions in Romania, and one has to distinguish between the analysis of the procedures for constitutional acts and the analysis of the procedures for the adoption and revision of the Constitution in its generally accepted meaning of work of a free constituent power. It is therefore a process of developing and expressing the constituent power in Romania as reflected in the procedure for the adoption of constitutional acts prior to the existence of a Constitution as such.

The constituent power and the legitimacy of constitutional acts

After the political unification of states at the end of the 18th century, fulfilled by regaining the royal prerogatives from the papacy and the local lords, there emerges the issue of the legitimacy of this unification that is the issue of sovereignty and its source or the issue of the origin of political power. Democratic theories are those which "put the origin of political power in the collective will of society, subject to this power and showing that *political power is legitimate only because it is established by the community it leads"* (Alexianu, 1930: 83); this is the view of constitutionalism for which a Constitution comes to materialize the collective will of society, expressed in rules of political and legal organization. Constitutionalism is therefore always concerned with the issue of the legitimacy of constitutions and the political structure of the state which they maintain, those expressing this free collective will being considered Constitutions in the proper sense of the term. Without this manifestation of the constituent power, that conveys general rules of organization through the adoption, by a constituent assembly, of a draft constitution which will then be subjected to popular approval, we cannot talk about freedom or legitimacy of the political order and therefore about constitutionalism (Vedinaș, 2013: 19).

In Romania, like any other state, the Constitution thus depends on the existence of a free constituent power to support and form a state order based on a specific social and political vision. However, a distinction is necessary. We can note that in the Principalities there was a constituent power before international relations were mature enough to allow its legally sanctioned manifestation, i.e. before gaining independence. The constituent power is not an abstraction, it can be seen in the demands of social classes, the principles pursued by them or the form of political organization whose development they pursue,

depending on the context in which these demands appear. We therefore had a constituent power in the Principalities without having a Constitution or before we had a Constitution.

The ability to freely change constitutional rules, upon the internal initiative of the authorities, is fundamental for defining independence and the constituent power, a mark of this independence, of the freedom and sovereignty of a state. But relating only to the constitution of a sovereign state, one cannot do justice to constitutionalism in Romania, considering the fact that its establishment is the result of a whole history of constitutional acts. Thus, if for the other countries, the political unification process under a state sovereignty is based on a mutation of the source of legitimacy of the state from the divine right of the sovereign to the nation, in the Principalities, the constitutional and revolutionary movements rely on internal autonomy and national independence. These are the aims of all actions by which, in the Principalities the constituent power is expressed, through constitutional acts discussed throughout its history in the Ottoman Empire, in Sankt Petersburg, Russia, through international treaties signed by the great powers, in Paris, France, or in England. All these define the historical course of constitutional development of the Romanian state and, at the same time, of its constituent power manifested in the procedures for the adoption and revision of the constitutional act, continued today by the 1991 Constitution.

The term Constitution, "first pronounced in Romanian in 1829, would be dramatically spread between 1834 and 1848, to become a vital presence in the economy of the national regeneration project" (Stanomir, 2004: 56). It is therefore about the development of the constituent power in Romania and the Principalities, i.e. its continuity, an idea that is found in the context of the two Romanian democratic revolutions: "To achieve this change, imposed by the laws of social development, it took a series of battles at the socio-political and ideological level, culminating in the Principalities by two major historic events: the 1821 revolution led by Tudor Vladimirescu - which, due to its objectives and consequences can be considered a true national and social revolution, and the 1848 revolution, which was the continuation and development of the first at a higher level. Consequently, the whole period can be considered as a time of preparation, in various fields, of the 1848 revolution" (Șotropa, 1976: 17).

For the Principalities, the legitimacy of the political organization and the constituent power as such represent an evolutionary process coagulated around the process of gaining independence and self-determination. Seen in relation to the current constants of political and legal modernity, in the Principalities, the will of the constituent power aimed at limiting the ruler's absolutism and the rationalization of the political power phenomenon along with self-determination or, in other words, at escaping feudal exploitation and foreign domination. Thus, in the Principalities, the work of the constituent power long precedes the time of adoption of the 1866 Constitution; it is a gradual development of the legal force of the constituent power which begins with the Organic Regulations and ends, in an acceptable form or not, with the adoption of the 1866 Constitution (Duțu, 2014: 37).

The adoption procedure and the legitimacy of the Organic Regulations

At the time of adopting the Organic Regulations, the Principalities were under Russian protectorate and under the suzerainty of the Ottoman Empire, suzerainty whose effects in terms of autonomy or internal sovereignty were aggravated by the end of the 17th century and reached the peak in the 18th century. It was mainly about the Sultan's intervention in choosing the rulers of the Principalities, on which his influence had

gradually increased by their revocation and appointment in accordance with the interests of the Ottoman Empire. The climax of this intervention in the internal sovereignty of the Principalities is reached by the establishment of the Phanariote reigns and Phanariote regime, a form of domination of the Ottoman Empire in the Principalities in the 18th century. This is why the re-establishment of the reigns of the land, becomes a constant demand until the final victory of this idea formulated during the war of 1716-1718, i.e. from the beginning of the series of claims and programmes in the Phanariote century (Șotropa, 1976: 36).

The issue of the Principalities' autonomy raised internationally by Russia, too, gets a real impetus within the two countries by the creation of a reforming group from among the boyars who, along with the rebellion of Tudor Vladimirescu, make possible a new discussion on the internal organization and outline the intention to adopt some fundamental laws closer to the self-determination right which embodied the general wish of liberation from Turkish and Phanariote domination. The political reform activity of the constituent power in the Principalities thus seeks, before the adoption of the Organic Regulations, the restructuring of the political organization by introducing the principle of the separation of powers in the state together with other political mechanisms and the regaining of the self-determination right and liberation from Ottoman suzerainty in order to pass under the protectorate of a Christian power.

The Organic Regulations are thus the result of the demands of the constituent power in the Principalities for a serious reform of the political order; they had to be seen at that time as a moment of separation from the old order of Phanariote reigns and it supported a new air of patriotism; internationally, these demands find a means of expression by the signing of the Adrianople Treaty as a result of the agreement between Russia and the Ottoman Empire.

The procedure for the adoption of the Regulations reflects the principle of a certain collaboration between the Romanian party represented only by the high-ranking Romanian boyars and the representatives of the Russians. Therefore the subordinate position of the Principalities, is suggested by the fact that they had only gained the right *to participate* in an *improvement* of their political fate. The Regulations finally become the result of an *agreement* between the high-ranking boyars and the Russian authorities: the discussions on the principles of the Regulations are conducted in Sankt Petersburg, and the latter are adopted by the Tsar in May 1829. The text is drafted by a Commission consisting of 8 boyars, 4 for each Principality; half of them are elected by the Divans and the other half by their president, Paul Kiseleff. The project is completed in March 1830, when it is sent to Sankt Petersburg, where another Commission consisting of three Russians and two Romanians examined them and operated minor changes. The Regulations are then submitted for debate in the Extraordinary Public Assembly in Bucharest and Iasi.

In the course of adopting the Regulations it is obvious that "most boyars fight for maintaining and including in the Regulations various rights and privileges which ensured their domination" (Șotropa, 1976: 87); although they met the demands submitted in different petitions and memoranda, the Regulations preserve strong features of the old feudal order. The Regulations were therefore "only half a measure; they were not a reversal, but simply an improvement of an existing system" (Șotropa, 1976: 91).

The procedure for adopting the Regulations as constitutional acts highlights the Principalities' position at international level and the freedom of expression of the constituent power within, the participation of authorities in the Principalities being limited

to *consultation* by the two international powers. But the constituent power is coagulated and strengthened around this subordinate position of the authorities in the Principalities with regard to the adoption of rules of political organization, because the procedure for adopting the Regulations is the main argument used to contest the legitimacy of these acts, especially when they are required to ratify a secret additional Article.

The additional article of the Regulations is added later, in 1833, while negotiating with the Ottoman Empire for the approval of these documents. The article is adopted by the representatives of Russia and stipulates the impossibility of princes and Assemblies to modify the Regulations without the express approval of the Russian government and the Ottoman one, of the protecting power and suzerain power. The article is brought before the Assemblies for ratification, being rejected by the boyars after the debates of June-July 1837. The Assembly delegates a Commission with the task to compare the original version of the Regulation with the present one: "The stakes were infinitely more important than the acceptance or rejection of the Article, the very status of the Principalities lying at the core of the debates, just like the relationship that they were to maintain with the protecting power" (Stanomir, 2004: 142). Pressure was needed from Russia and the Empire in the form of a written firman drafted in Petersburg which ordered the authorities to ratify the additional Article. The Additional Act was passed on 21 May 1838, this opposition proving the national thinking, the conscience of independence; the event hardens the boyars' attitude towards Russia and strengthens the attitude of liberal boyars who would form the nucleus of the 1848 generation.

In order to understand the reasons behind the wave of discontent against these Regulations, it is extremely important to see the discrepancy between them and those wishes which supported the 1821 Revolution and all the demands in the memoranda preceding the adoption of the Regulations, which did not cease to be formulated after their application. The authors of the petitions and memoranda understood the reform in the Principalities in the form of an administrative autonomy accepted by the foreign powers. Thus, there are two constants of these demands from the perspective of the topic we are concerned with: acceptance of the legal acts of political organization by the Powers which, following the international game, earn the right from the other Powers to obtain the satisfaction of certain interests in the Principalities and an autonomous internal administrative system. It should be noted that all these movements take place against the background of internal class and social dissensions between the low and high nobility, later followed, through the group around Cîmpineanu and the 1848 group, by representative democratic demands for the benefit of all social categories.

We have to note in this sense that: "A criticism that can be made to all claiming acts until the revolution is that formulated by N. Bălcescu in the biography of Ion Cantacuzino (...) in the sense that he, like the other members of the nobility of his time, called external political forces, or, as the author says, sought the support of foreign kingdoms to raise his homeland, he never asked for the people's help for this purpose and never thought to grant the people rights that might make them defend their homeland, that our patriots, forgetting the experience of centuries which clearly proves that a nation can only be saved by itself, losing confidence in its powers, began to beg for foreign help. To a lesser and lesser extent, we will find this negative aspect in the next period (1821-1848), when ideologists turn into revolutionaries who seek to gain freedom for our society and to bring necessary innovations, relying primarily on the country's own forces, the power of the people, which they would aim to set free and bring to a higher position than that during feudalism" (Șotropa, 1976: 48).

By the movement he generates and the acts he adopts, Cîmpineanu somehow responds to the critics formulated by Bălcescu and proposes for the first time in the Principalities the variant of an autonomous organization of the Principalities. One has to note in the programme of this movement the importance attributed to the sovereign, the application of the constitution being mandatory after the election of the sovereign, and therefore, after the achievement of unity and independence. Cîmpineanu thus imagines the establishment of an independent state, organized on true constitutional rules adopted by internal forces of the Principalities: "It is the only Romanian constitutional draft which provided the establishment of a democratic state by a battle aiming at freedom and independence, a fight which could only begin as a consequence of a revolutionary movement carried out in order to gain power (...) the Constitutional draft of Cîmpineanu distinguishes itself from all projects of that time (Șotropa, 1976: 106).

The Organic Regulations pave the reign of privilege and inequality in the Principalities; they strengthen the Russian protectorate: "The Romanian people, relying on the old treaties rejects a Regulation which is against its legislative rights, and against the treaties recognizing its autonomy" (Stanomir, 2004: 213). Those contesting the order of the Regulations consider that all these evils are caused by the method of adopting these Regulations, so that the adoption procedure is one of the main reasons of contestation by reformist groups in the Principalities, whose work culminates with the movement of Ion Cîmpineanu and the National Party: "without getting in the details of a debate relating to the adoption technique, the common denominator of their assessment is offered by the acknowledgement of their non-constitutional nature, given the absence of a free debate and the gaps in the regulated object" (Stanomir, 2004: 97). The Regulations are thus assigned a transitory nature by the protestors, being adopted "during a military occupation and only by part of those who should have been called to their drafting" (Șotropa, 1976: 99).

Hence, the constituent power in our country develops around the ideas embraced by several generations of Romanians; the ideas of the 1821 revolution, strengthened and complemented by the 1848 revolution. These ideas are protected against the Organic Regulations, between these two revolutions, that everybody expected to be the legal embodiment of the ideas of the 1821 revolution. The 1848 revolution, as well as all the movements that precede it and made possible its manifestation, come and let speak those who protested against the Regulations and their fidelity to the requirements of the constituent power from the time of their adoption.

The constituent power and constituent authority of 1848

The distinction between the imposition of some fundamental laws by the authorities outside the Principalities and the free adoption of such documents, a distinction that marks any debate on the existence of genuine constitutional forms is highlighted in the Principalities as never before the events around 1848. Ioan Stanomir noted that "the argument underpinning the wish of change is the conscience of its usefulness, for the Romanians, as for the Porte alike. Recurrent in the anti-Russian pleadings, the verdict regarding the Organic Regulation is predictable, evoking that advanced in 1838 by Ion Cîmpineanu. The *Constitution* is imposed, it is far from reflecting the *genuine* will of the nation" (Stanomir, 2004: 194). Therefore it is always, under the influence of the developments of Western society, about seeking domestic legitimacy of constitutional acts, and once again the issue of legitimacy is connected in Romanian constitutional history with the constituent power and constitutional procedures.

The discussion about a state order which is not sanctioned by the will of those to which it is applicable is not mere rhetoric; the effects generated by such an order are real and justify the action of those who contest it: "The constitution imposed by the Russian authorities is stigmatized as one that has led to the distortion of the old national institutions at the expense of most of the inhabitants of the country, with the effect that the entire tax burden lies on the poorest classes of society, and political power is confined to the circle of a privileged aristocracy" (Stanomir, 2004: 194). Under the influence of young boyars in Paris, an Article appears in the French press criticizing, among others, the Organic Regulation on the ground that it was "proposed by Russia and voted by the Assembly, and it had created a privileged aristocracy, where public dignities had never intended any legacy titles. The Russian law is then criticized in terms of its false constitutionalism, thus preparing European minds for the understanding of the Romanian people's thoughts, that the revolution of 1848 would bring to light" (Xenopol, 1920: 238).

Along the same line, the Proclamation of Islaz is in itself a criticism of the authority and legitimacy of the Regulation: "The Romanian people strongly wants to maintain the independence of its administration, the freedom of its laws, its sovereign right in internal affairs (...) The Romanian people reject a Regulation that is against its legislative rights and against the treaties recognizing its autonomy" (Proclamation of Islaz). Moreover, to note another option: "The Proclamation of Islaz lies at the origin of a lexical and conceptual development at the end of which lie many of the gains of the 1866 constitution" (Stanomir, 2004: 201). The Metropolitan Bishop of the country blesses the symbolic burning of the Regulations, which "exorcises the demons of the feudal past" (Stanomir, 2004: 220).

That in 1848 there was a genuine constituent power, which included and met the requirements of all social classes, can be seen in "the fact that the peasants enjoyed the happiness that arose for them from the Constitution and showed that they were looking forward to the opening of the Constituent Assembly so that their wounds might be healed for good" (Xenopol, 1920: 259). We can see here for the first time the attempt to include all social classes in the adoption of the Constitution, the constituent power is a revolutionary one and this is manifest in the fact that the 1848 Revolution is primarily a social revolution. This is the sense in which the propaganda commissioners are established, the constituent power cannot exist without confidence in the people and without the confidence of the people: "what was originally intended for a less large audience gets down in the streets and is translated and transmitted through propaganda commissioners to those who are regarded as potential citizens" (Stanomir, 2004: 229).

On June 28th, the provisional government sets the rules for the election of a Constituent Assembly with the task of adopting a constitution that reflects the principles of the Revolution (this process was interupted on August 16th): "This Assembly will bequeath this constitution to future generations and will still owe to finish it by a law under which the people will have the right to elect, every 15 years, extraordinary deputies who, coming to the extraordinary Assembly, will introduce the reforms required by the spirit of the epoch. This prevents the deplorable need to require reform by way of arms and our children and grandchildren will be spared of the need in which the Romanian people stays today" (Badea, 1982: 538). The Constituent Assembly was imagined as a permanent institution that should intervene every 15 years to introduce "improvements required by the advance of the century". Limiting in time the revision of the Constitution, not earlier than 15 years, had the purpose to strengthen stability within the state.

The Constituent Assembly has clearly defined roles based on the representative mandate received "it shall represent the whole country, its general interests and principles, it shall take an oath on the constitution, it shall give the country the constitutional charter based on the 21 Articles that the true patriots swore on; it shall provide the fundamental laws for the organization of the country and shall eventually close the session by electing the ruling prince" (Badea, 1982: 770). The role of the Assembly was to "regulate the reform of the country after the 21 above-mentioned articles that the Romanian people decreed".

The Constitution gains at the time the place required by constitutionalism, following the same pattern of the French Revolution in which the declaration is followed by the adoption of the Constitution which has the purpose of implementing the revolutionary principles. The proclamation and the movement around it bring forward specific elements of constitutionalism, of a constituent assembly in that language of a constituent extraordinary general assembly. The Revolution of 1848 contributes to the development of the constituent power in that it emphasizes in the public conscience the fundamental difference that exists between the right to be consulted and the freedom to organize an autonomous and independent constituent authority. However, the 1848 Revolution and the experiment of liberalism in Romania ended in September 1848 when Tsar Nicholas sent his troops to Wallachia. They occupied Bucharest and dissolved the interim government. The next chance of Romania is created by international conflicts that give rise to the Crimean War.

The adoption procedure and the legitimacy of the Statute expanding the Paris Convention

After the Crimean War, the Peace Treaty of Paris (1856) leaves the Principalities under the suzerainty of the Ottoman Empire and, as a result of Russia's defeat, places them under the collective protection of the Powers: no guarantor power was allowed to intervene alone in the affairs of the Principalities.The signatories of the 1858 Convention of Paris recognize to the Principalities two important rights that had been granted to them under the rule of the Organic Regulations, too, the right to choose their own rulers and to express their views on the future form of government, the right to maintain an army, to trade with other states and to pass laws, are also recognized (the administrative independence of the Principalities). The favorable international context makes it possible to approach the topic of the union of the Principalities under this Convention, a topic which had already been included in the Organic Regulation.

The decision to consult the Romanians with regard to their own organization is taken by the Great Powers at the Congress of Paris, at the meeting of March 8th 1856 when Count Walewsky notes "that before reaching the issue of the new organization of the Principalities, one must examine whether they should live on under a separate organization, and whether it would be in the interest of both these countries and Europe that they be reunited in a single state. The ambassador of Austria shows that such measures could not be taken without consulting the will of the people, supported by the British ambassador with the mention that in such cases it is always appropriate to consider the will of the people" (Xenopol, 1920: 311). The foreign countries, while analyzing the protocols of the Paris Convention, observe "the significant role assigned by the Congress to the Romanian people which will have to decide its own fate, since the union will take place or not, as the wishes of the Moldavian and Wallachian populations will be pronounced for it or against it" (Xenopol, 1920: 324).

A consultative assembly, called ad-hoc Assembly, had the role to make known to the great powers the public opinion in the Principalities. The Sultan issued a Firman on January 26th, 1856 to convene ad-hoc Assemblies and to present the procedures for their election; the Paris Commission restrains the right to vote only to owners of large fortunes; the Divans adopt the four points: the union, the foreign ruling prince, the autonomy and the representative principle or constitutionalism.

The information obtained by repeating the method of consultation of the Principalities, also used for the adoption of the Regulations was to be processed by the Powers that would establish, based on it, the form of organization for the Principalities. For the second time the Great Powers set for the Principalities a Commission whose task is to gather information about the future form of government, commission which reaches the country in March 1857. The investigation commission makes a report on the situation of the Principalities and the wishes of the Romanians as expressed in the ad-hoc assemblies, a report discussed by the Powers in Paris on May 22nd 1858; based on these discussions, the Paris Convention is adopted and signed on August 19th 1858. The Central Commission in Focsani is established under the Paris Convention for the purpose of ensuring the application of the provisions of the Convention in the two Principalities. It was the guarantor of conventional order.

This international and political climate witnesses the first manifestations of the internal autonomy in the Romanian Principalities, and the first sign of this internal autonomy is the resistance of the Divans against the failure of the signatories to the Convention to observe the demand for a foreign prince. This resistance takes the form of the double election of Cuza in the two Principalities: "On the election day in Moldavia, M. Kogălniceanu before voting, proposes that, although the Convention has not accepted the election of a foreign Prince, the Moldavian assembly continues to wish it, and the Ruling Prince who will be elected should remember that his highest mission is to get off the throne and to bring a foreign dynasty in his place" (Xenopol, 1920: 392). This is the context in which the two political parties came into being: the liberal party, which supported Cuza and the union, and the conservative party, which elected Cuza under the social pressure, and feared the loss of class privileges in case the peasants were put in possession of land. Cuza is thus elected as a connection point between the situation created by the rejection of the foreign prince by the powers and the near future in which this demand of ad-hoc Divans could be achieved.

But precisely in this period of transition there occurs one of the most important achievements for the autonomy of Romania in the game with the great powers. Cuza convenes the first joint session of the legislative bodies on January 24th, 1862 in Bucharest, by the Law of February 21th, 1862 he abolishes the Central Commission in Focsani and on January 22nd, 1862 under the leadership of Barbu Catargiu, he forms the first government common to both countries. But the prominent element of the development of the constituent power and authority that we describe is the adoption by Cuza of the Statute expanding the Paris Convention after the coup of May 2nd, 1864. Considering the two political factions already polarized before Cuza's election, the Statute is adopted as a result of the disagreements with the Assembly on the issue of electoral and agrarian reforms. Kogălniceanu, when forming the government believes that only an authoritarian government may allow agrarian and electoral reforms, considered indispensable for the entire economic and social progress.

The social and economic reforms could only be achieved if the power of the Conservatives in the Assembly was reduced by enlarging the electoral right. On April 15th

1864, Kogălniceanu brings in the Assembly a bill that increased the size of the electorate by reducing the amount of annual taxes for direct and indirect voters. Both the conservatives and the moderate liberals opposed this bill; they contested the capacity of non-educated people to participate in governing. They brought amendments limiting the right to a direct vote and the right to be elected, to educated people. The adoption of such a bill would have made possible the fulfilment of the agrarian reform by mitigating the position of the conservatives in the Assembly. The motion of censure is moved on April 25th 1864 against the government of Kogălniceanu on the issue of this electoral reform, and Cuza rejects his resignation.

On May 14th, Cuza convenes an extraordinary session to analyze the project of the electoral reform, a session in which Kogălniceanu presents Cuza's decree for dissolving the Assembly; the deputies of the opposition leave the room with the help of armed forces. Following these events Cuza announces by a proclamation to the country the reasons for such action, criminalizing the opposition of a turbulent oligarchy which opposed the efforts of social and economic reform. Cuza submits an electoral law to the vote of the people and the draft of a new Constitution, the Statute expanding the Paris Convention.

This is how the internal dissensions that had always been present in Romanian politics, even during the period of affirming the independent character of the state, connected the internal autonomy with an authoritarian government. In terms of its constitutional nature, the Statute can be considered a Constitutional Charter, adopted by the Monarch. This type of Constitution may be amended by the Monarch, without the consent of the people. Cuza's Statute contains no provision referring to its amendment. If the legislative initiative belonged to the Prince, then "the Statute could be altered by any ordinary law following the agreement between the Ruling Prince, Chamber and the Moderating body (...). The Statute was a flexible constitution; there was no subsequent control of the constitutionality of laws" (Alexianu, 1930: 346). The Statute expanding the Paris Convention is a constitutional act emanating from the executive and is based on the authoritarian will of Prince Ioan Alexandru. The submission for approval by a plebiscite is not likely to change its legitimacy, "the terms of the pact were not established by the nation, but imposed by the power" (Focșeneanu, 1992: 11). The constitutional framework established by the Statute is thus one in which the executive has most powers to the detriment of the legislative power.

The Electoral Law and the Statute are inconsistent with the Convention. Cuza goes to Constantinople where he obtains the consent for the operated amendments, and on June 28th an agreement is signed by the great powers, recognizing the need for changes in the Paris Convention. Cuza obtained to this point, "in exchange for accepting minor changes in his reforms, a significant reward, namely the recognition, by the powers, of the United Principalities' right to amend all laws relating to their internal administration without any foreign approval, except issues that would affect their relations with the suzerain" (Hitchins, 2013: 376). The Statute thus becomes "the first national Constitution given by the Prince of the Country out of his own authority and approved by the people through the plebiscite. The Statute is the first work in constitutional history, in which the people were called to participate directly in order to accomplish the fundamental law of its organization" (Văleanu, 1936: 261).

The right to amend the fundamental acts of the state and an elected ruling prince are the constitutional elements established in this period, elements that would profoundly mark Romanian constitutional history. The Statute is sanctioned by the plebiscite

(concluded with 682, 621 votes for the reform and 1,307 votes against it), contested by those who would later be part of the revolutionary government. However, ad interim rulers preserve the institutions arising out of the Statute, Assembly, Senate and State Council (Xenopol, 1920: 472). The maintenance of the order of the Statute is profitable to the new political leadership of the Principalities, which uses the internal autonomy principle, gained by Cuza and enshrined by the Statute. Therefore the assemblies of the Statute are initially extended by the Decree of March 5th, 1866 on the ground that in hard times we have to meet permanently (Xenopol, 1920: 474).

The five fundamental points made by the Ad-hoc Divans in Iasi and Bucharest on 7th and 9th October 1857: the observance of the capitulations, the union, a hereditary dynasty from a sovereign family of Europe, neutrality guaranteed by the Powers and the constitutional system or constitutionalism. "Here was the real expression of the country's demands, in conformity with the early stage of its historical evolution, a programme arising from the experience of the past, which had to be preserved like something sacred until its full achievement, followed by a new decision and formulation" (Maiorescu, 1987 : 47). If the first two demands of the Ad-hoc Divan, the Union and the Autonomy, had been met, the other two, a foreign Prince and a constitutional regime, became possible after February 1866. The constitutional regime and the adoption of the 1866 Constitution were part of the principles required by the ad-hoc divans of 1857. The 1866 Constitution was the bridge between the past of the Principalities and the future of Romania.

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Article Info

Received: February 26 2015
Accepted: March 28 2015

RSP • No. 45 • 2015: 43-54

ORIGINAL PAPER

"Governance by the Rule of Law": Parliamentarism in Romania - Constitutional Traditions and Topicality

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Abstract
The present Romanian constitutional context underscores particular coordinates of the institution of Parliament and parliamentarism whose specificity is given by the democratic traditions of the Romanian state and people in the area of parliamentarism. These traditions become normative through provisions of Article 1 (3) of the Constitution according to which "Romania is a democratic and social state, governed by the rule of law, in which human dignity, the citizens' rights and freedoms, the free development of human personality, justice and political pluralism represent supreme values, in the spirit of the democratic traditions of the Romanian people and the ideals of the Revolution of December 1989, and shall be guaranteed". The present study pursues the legal determination of the fundamental coordinates of current Romanian parliamentarism through the analysis of the role and the bicameral structure of the Parliament of Romania, as well as through the analysis of the statute of the institution of MP in our constitutional system.

***Keywords*:** parliamentarism, democratic traditions, bicameralism, representative mandate, majority, minority

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The legislative power is, traditionally, granted to the Parliament in the different constitutional systems. The current fundamental Romanian act consecrates this too, in Article 61 (1) establishing through norm that "*the Parliament is the supreme representative body of the Romanian people and the sole legislative authority of the country*". The constitutional provision, by considering its marginal designation, regulates the fundamental role of the Parliament within the system of state authorities in Romania. Nonetheless, this generic role of the Parliament stands out by means of the specific functions that it fulfils.

Firstly, by decreeing the fact that the Parliament is the supreme representative body of the Romanian people, *a function of representation of popular will* becomes distinguishable. By adding to this fact the constitutional provisions of Article 2 (1), in line with which "the national sovereignty shall reside within the Romanian people, that shall exercise it by means of their representative bodies, resulting from free, periodical and fair elections, as well as by referendum", results that the Parliament constitutes the "supreme" instrument in the state, whose concrete determination as a representative body is accomplished through elections, and through which the people, i.e. the electoral body, exercises sovereignty.

The expression of parliamentary will, a means of exercising sovereignty, is contoured by the representation of the will of the people, yet one must bear in mind the fact that public law representation is different from private law representation, as such being merely created a relative, and not an absolute premise of conformity between the two types of will, due to the fact that by means of election it is not the will, but only the power that is handed down (Dănișor, 2007: 96-97). The use of the attribute "supreme" in the expression of the constitution underlines, on the one hand, the extremely important role of the Parliament in the system of state authorities and induces, on the other hand, a hierarchization of the representative bodies of the state, with the legislative body at the top of the pyramid, but without this leading to an implicit subordination of the afore-mentioned bodies. Further, by establishing that the Parliament is the sole legislative authority of the country, one identifies the *lawmaking function* of the Romanian supreme representative body. The constitutional regulation seems to institute, through the use of the term "sole", the exclusivity of the Parliament in the area of lawmaking. Nonetheless, the present Romanian constitutional frame institutes for yet another state body, i.e. the Government, the possibility to exercise the competence of legislating by means of adopting simple or emergency ordinances. In order to avoid a contradiction at the level of constitutional provisions from the Fundamental Act, a nuanced interpretation of the above-mentioned aspects is required. Thus, in the sense of Article 61, the Parliament can be viewed as having exclusivity in the area of lawmaking in the context in which, on the one hand, only the Parliament is competent to decide on legislative delegation to the Government, on the basis of which the latter may adopt simple ordinances in the strictly imposed limits of the enabling law and, on the other hand, the emergency ordinances of the Government, though a result of its exclusive, spontaneous will of regulation, must be submitted to the Parliament that will decide in the sense of the adoption or rejection of these governmental legal acts.

Furthermore, by way of relating to the constitutional provisions comprised in Chapter IV – Relations between Parliament and the Government, Articles 111-114, which regulate the specific means of parliamentary control over the Government, i.e. the obligation to inform the Government, the questions, interpellations, the simple motion, the motion of censure and the assumption of responsibility by the Government, one

identifies the *function of parliamentary control* exercised by the legislative body over governmental activity. This function is equally exercised through other legal means, such as financial control and participation at the setup of Government.

The Structure of Parliament: The Tradition of Bicameralism

In accordance with Article 61 (2), from a structural point of view, the Parliament is made up of two functionally independent Chambers, the Chamber of Deputies and the Senate. The constitutional provision imposes *bicameralism* as a way of structuring the Romanian legislative body. The option of the Romanian constitution in favour of bicameralism was above all determined by the traditions of Romanian parliamentarism that, from as far as the half of the 19th century until the present day, with a few exceptions during the communist period, has known a two-chambered structure of the legislative body of the Romanian state (Vida, 2008: 600).

Though at a doctrinarian level the controversy bicameralism – unicameralism with regard to the Romanian constitutional system is still very much real and continuous – arguments with concern to *bicameralism* (for further details see Attila, 2007: 146-54; Muraru and Muraru, 2005: 1-10; Tocqueville, 1992: 136-137; Duculescu, 2000: 19-24; Sartori, 2008: 249-256) being advanced both pro, i.e. a transposition at infra-functional level of the principle of the division of powers in the state, as well as against, i.e. bicameralism is specific to federal states – we consider that the key issue resides in that the present Romanian Fundamental Act justifies bicameralism as a means of structuring the Parliament.

One should first be reminded of the recent jurisprudence of the Constitutional Court in the sense of traditions of Romanian parliamentarism (Guțan, 2013) that consecrates bicameralism and the advantages of this structure to the legislative. Thus, through Decision no. 799 from June 17th, 2011 (published in the Official Gazette no. 440 from June 23rd, 2011) on the project of law with regard to the revision of the Romanian Constitution, the Court decreed that "[One] should not ignore, [...] the tradition of the Romanian state and the advantages that the bicameral structure of the Parliament, as opposed to a unicameral one, has to offer [...]". Traditionally, the Romanian Parliament has had a bicameral structure. This structure of the legislative body, consecrated in 1864, through «the Developing Statute of the Paris Convention» of the ruler Alexandru Ioan Cuza, continued to exist under the empire of 1866, 1923 and 1938 Constitutions and was only interrupted during the period of the communist regime when the national representation was unicameral – The Great National Assembly. After the Revolution of December 1989, through the Decree-law no. 92/1990 for the election of the Parliament and the President of Romania, published in the Official Gazette of Romania, Part I, no. 35 from March 18th 1990, the act on the basis of which the elections of May 1990 were organised, the formula of bicameralism was reintroduced. The 1991 Constitution took over, with some changes, the same structure of Parliament, maintained upon the 2003 revision of the Fundamental Law.

The amendment of intercalated texts, completed upon revision, targeted only the crossover to a functional system of bicameralism. The advantages that the bicameral structure of the legislative body beholds are evident. Accordingly, the concentration of power in Parliament is avoided, due to the fact that its Chambers will impede each other from becoming the endorsement of an authoritarian regime. Moreover, debates and a frame of successive analysis of laws are ensured by two different bodies of the Parliament, which offers a greater guarantee of the quality of the legislative act. The adoption of laws

within a unicameral Parliament is completed after several successive "lectures" of a text which is otherwise being proposed in the present project of constitutional revision. Being, however, performed by the same legislative body, lectures can become an artificial formality, or be suppressed on immediacy grounds. Bicameralism determines a second lecture of the law to be always performed by another assembly, which is meant to establish an accentuated critical perception. The opportunity of a better critical cooperation, of a common and collective debate on decision-making is hence provided and, as such, amplitude is hereupon conferred to the shaping of the will of the parliamentary state. Additionally, bicameralism minimises the risk of majority domination by favouring dialogue between the majorities of the two Chambers, as well as between parliamentary groups. Cooperation and legislative supervision are thus extended, one consequently demonstrating that the bicameral system is an important form of the division of powers that functions not only between the legislative, executive and judicial powers, but also within the legislative power itself. Both tradition that defines and represents it due to its link to the being of the Romanian state, as well as the enunciated advantages constitute powerful reasons of reflection upon opting for one of the two formulae: unicameralism or bicameralism.

The regulation of the bicameral Parliament was reintroduced in Romania through the adoption of the 1991 Constitution. Though established through norm at constitutional level, in the light of the other constitutional provisions, the regulation of egalitarian bicameralism does not justify itself, more specifically the existence of a second Chamber. The two Chambers of Parliament were constituted in the same manner, through the same type of voting ballot, the same type of suffrage, for the same period of time and exercising the same competences in legislative matter. The only difference between the two Chambers consisted of the necessary minimum age for the submission of candidature as Deputy (23 years old) or Senator (35 years old).

The legislative procedure at the level of the two Chambers was hardened by their perfect equality in legislative matters. According to Article 75 of the 1991 Constitution, bills or legislative proposals adopted by one of the Chambers were sent to the other Chamber of the Parliament. If the latter rejected the bill or the legislative proposal, these were resent, for submission to a new debate, to the Chamber that had adopted them, a new rejection being definitive. Furthermore, according to Article 76, if one of the Chambers adopted a bill or a legislative proposal in a wording different from the one approved by the other Chamber, the presidents of the Chambers would initiate, by means of a parity committee, the mediation procedure. If the committee did not reach an agreement or one of the Chambers did not approve the report of the mediation committee, the divergent texts would be submitted to debate to the Chamber of Deputies and the Senate, in common session, and they would adopt the final text by means of the vote of the necessary majority in relation to the typology of the law. Presently, the constitutional revision of 2003, by maintaining the previous option of the constitution for bicameralism, operates a specialization of the two Chambers, thus partially justifying their existence – please see the contrary opinion according to which "the 2003 constitutional revision dissolved this bicameral system and placed in profound antagonism the provisions of Article 61 (2) with those of Article 75 from the Fundamental Law" (Vida, 2008: 601). We consider that, despite the fact that the manner of formation of the two Cambers has remained identical, the specialization of the Chambers partially justifies the principle of regulated bicameralism as well, and accordingly between the two constitutional provisions there is no contrariety.

Thus, according to Article 75 (1), the Chamber of Deputies has limited specific competence and, accordingly, as the first notified Chamber, it shall debate and adopt the bills and legislative proposals for: the ratification of treaties or other international agreements and the legislative measures deriving from the implementation of such treaties and agreements, as well as bills of the organic laws stipulated by Article 31 (5), Article 40 (3), Article 55 (2), Article 58 (3), Article 73 (3), e), k), l), n), o), Article 79 (2), Article 102 (3), Article 105 (2), Article 117 (3), Article 118 (2) and (3), Article 120 (2), Article 126 (4) and (5) and Article 142 (5). Other bills or legislative proposals shall be submitted to the Senate, as the first notified Chamber and that now acquires general competence, for debate and adoption.

The Constitutional Court, through Decision no. 710 from May 6th 2009 (published in the Official Gazette no. 358 from May 28th 2009) and Decision no. 1575 from December 7th 2011(published in the Official Gazette no. 908 from December 21st 2011; also for a complete analysis of the Decision see Gîrleşteanu, 2012: 101-104), confirmed the concordance of establishing through norm the principle of bicameralism with constitutional provisions which regulate the specialisation of the Chambers of Parliament, by stating that "the principle of bicameralism, as such consecrated, reflects itself not only in the institutional dualism within the frame of the Parliament, but also in the functional dualism, due to the fact that Article 75 of the Fundamental Law establishes lawmaking competences according to which each of the two Chambers has, in expressly defined cases, either the quality of first notified Chamber or that of decision-making Chamber".

Moreover, by taking into consideration the indivisibility of the Parliament as supreme representative body of the Romanian people and its uniqueness as legislative authority of the country, the Constitution does not allow the adoption of a law by one single Chamber in the absence of a debate on the bill conducted by the other Chamber. Article 75 of the Fundamental Law introduced, past its revision and republication in October 2003, the solution of the compulsoriness to notify in some matters the Senate, as the first Chamber of reflection or, as the case may be, the Chamber of Deputies and consequently regulated in the role as decision-making Chamber the Senate in some matters and the Chamber of Deputies in other matters, precisely so as not to exclude one Chamber or the other from the mechanism of law-making. However, the law ought to be the resultant of the concurring manifestation of will of both Chambers of Parliament. [...] It is true – such as the Court made a note on another occasion (Decision no. 1093 from October 15th, 2008, published in the Official Gazette of Romania, Part I, no. 710 from October 20th, 2008) – that in the course of a debate on a legislative initiative, the Chambers have their own decision-making right to it, but the principle of bicameralism can be respected only as long as both Chambers of Parliament have debated and expressed themselves with regard to the same content and the same form of the legislative initiative.

To sum up, the Court, through Decision no. 1237 from October 6th, 2010 (The Official Gazette no. 785 from November 24th, 2010), established the essential criteria for the determination of instances in which the legislative procedure infringed upon the principle of bicameralism: "a) the existence of major differences in legal content between the forms adopted by the two Chambers of Parliament; b) the existence of a special, significantly different configuration between the forms adopted by the two Chambers of Parliament".

The Mandate of the MP

According to Article 69 (1) of the Constitution, in the exercise of their mandate Deputies and Senators shall be in the service of the people. The constitutional provision practically regulates a public law contractual relation between MPs and participants at the electoral process, i.e. the voters, in the form of the representative mandate. The use in the Constitution of the phrase "in the service of the people" presupposes several specifications with regard to the representative mandate.

Firstly, for the Constitutional Court, through Decision no. 209 from March 7th, 2012 (The Official Gazette no. 188 from March 22nd, 2012), that fact that, both in the legislative process, as well as in the activity of control over the Government or in fulfilment of other constitutional obligations, the MPs, in the exercise of their mandate, are in "service of the people", implies "*the representation in the political battle in the Parliament of political debates pertaining to society, of opinions, ideas rooted in different social, political, economic or cultural categories*. Thus, the people, *the holder of national sovereignty*, exercise *sovereignty* not only throughout the elective process, but also throughout the entire period of the mandate offered to the MP who is in their service". The representative mandate, in conformity with stipulations provided by Article 2 (1) of the Fundamental Act, thus represents an indirect way for the people, the holder of sovereignty, to indirectly exercise it.

In the field of parliamentary law, the main consequence of the elective nature of the representative mandate and the political pluralism resides in the principle that the doctrine has suggestively consecrated, namely "the majority decide, the opposition express themselves". *The majority decide* due to the fact that, in virtue of the representative mandate conferred upon by the people, the predominant opinion is presumed to reflect or correspond to the predominant opinion of society. *The opposition express themselves* as a consequence of the same representative mandate that fundaments the inalienable right of the political minority to set forth political options and to constitutionally and fairly oppose themselves to the majority in power. The application of the principle "the majority decide, the opposition express themselves" ensures, on the one hand, legitimacy of governance and, on the other hand, the conditions for the realisation of alternation at governance.

This principle seeks, through the organisation and operation of the Chambers of Parliament, to ensure that the majority decide only after the opposition have expressed themselves, and that the decision which the latter adopt is not obstructed during parliamentary procedures. Thus, a series of norms pertaining to parliamentary regulations target avoidance of blocking the majority in the decision-making process (organisation of debates, limitation imposed on time span of taking the floor, regime of amendments, institution of procedural deadlines, etc.), while others are intended to secure the protection of political minorities (the makeup of permanent offices and parliamentary committees in conformity to the political configuration, the system of majorities necessary for the unfolding of workings and the adoption of measures object to debate, the possibility to notify the Constitutional Court according to stipulations of Article 146 of the Constitution, equal access to parliamentary procedural means, the exercise of the right to legislative initiative, formulation of amendments, etc.). From the point of view of the function of control exercised by the Parliament over the Executive, constitutional provisions stipulate as means of action: informing the Parliament, the procedure of questions and interpellations, the motion of censure, assumption of responsibility by the Government or the legislative delegation.

The rule of the majority necessarily implies, in the course of parliamentary procedures, avoidance of any means that might lead to an abusive manifestation from behalf of the majority or what might serve as hindrance to the normal unfolding of parliamentary procedures, and which might culminate in parliamentary boycott, abandonment of workings in parliamentary structures or withdrawal from the activity of the Chambers.

Further, *the principle "the majority decide, the opposition express themselves" entails a balance between the necessity to express the position of the political minority with respect to a certain issue and the avoidance of the use of obstruction means* with the scope of ensuring, on the one hand, the political confrontation in the Parliament, hence the contradictory character of debates and, on the other hand, the accomplishment by the Parliament of its constitutional and legal competences. In other words, members of Parliament, be they from within the majority or the opposition, must hold back from abusive exercise of procedural rights and adhere to a rule of proportionality meant to ensure the adoption of decisions as a result of a preliminary public debate.

The parliamentary debate on important issues of the state is meant to ensure abidance by the supreme values consecrated in the Fundamental Law, such as the state governed by the rule of law, political pluralism and constitutional democracy. This is the reason due to which the Constitutional Court highlights *the issue of necessity in that both parliamentary majority and minority need to exercise constitutional rights and obligations in good faith and that a conduct of political dialogue ought to be cultivated*, a type of dialogue that, regardless of different motivations, does not exclude consensus a priori when the major interest of the nation is at stake.

Secondly, the fact that the MPs are "in the service of the people" circumscribes the parliamentary mandate to a public function, a public service, with which members of Parliament are endowed through elections, that evinces a constitutionally determined content and that allows the afore mentioned to compete for the exercise of national sovereignty (Avril and Gicquel, 2010: 23).

Thirdly, the exercise of this "public service" by MPs presupposes a legal relation to the recipient of this service, i.e. the people, determined by means of election and which implies the existence of a public law mandate. In this case, one actually talks about a transposition at public law level of the theory of the private law mandate. In private law, according to Article 2009 of the New Civil Code (for a complete study of the contract of mandate in Romanian private law see Baias et al., 2012), the mandate represents the contract by means of which a party called mandatary undertakes conclusion of one or several legal acts on account of the other party called mandator. Per transposition in public law, the theory of mandate presupposes members of the Parliament, i.e. the mandatary, to express through concluded legal acts the will of the Nation, i.e. the mandator, who is also the source of state sovereignty. Nonetheless, the parallelism cannot be perfect, one being actually able to point out many major differences between the two types of mandate, the public law one and the private law one, as follows (Dănișor, 2007: 93-97; Nica, 2010: 70-79).

Distinctive Features of the Representative Mandate

Indeterminacy of the mandator in public law. If in private law the mandator is an indubitably determined person, the transposition of the theory of mandate in public law results in the impossibility to clearly determine the mandator due to the fact that, on the one hand, the latter is held to be the nation, an abstract, collective, indivisible entity, distinct from the members of whom it is comprised but that cannot express itself in the

electoral process but with the aid of an agent, i.e. the electoral body, and, more precisely, with the aid of participants at elections and, on the other hand, due to the fact that the actual mandate is obtained solely from an electoral circumscription, an abstract component of the nation as organic whole.

The public law mandate does not have an actual intuitu personae character. The private law mandate has an *intuitu personae* character due to the fact that it is conferred by the mandator on the mandatary in view of the personal qualities of the latter. In public law, this character is no longer preserved and, due to several factors such as the distinctive features of the vote, the type of voting ballot or the interposition of particular intermediary bodies, with greater influencing power over the political option, between electors and representatives the mandate is rather conferred upon in view of a particular partisan doctrine that is embodied in the person of the candidate than in view of their own qualities. Actually, the Constitutional Court made notice of this aspect by stating in Decision no. 1219 from December 18th 2007 (The Official Gazette no. 14 from February 2008) that "in the course of the electoral process mandates are obtained solely as result of votes expressed by electors in favour of political parties" and in Decision no. 305 from March 12th 2008 (The Official Gazette no. 20 from March 2008) that "electors personally vote a candidate proposed by an electoral competitor and, at the same time, they manifest their preferences for the political party [the candidate] is part of".

Irrevocability of public law mandate. Essentially revocable in private law, this type of mandate automatically presupposes that the mandator can decide cessation of legal relations of mandate with the mandatary at any time, *ad nutum*, in view of the fact that their interests are not well secured. However, the public law mandate is irrevocable on principle due to the fact that its non-imperative character transforms it into a 'free' mandate that cannot be interrupted prior to term once granted through vote (Favoreu et al., 2011: 732). This conception of dependency of the irrevocability of public law mandate on its non-imperative character must nonetheless be nuanced in the context revealed by the institutional practice of world states with regard to the introduction of particular means that can lead to expiration of the mandate of representatives prior to term through popular revocation, a fact which should not be understood as an invalidation of the previously specified rule, but rather as a possibility of coexistence between non-imperativeness and revocation.

The different manner of creating obligations through the exercise of the public law mandate. If in private law, through conclusion of legal acts by the mandatary, on behalf and account of the mandator, legal effects and obligations are created solely for the latter, the exercise of the public law mandate binds both electors as well as the mandatary. Consequently, legal acts adopted by the Parliament have binding character not only for individuals and groups of whom the state is comprised, but also for members of the legislative assembly.

Inadmissibility of substitution. If in private law, in certain cases, the mandatary can decide on the substitution of its own person with another who can conclude legal acts on his/her behalf and account and who basically acts as a mandator in relation to the new mandatary, in public law the mandate cannot be retransmitted, as a consequence of the principle *delegata potestas non delegatur*. The impossibility to re-delegate delegated power derives from the principle of the supremacy of Constitution, so that the Fundamental Act grants a certain competence to a body and it cannot transmit competence to another unless the possibility and the conditions of the re-delegation are expressly stipulated. With regard to the parliamentary mandate, in case of holiday time in course of

its exercise, the impossibility to re-delegate the mandate obtained through elections brings about the organisation of new elections for its take-up.

Power, not will, is transmitted through the public law mandate. In private law the mandatary does not express a will of his own through conclusion of legal acts, but the will of the mandator, the only one that is thus expressed considering that these acts are concluded on behalf and account of the mandator. In public law the nation, through elections at which members of the electoral body take part, does not forward its will to the body of parliamentarians, but rather just a power to legislate and control over the activity of the Government (Dănișor, 2007: 96). On the basis of this power transmitted by the nation, a distinctive will is formulated, i.e. the legislative will, that manifests itself through legal acts adopted by Parliament; thus not an absolute, but a relative type of will is instituted, one of conformity with both sorts of will. Legislative acts are presumed to express the will of the nation, but merely in a relative way, the manner of understanding leading to the admission and legitimisation of constitutional justice as a way of control over the conformity of legislative will with the will of the nation.

Non-imperativeness of public law mandate. Article 69 (2) rules that any imperative mandate is void. The constitutional provision establishes the representative character of the mandate, as a consequence of the theory of national sovereignty and interdicts any regulation that might lead to the transformation of the mandate of the parliamentarian into one that would display an imperative character.

The private law mandate is essentially imperative as it transfers a precise type of power from mandator to mandatary; consequently, the sole will that is expressed through concluded legal acts, is that of the mandator. The parliamentary mandate is a general mandate that does not involve a predetermined and binding engagement of action or decision from behalf of the parliamentarian (Favoreu et al., 2011: 731-732) and which presupposes expression of a will distinct from the popular will, namely the legislative will (Duguit, 1923: 133-137). The imperative mandate is consequently prohibited in public law, thus ensuring protection of parliamentarians from the intermediary structures that propel them at the level of the legislative assembly (Dănișor, 2007: 94).

Protection of the exercise of the parliamentary mandate under the empire of the principle of its non-imperativeness (Nica, 2011: 122-144; Nica, 2010: 73-77; Dănișor and Nica, 2007: 42-56; Bălan, 2011: 120-127) consists of the fact that the parliamentarians are free to express, for this purpose, votes and political opinions with no constraint that might stem from both the electorate who propelled them, as well as the political party whose members they are and that has endorsed them throughout the elections and from which, this point considered, they are independent. From the perspective of this freedom to exercise mandate, as a result of its non-imperative character, the cause for which a Member of Parliament, in the course of mandate, looses the quality as member of the political party that has sustained them during elections cannot be ignored (Nica, 2011: 130). The nature of the cause of loss of the quality as member of the political organisation that promotes one in a function, either involuntary and imposed, or voluntary and freely decided, constitutes in fact the essential element for the interpretation of the distinct effects of the non-imperative character of the mandate.

Thus, if on the basis of a disciplinary or political sanction the parliamentarian is excluded from a particular political party due to expressed votes and political opinions, the mandate as parliamentarian cannot be forfeited because it would hence become imperative, a matter which is prohibited. MPs become "independent" in the sense that they obtain a statute of autonomy until expiration of mandate. The conclusion hereby applies

also in view of the source of the mandate, its procurement depending not on the will of a political party or an intermediary body between citizens and state, but rather on the will of the electorate, the mandate being granted by means of elections by the people through their agent, i.e. the electoral body (Nica, 2011: 131).

For that matter, this is also the meaning of Article 2 (1) of the Fundamental Act that practically establishes through norm the manner of procurement of the quality as representative of the people, and secondarily that as parliamentarian, as effect of elections, an institutional mechanism that fundaments the establishment of the Parliament as representative body through which competences linked to sovereignty are exercised, i.e. the legislative competence, whose source lingers on in the power to vote. Automatically, the political party that has endorsed a certain parliamentarian in the course of elections will not be able to withdraw their quality as representative of the people due to the fact that the party does not grant it; what the political organisation grants is, at most, the quality as member of the associative group with political character.

If, however, MPs freely decide in the course of exercising their mandate to leave the political structure that has endorsed them during the election period and whose members they are, in the absence of any element of constraint or external pressure on them in the sense of expressing certain votes and political opinions, hence in the absence of any imperilment to the freedom to exercise the representative mandate whose legal protection is ensured by the principle of the non-imperative mandate, their mandate must automatically cease.

Voluntary renunciation of the quality as member of the political party which they were part of and that endorsed them at the time of the elections is equivalent to a "voluntary renunciation of the legitimisation obtained as result of the same elections, given that parliamentarian[s] were voted precisely because they embodied a certain political vision, specific to the political entity whose members they were and that endorsed them in the elections" (Nica, 2011: 131). Thus, the non-imperative character of the mandate cannot ensure protection to the parliamentarian in a situation such as this, "due to the fact that no external force inherent in conscience has constrained him in any way, and the constitutional norm has been adopted solely to protect him from such constraints" (Dănișor, 2007: 95).

Such a conclusion is simpler to come to in the case of the list vote used in Romania for parliamentary elections until 2008 when it was replaced with the uninominal vote. This was due to the fact that, by voting a list, the elector expressed an option for a specific political tendency which this particular list represented, and the candidates on the list were the exponents of that specific tendency.

The election and legitimisation of the parliamentarian through endorsement of a particular political party maintains itself in the context of the uninominal voting system as well, so long as, in spite of the fact that people, not lists, are elected, the conferment of the mandate is not *intuitu personae*, but in consideration of a proposed political programme, derived from the party that endorses the candidate in elections (Nica, 2010: 74-75). For that matter, this aspect was also underscored by the Constitutional Court that, in Decision no. 305 from March 12th 2008 (published in the Official Gazette no. 20 from March 2008) established the following: "the elector personally votes a candidate proposed by an electoral competitor and equally expresses preference for the political party that [the candidate] is a member of".

Nonetheless, the jurisprudence of the Constitutional Court with regard to the representative mandate and its non-imperative character proves to be deficient in that the

Constitutional Court does not operate with the necessary distinction between causes for which parliamentarians forfeit, in course of their mandate, the quality as members of the political party that has endorsed them throughout elections, with the scope of establishing the effects of non-imperativeness of the mandate.

This erroneous practice becomes explicit with Decision no. 44 from July 8th 1993 (published in the Official Gazette no. 190 from August 10th 1993), occasion on which the Court, by founding its argumentation solely on the representative character of the mandate in the detriment of its non-imperative character that brings about the necessary afore mentioned distinction, ruled that "deputies have the constitutional possibility to adhere to one or another parliamentary group according to their options, to transfer from one parliamentary group to another or to declare themselves independent from all parliamentary groups. No other judicial norm, legal or in accordance with regulations, can contravene these constitutional provisions".

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Article Info

Received: January 10 2015
Accepted: February 27 2015

RSP • No. 45 • 2015: 55-64

ORIGINAL PAPER

Defining the *New Economics of Labor Migration Theory* Boundaries: A Sociological-Level Analysis of International Migration

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Abstract
Appeared among the theories explaining international labor migration only by the end of the former century, *the new economics of labor migration* questions some of the ideas and principles considered in the creation of the neoclassic theory, either by arguing against them, or by simply completing them. The starting point of this new approach is being represented by the idea that the emigration decision is not being made at an individual level, but rather along important human groups, such as families or households. The members of this groups act in common, not only to maximize their incomes, but also to minimize their risks and overcome limitations occurred as a consequence of the failures of the national markets, not necessarily in the labor market. This paper explains the main ideas on which this theory is based and makes a current analysis on whether this ideas are still accurate and have the capacity to explain the evolution of contemporary international migration.

***Keywords*:** migration, theory, labor, economics, communities

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Most of the developed countries of the world currently have diverse, multiethnic societies and the emergence of international migration as a basic structural feature of most of the industrialized states confirms the strength and coherence of the forces that form its foundation. Despite this, the theoretical base for understanding these forces is not adapted to the current dimension of this phenomenon. Therefore, the amazing growth of migration in the latest years has surprised the citizens, officials as well as researchers, and when it comes to international migration, the current analysis remains tied in the concepts, models and premises of the 19th century (Massey et al., 1998: 432).

Starting from the general and particular causes that generate population mobility in the territory, one can get the following overview of the migration phenomenon.

On the one hand, we can discuss about individual migration, determined primarily by economic factors. Depending on their range, the period of travel and means of travel, they are subdivided into seasonal migration and final long-distance travel. They can often become final (forced migration, limited-range free migration, industrial or agricultural migration). The most common form of migration of this type is known as rural exodus, primarily aimed at movements within countries. There are also known periodic movements unrelated to the type of work – the type of tourism and pilgrimage type (Porumbescu, 2012: 273). On the other hand, we can discuss about conducted migration organized in groups, which can be final (warlike migrations – some of the great invasion, colonization – migrations of hunters, livestock farmers, farmers after exhausting their land). They can also be rhythmic; the ones that took place in a defined space (pastoral nomads, nomadic fisherman, hunter, picker, farmer with seasonal rhythm) or have a seminomadic character – agricultural and pastoral life in the mountains or so. Such movements are determined by a way of life, shaped for centuries to come.

Currently there does not exist one single coherent theory regarding international migration, but a group of theories, that developed isolated, sometimes being limited by the differences among the areas of study (Anghel and Horvath, 2009: 29). The contemporary migration tendencies suggest, however, that one common understanding of the contemporary migration processes will not be reached, by using the tools provided by one single field, or by focusing on just one level of analysis (Buzărnescu, 1995: 204). Their complex nature requires, more likely, a complex theory that will embody a variety of perspectives, levels of study and hypotheses.

In order to explain what triggers international migration, a series of theoretical models were designed, and, although eventually each of them attempts to explain the same thing, they start from radically different concepts, hypotheses and frames of reference. The neoclassic economical theory is focused mainly on the wage differences between states reported on the costs of migration, and explains, most of the times, migration as an individual decision to maximize the incomes. On the other hand, the new economy of migration theory, considers the conditionings in a wide variety of markets, not just workforce (Badie and Withol, 1993: 107). This theory regards migration as a family decision, aiming at minimizing the risks and overcoming temporary financial constrains. The dual work market theory and the global systems theory ignore, in general, the processes of adopting the decision to migrate on a micro level, focusing, in return, on the forces that act on a larger scale. The first theory mentioned links immigration to the structural requirements of the modern industrial economies, while the latter sees immigration as a natural consequence of the economic globalization and vanish of the national borders under the pressure of the international markets.

Massey argues that, considering the fact that the theories regarding migration conceptualize causal processes on very different levels of analysis – individual, family, national, international – one cannot presume, beforehand, that they are not compatible (Massey et al., 1998: 433). Even more, it is very likely that the individuals act to maximize their income, while their families reduce the risks, all these in the context in which both decisions are being determined by structural forces that operate on a national and international level. Despite all these, different models reflect different research objectives, interests and methods to de-compose one very elaborate subject in parts that can be easier analysed. Therefore, we can consider that the only right way to confirm the consistence of these theories is that the logic, the hypothesis and the arguments of each of them are clearly specified and very properly understood. Some authors distinguish theoretical approaches of international migration into two categories: theoretical approaches explaining the initiation of migration and theoretical approaches explaining the continuation of migration (Massey et al., 1993: 430). In this theoretical overview a similar distinction is also made. Neoclassical economic theory, dual labor market theory, the new economics of labor migration, and world systems theory try to explain the initiation of migration.

An example of an indicator that causes an international migration flow between two countries is wage difference between these two countries. It is a mistake to assume that the initiation of international migration flows (i.e. a wage difference) acts only in a short space of time. Wage differences between countries may persist for decades. This initiation of migration may instigate international labor flows that persist as long as these wage differences continue. International migration itself may even exacerbate the initiation. Income inequality, for instance, may initiate migration from a country. Subsequently, if remittances or return migration cause increased inequality in the sending society, emigration leads to more emigration.

Network theory and institutional theory attempt to explain the course of international migration flows over time. These theories try to clarify, for instance, why international migration flows may increase if the initial incentive to migrate has diminished. However, international migration flows on a large scale and in a disproportionate direction cannot persist, at least not over the long term, solely on the basis of mechanisms identified in the theoretical explanations for the course of international migration flows over time. At least one of the mechanisms described in the theoretical approaches that try to explain the initiation of migration or physical danger in the sending country have to be involved, too.

The comparison between Turkish and Italian chain and return migration after labor migration to and from Germany is illustrative. Economic prosperity in Germany was considerably higher than in Turkey and Italy. This induced many Turkish and Italian workers to migrate to Germany. The Anwerbestopp of 1974 ended the labor migration from Turkey and Italy to Germany. Since 1974 migration flows between Turkey and Germany have been much more disproportionate (more migration from Turkey to Germany than the other way around) than migration flows between Italy and Germany. This difference cannot be accounted for by employing theories explaining the course of international migration over time. The main reason lies in the extent to which the initial cause of (labor) migration to Germany prevailed in Italy and Turkey after 1974. Italy largely reduced its economic backwardness vis-a-vis Germany in the 1970s and 1980s, while Turkey's economic backwardness in relation to the German economy increased. In addition, Turkey, in contrast to Italy, has been a politically unstable country.

Several theoretical models have been proposed to explain (part of) the international migration puzzle. However, according to Massey et al., research into international migration lacks a commonly accepted theoretical framework, which would facilitate the accumulation of knowledge (Massey et al., 1993: 437).

The oldest theory of migration is neoclassical economic theory. According to this theory, wage differences between regions are the main reason for labor migration. Such wage differences are due to geographic differences in labor demand and labor supply, although other factors might play an important role as well, e.g., labor productivity, or the degree of organization of workers. Applying neoclassical economics to international migration, it can be said that countries with a shortage of labor relative to capital have a high equilibrium wage, whereas countries with a relatively high labor supply have a low equilibrium wage (Jennissen, 2007: 418). Dual labor market theory argues that international migration is caused mainly by pull factors in the developed migrant-receiving countries. According to this theory, segments in the labor markets in these countries may be distinguished as being primary or secondary in nature.

The primary segment is characterized by capital-intensive production methods and predominantly high-skilled labor, while the secondary segment is characterized by labor-intensive methods of production and predominantly low-skilled labor. Dual labor market theory assumes that international labor migration stems from labor demands in the labor-intensive segment of modern industrial societies (receiving countries) (Piore, 1979: 21).

Stark (1991) argues that the decision to become a labor migrant cannot be explained only at the level of individual workers; wider social entities have to be taken into account as well. Their approach is called the new economics of labor migration. One of the social entities to which they refer is the household. Households tend to be risk-avoiding when household income is involved. One way of reducing the risk of insufficient household income is labor migration of a family member. Family members abroad may send remittances. According to the new economics of labor migration, these remittances have a positive impact on the economy in poor sending countries as households with a family member abroad lose production and investment restrictions (Taylor, 1999: 72).

Migration in the context of the relative position of a household in the sending society may be seen as a second aspect of the new economics of labor migration (Massey et al., 1993). Here, the sending society is the wider social entity in which international migration is studied. Relative deprivation theory, which is the subject of the next subsection, is the theoretical linchpin of this aspect of the new economics of labor migration (Jennissen, 2007: 77).

Relative deprivation theory argues that awareness of other members (or households) in the sending society about income differences is an important factor with regard to migration. Therefore, the incentive to emigrate will be higher in societies that experience more economic inequality. World systems theory considers international migration from a global perspective. This approach emphasizes that the interaction between societies is an important determinant of social change within societies. An example of interaction between societies is international trade. Trade between countries with weaker economies and countries with more advanced economies causes economic stagnation, resulting in lagging living conditions in the former (Jennissen, 2007: 419). This is an incentive for migration.

As a result of large inflows of international migrants, migrant networks may be formed, involving interpersonal linkages between (migrant) populations in origin and

destination areas. Migrant networks may help potential migrants of the same ethnic origin, for instance, by contributing to financing the journey, helping to find a job or appropriate accommodation, or by giving information about education possibilities or access to social security. As international migration occurs on a large scale it can become institutionalized. According to institutional theory, a large inflow of international migrants induces profit and nonprofit organizations, which can be legal or illegal, to provide, for instance, (clandestine) transport, labor contracts, (counterfeit) documents, dwellings or legal advice for migrants (Massey, 1993: 172).

The new economics of labor migration theory

More recently, an alleged theoretical "alternative" to the theories presented above has been put forth under the guise of the so-called New Economics of Labor Migration, which has purportedly sought to redress both the excessive structural emphasis of the historical-structural perspective and the theoretical insufficiencies of the standard neoclassical theoretical framework. According both to its proponents (Taylor, 2001) and to latter-day authors reviewing the literature (De Haas, 2010; Hagen-Zanker, 2008), this theory has thus constituted a fundamentally new theory – one which effectively reconciled agency and structure and allowed for "a greater variety of outcome than would have been allowed from either the single aggregation of individual decision making or from the unidirectional imperatives of structures" (De Haas, 2010: 242).

Appeared in the specialized theory regarding migration by the end of the last century, the new economy of migration questions some of the ideas regarded in creating the neoclassic theory (Piore, 1979: 56), either by arguing against them, or by completing them (Stark, 1991: 98). The starting point of this new aproach is represented by the idea that the decision to migrate is not an individual one, but rather one made by a group, such as families or households. The members of these groups act in common, not only to maximize their incomes, but also to minimize their risks and eliminate the restrains that come from the failures of national markets, not only of the labour field (Stark, 1991: 17).

Stark and Bloom try to argue why there was need for a new theoretical structure in the attempt to explain international migration: research on the economics of labor migration has undergone an exciting and significant transformation during the past few years. At a theoretic level, migration research has expanded the domain of variables that seem to impinge upon and are affected by spatial labor supply decisions; it has highlighted the role of wider social entities and interactions within them in conditioning migration behavior; it has identified new linkages between migration as a distinct labor market phenomenon and other labor market and nonlabor market phenomena; and it has contributed to our understanding of the processes of economic betterment and development. At an empirical level, their work on the economics of labor migration has confirmed the usefulness of old and well-established models of labor migration. It has also provided better estimates of key-behavioral patterns, many of which are important ingredients in ongoing debates over public policies regarding migration (Stark and Bloom, 1985: 173).

It purportedly sought to redress both the perceivably unsatisfactory character of the neoclassical theory of migration and the alleged lack of regard for human agency in historical-structural accounts. In so doing, it has been variously characterized as a "fundamental departure from past migration research" (Taylor, 2001: 181); a "fundamentally different theory of migration [...which constitutes...] the only migration theory that explicitly links the migration decision to the impacts of migration" and "a

pluralist view on migration and development", "inspired by Giddens' (...) structuration theory", which "sought to harmonize actor and structure-oriented approaches" (De Haas, 2010: 241).

Some authors argue that the new economy of migration is characterized by the same fundamental flaws as the standard neoclassical theoretical account, albeit in a more sophisticated information-theoretic clothing. In this respect, it constitutes migration theory's own instance of what is called "the art of paradigm maintenance": bulwarking the central tenets of a theoretical body against rising contestation through peripheral concessions and readjustments. Such concessions and readjustments notwithstanding it is argued that the methodological individualism that characterizes both the standard neoclassical theory and its new economy of migration avatar structurally prevent them from constituting satisfactory theoretical accounts of migration. For that, one must look instead to the contributions of the historical-structural perspective, much in need of a new "synthesis" and a number of theoretical readjustments.

The neo-classical economics and the new economy of migration approaches differ from one another insofar as they posit contrasting sets of interpretations regarding return migration. When neo-classical economists argue that people move permanently to raise and maximize their wages in receiving countries, return migration is viewed as a failure, if not an anomaly. When the new economy of migration contends that people move on a temporary basis to achieve their goals or targets in receiving countries, as a prerequisite to returning home, return migration is viewed as a success story, if not a logical outcome. The new economy of migration theorists are adamant about breaking away from the neo-classical image of the failed returnee (Abreu, 2012: 48). The duration of stay abroad is calculated with reference to the need of the household, in terms of insurance, purchasing power and savings. Once such needs are fulfilled, return migration occurs. In other words, the new economy of migration approach to return migration goes "beyond a response to negative wage differential" (Stark, 1991: 11).

When they are organized in households, the individuals have the ability to control the risks regarding their economic welfare, by dividing their resources to various destinations, in order to overcome economically difficult moments. By doing so, some of the family members can work in the local economy, while others emigrate, hoping to obtain income in a market that has nothing to do with the national one, thus being shielded from the risks that may apper in their country of origin (Sandu, 2000: 102). If such risks or economic problems appear, the household can rely on the remitances sent by immigrants in order to overcome difficult times. In the economically developed countries, the posibility of such risky situations to appear is being handled by the insurance companies or governmental programs, while in the poor countries there are no such institutional mecanisms to handle risks, or the small incomes of each family do not allow them to have private insurance, thus creating even more reasons to migrate. Furthermore, in the economically developed countries the credit systems are efficient, allowing families to obtain suplimentary incomes needed to fund various projects, such as the aquisition of new production technologies (CDMG, 1996: 85). On the other hand, in the developing countries, the credits are generally hardly accesed, or very expensive. Therefore, in the absence of efficient and accesible insurance and credit systems, the market failures are being perceived more intensely at an individual level, causing increased social pressure, and favouring external migration.

According to the theory of the new economics of labor migration, labor migration has to be studied within wider social entities: i.e., households. Within the entity of the

household, the (un)certainty of household income is the main determinant of labor migration. Migration of a household member is a way to spread the risk of insufficient household income. Subsequently, the household member abroad may send remittances, which may increase (the certainty of) the household income. Moreover, the theory of the new economics of labor migration states that remittances have a positive effect on macroeconomic development in sending countries. This perspective on the impact of remittances upon sending economies is called the "developmentalist" perspective (Taylor, 1999: 72). International labor migration then is, according to the new economics of labor migration, a transient phenomenon. In the literature, however, there is no consensus on whether remittances have a positive or a negative influence on the sending economy. In addition to the "developmentalist" perspective, Taylor also distinguishes the "migrant syndrome" perspective on the impact of remittances upon sending economies. If labor outflow and consequently remittances experience great ups and downs, the economy of sending countries faces considerable adaptation difficulties like inflation or "Dutch disease". The term "Dutch disease" is used when a country's apparent good economic fortune ultimately proves to exert a net detrimental effect. Because of the (possibly) disturbing effect of remittances on the economy of sending countries, the certainty of sufficient income of more households in the sending region may be reduced, leading to more labor migration.

Migration becomes a tempting alternative for extra income, which is necessary for investments in means of production, or even to sustain current living. The new economies of migration question the thesis acording to whitch the variation of income has constant effects for the individual, even if the social and economic conditions are different (Held et al., 2007: 152) – for instance, a raise of 100$ in income means the same for any person, regardless of the specific conditions of the local comunity, or the position of the individual in the distribution of income (Massey et al., 1993: 438). Those who argue for the new economy of migration claim that the members of households decide to send some of their relatives for work abroad not only to increase their incomes in absolute terms, but also in order to increase their incomes compared to other households, and, thus, reduce relative deprivation compared to certain reference groups (Stark, 1991: 25). The perception of the relative deprivation by the members of a household depends on the level of the income that it is bein deprived of, reported to a certain reference group. Relative deprivation can be perceived by a poor household even if its income is constant, but the income of the reference group grows. Thus, the likelihood of migration grows if, by sending one member abroad, a household hopes to recover some of the economic disadvantage regarding wealthier households (Porumbescu, 2012: 272). The national economic problems and the lack of atractive oportunities existing in developing countries encourage such a decision.

The emphasis on relative deprivation as a determinant of migration was introduced by Stark (Stark, 1991: 25). It rests on the hypothesis that potential migrants carry out interpersonal income comparisons with other people within their relevant social settings, and that it is these comparisons, along their wish to improve their relative positions within those settings, that constitute the relevant element in the decisionmaking process (Abreu, 2012: 54). This hypothesis constitutes an application to the field of migration of the theory of relative deprivation introduced by Stouffer et al. in 1949 (Stark, 1999: 52), and it seeks to account for the fact that, in numerous empirical contexts, "migration rates are higher from villages where the distribution of income by size is more unequal" (Stark and Bloom, 1985: 175).

The theoretical models that result from the new economy of migration raise a set of hypotheses that are obviously different from the ones formulated in the neoclassical theory (Massey et al., 1993: 439): 1. Families, households, and other culturally defined units of production and consumption are the levels on which migration research should be reported, not individuals; 2. A wage difference is not a necessary condition for international migration to occur; households cand have good reasons to reduce the risks associated to economic differences by migration, even in the absence of wage differences; 3. International migration and local production are not posibilities that exclude each other. Indeed, there are good resons for members of the same household to involve in activities both local, as well as in other areas. Actually the increase in the volume of remitances as a consequence of migration, and economically reflected on the local area, lead to increasing the appeal of migration, as a mean to overcome financial risks. Therefore, the economic development of the areas of origins does not necesarily reduce the appeal of migration; 4. International migration does not stop at the moment when the wage differences in the sending and destination areas are eliminated. Reasons to migrate may continue to exist, if certain markets in sending countries do not work properly; 5. The same estimated wage gain will not generate the same effects in the event of migration for households situated in different areas or that belong to communities with different wage gains; 6. National governments can influence migration not only by the national policies in the field of labour force, but also by the policies in the field of capital markets or insurance markets. Social security systems, particulary unemployment insurance, represent major factors in influencing the decision to emigrate; 7. Governmental policies and economic changes that influence the distribution of incomes will alter relative deprivation perceived in some households, and consequently, will modify the migrant′s intentions; 8. Governmental policies and economic changes that affect the distribution of income will affect international migration regardless of their influence on income. As a matter of fact, governmental policies that have the effect of causing a wage raise can result in a growth of migration, if this wage raise is not applied for all employees, an the poor households cannot enjoy it. On the other hand, these policies can result in a decrease of the intensity of the migration process, if the rich families do not benefit from these wage raises, thus reducing the social differences between the rich and the poor.

The incorporation of aspects such as incompleteness of information, risk, self-insurance or game-theoretical analyses of intra-household commitments (Stark and Bloom, 1985: 175) renders clear the informational-theoretical character of the new economics of migration theory. It also provides a theoretical framework in which to reframe the analysis of migration as a process of innovation adoption and diffusion (Abreu, 2012: 56). Thus, the speed of diffusion of the decision to migrate as an innovation, from the innovators and early adopters in a community through to the late majority and laggards, is in the new economics of migration framework a function of the interaction between the risk-aversion properties of the potentially adopting households' utility functions and the extent to which information conveyed by previous migrants reduces the uncertainty surrounding the migration option itself, conditioned by market incompleteness and the overall income distribution at the origin (Stark and Bloom, 1985).

The new economics of migration theory was built in accordance with a certain historical context, the mexican migration in the United States, and this is precisely the fact for which it was criticised (Krity et al., 1998: 78). Some of the limits of this theory can be assumed to have been caused by the fact that the conditions associated to the places of origins are being considered exclusively, while the characteristics of the destination are

being ignored. In reality, some policies regarding migration in the destination country can encourage or restrict this phenomenon, thus becomeing worthy of being regarded by the potential migrants.

Furthermore, the basis of this theory is represented by the formulation of some counter-arguments for the neoclassical theory (Szczepanski, 1972: 112). The ideea of relative deprivation and its action as an incentive for external migration has an obvious sociological value, and introduces the comunitary level as an element of novelty in the attempts to explain the phenomenon, emphasizing the cumulative character of the factors that create the basis for the decision to emigrate. However, what the new economics of migration theory fails to explain properly is the connection between the intention to reduce the risks upon the family income by migration and the place of that certain household in the communitary income distribution scheme, fact proven also by the existence of differentiated emigration rates (Constantinescu, 2002: 99). The process of re-uniting the family at destination is completely overlooked within this theory. This is a mechanism that fueled, for instance, the Turkish migration flow in Germany after the end of the recruitment agreements. Considering the two concepts discussed within this theory, imperfect markets and relative deprivation, and also the effect they may or may not have on the decision to emigrate, we can argue that the explaining elements offered by the new economics of migration theory are not enough to understand the proccess. So, as some authors confirm (Abreu, 2012: 64), the new economy of labor theory has in fact been little more than an avatar of the neoclassical approach in which only marginal concessions and changes were made, while the core (rationality, methodological individualism, lack of regard for structural trends and constraints) remained untouched. Therefore, we consider that an integrated approach of various migration theories would be much more appropiate to understanding and explaining the complex events of current international migration.

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Article Info

Received: February 24 2015
Accepted: March 16 2015

RSP • No. 45 • 2015: 65-75

ORIGINAL PAPER

Bringing Justice Back In: Legislation and Case Law Evolution Concerning Partition by Court and Rule of Partition in Kind

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Abstract
This scientific approach will be compared in terms of the innovations brought by the new regulation regarding separation in nature relative to the old civil dispositions. Special procedure of judicial partition has generated, especially in the normative context imposed by the old Civil Code and Code of Civil Procedure, some solutions or different opinions, both in the courts and the doctrinal level. Considering these aspects, new codes regulations concerning partition, take a series of opinions and solutions, trying to simplify and clarify the procedure, for a uniform implementation of legislation and thus require a careful analysis of the impact and effects they have new regulations. Based on the concepts and theories developed in the case law and doctrine dedicated partition will formulate new concepts and theories applicable in national law. The new Civil Code regulates in detail the rules applicable to partition, putting a large extent, the views expressed in doctrine and the solutions adopted in judicial practice, but also states new principles complementing some of the newly introduced provisions in the matter of co-ownership. Analysis of the special procedure to partition in the new legislation, comparing special procedure with ordinary contentious procedure identifies novelty legislative solutions, determining the scope of these special procedures, analysis of relevant case law on the subject, developing proposals to improve the solutions of law, litigant and not only ease access to justice by providing models and applications specific to the special pleadings of partition, facilitating the access of justice seeker by providing models and applications specific to the special division procedure.

Keywords: imprescriptibility, convention to suspend partition, balancing payment, partition by court, partition in kind of the property

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General issues concerning the concept of partition

The most frequent way, specific for the termination of co-ownership is constituted by partition. In the legal doctrine (Alexandresco, 1912: 454; Stătescu, 1967: 234; Deak, 2002: 494; Baias et al., 2012: 726), and legal practice (Supreme Court, Decision no. 384/1989, 1990: 67; Supreme Court, Decision no. 1451/1989, 1990: 72), in the absence of express legal meanings, under the old Civil Code, partition is defined as the legal procedure to end the tenancy status (ownership) by dividing nature and/or the equivalent of assets in joint tenancy, with the consequence of replacement, with retroactive effect, to individuals ideal shares, on "their exclusive rights of each co-owner on some specific assets in their materiality".

The reference to the tenancy is justified by the fact that the old Civil Code did not regulate common property generally, but the division of the inheritance, which results in the termination of the joint tenancy and replacement of the undivided right of each co-owner having exclusive right over one or several actual properties.

The New Civil Procedure Code regulates partition as a special procedure and is stipulated by the provisions of Article 979-995, but these standards should be completed by those of the Civil Code (especially those from Articles 669 through 696) or by standards under possible special laws. For example, public notaries and notary activities Law (Law no. 36/1995), the law on mediation and the mediator profession (Law no. 192/2006). Most of the times, these provisions set rules which have been previously established by case law and doctrine. Moreover, under the New Civil Code, the rules that apply to the termination of co-ownership by partition are now those of common law; judgment of any partition suit filed is made by these standards, which apply to the partition of inheritance as well, as stipulated by Article 1143 paragraph (2) of the New Civil Code, and to condominium as well, as stipulated by Article 686 of the New Civil Code.

Partition by court – frequent modality for division

Depending on the manner in which co-owners seek partition, it may be made in two ways: conventionally, only if there is an agreement of all the co-owners expressed in the conditions directed by the law, and through the court, after one procedure prescribed by law when co-owners do not agree. To this effect, the New Civil Code lays out in Article 670 "Partition may be made amiably or by judicial order, under the law". The provision, with priority, in the legal text of division by agreement indicates its preeminence in relation to judicial division. In fact, even in the case of the legal partition, according to Article 982 paragraph (1) of the Code of Civil Procedure, throughout the hole trial, the court will insist that the parties divide assets by agreement.

This provision is the result of legal realities' evolution since the last time it was observed that increasing differences between people often turn into court litigation; according to social customs historicall established and the jurisdiction act has, sometimes, one major disadvantage of leaving one or more parties involved in a case displeased with the final decision. The consequence of this type of perception of individuals is often maintaining their state of conflict, judiciary dispute extension, due to the desire for revenge, with additional costs in time and money for both parties and for the justice system. By modernizing national legislation the parties were given one opportunity to complete disputes on the sharing of goods by mediation, by the notary procedure or before the court by the establishment of more accesible rules for settling claims division, being promoted under the principle of resolving the dispute by agreement.

The new regulation emphasizes the active role of the judge in attempting to determine the parties to reach a settlement by agreement, a way of settling disputes which would have a positive impact on the judiciary system. Even if the agreement of the parties would be only partial, this would facilitate the course of the case, both in terms of duration of the process and of probation.

In the specialized literature (Boroi, Anghelescu and Nazat, 2013: 86-87) it was underlined that there are some particular situations in which partition by court is mandatory, as law does not allow parties to enter a voluntary partition: a) if among co-owners are minors without civil capacity of exercise (under age of 14 years) or persons under judicial interdiction or missing persons and their legal representatives or tutela Court have not consented or authorized voluntary partition, the partition will be made only by court.

Thus, in compliance with Article 674 of the New Civil Code, if among the joint tenants there are persons who lack legal competency or who have restricted legal competency and there is no authorization from the court for tutela for a voluntary partition, it shall take place solely by court; b) Considering that, in compliance with Article 648, paragraph (2) of the New Civil Code, the partition action carried out without the participation of all co-owners is fully null and void, it results that if one of the co-owners was not present or if he/she does not agree to enter a partition agreement, the party seeking division of joint property or assets should resort to partition by court; c) Another case requiring mandatory partition by court is the petition made to the court by one of the spouses for joint property's division during marriage, for reasonable grounds. Thus, for example, according to Article 358 paragraph (1) of the Civil Code, during the legal community property, joint property of the spouses may be divided, in whole or in part, by an official notary act in case of mutual agreement, or by court, in case of disagreement In this circumstance, the court should set forth the existence of the reasonable grounds, and only subsequently it shall proceed to division of portions and their awarding (Ciobanu, Boroi and Briciu, 2011: 452; Frentiu and Baldean, 2008: 1479); d) The partition by court is also mandatory when the personal creditor of one of the spouses petitions the court for division of joint assets during marriage, in order to keep track of the assets which will be awarded in its debtor's portion.

In order to prevent or diminish the transposition to practice of inconveniences generated by the co-ownership status, the civil law giver has instituted, in the matter of co-ownership division of joint property in Article 669 of the New Civil Code, and in matters of inheritance partition by Article 1143, paragraph 1 of the same Code the imperative rule of indefeasibility of the right to seek partition. Possessed by Romanian Civil Code of 1864, the same effect was Article 728 provisions. Thus, in compliance with this provision, "termination of co-ownership by partition may be sought at all times, except for when the partition was suspended by law, legal instrument or judicial order". In turn, Article 1143 paragraph (1) of civil Code stipulates that no one can be forced to remain impartible, the inheritor may ask at any time out of the co-ownership, even when there is agreement or testamentary clauses which provide otherwise. Article 1143, paragraph (1) of Civil Code, took in one improved form, the provisions of Article 728 paragraph 1 of old Civil Code.

The doctrine was established that if the partition in the process of formulating accessories requests to this effect, some related petitions formulated within the partition action are: the ratio of donations, reduction of excessive liberalities, and payment of funeral fees regarding the defunct between heirs are subjected to extinctive prescription,

the indefeasibility of the main application for partition not expanding over these as well (Boroi et al., 2013: 540).

There is one exception from the indefeasible characteristic of this right, provided by Article 675 of the New Civil code "partition may be sought even if one of the co-owners has utilized the property exclusively, except for when it was subject to usucaption, under the law". Thus, acquiring the exclusive property right by usucaption by the co-owner who owned the joint property, in its thoroughness, constitutes an absolute hindrance for the partition action exercised by the other co-owners. The simple exclusive use of the property by a sole co-owner, cannot give him/her additional rights towards the other co-owners (Atanasiu et al., 2011: 231-232).

By the same circumstance, if a part of impartible goods is acquired by inheritance by one co-owner, shared action is not extinguished by prescription, but on the grounds that it was unnecessary (Eliescu, 1966: 213). Another obstacle is the existence of a valid partition division, given the principle of binding force of agreements between the parties as provided by Article 1270 Civil Code for voluntary partition, and *res judicata* for judicial partition, as provided by Article 1001 Code of civil procedure.

We remind the fact that, in compliance with provisions of Article 669 of the New Civil Code, any of the co-owners may seek, at all times, the joint property's partition, except for the cases when the partition was suspended by law, legal instrument or judicial order. In the doctrine (Comăniță, 2002: 24; Eliescu, 1966: 214) it was considered that a testamentary disposition by which the heirs would be forced to remain in tenancy is null and void, motivated by the imperative character of Article 728 paragraph (1) of civil Code. The solution should be identical when co-owners would decide, by one convention, to give up the right. And under the rule of the new Civil Code this solution remains topical whereas the provisions of Article 669 and 1143 paragraph (1) have also mandatory effect.

The agreements regarding the partition's suspension are regulated by Article 672 of the New Civil Code, ruling they cannot enter for a period longer than 5 years; for buildings, an authentic form is required, following the formalities of real estate publicity to be legally binding on third parties. For movable assets, the deed should be concluded in writing, with a notarized certified date as provided by Article 678, paragraph (4) of the new civil Code). Unlike the old Civil code, the new Civil code, to avoid repeated co-owners conventions of suspension of partition, no longer restates the provision of Article 728, paragraph (2), 2nd thesis which concerned the status in which, upon the 5-year period "the agreement may be renewed".

Thus, to the extent in which co-owners are interested, they may extend the co-ownership duration by repeated agreements, on a total period longer than five years. But the Civil Code does not cover the consequences of this possibility, meaning it has not provided the legal organisation of ownership when it is maintained for a longer period of time, either following the co-owners agreement, or as a consequence of the fact that none of them exercises the right to seek partition (Athanasiu et al., 2011: 231). This gap in the law allows us to formulate the *lege ferenda* proposal by which we deem as necessary that the legislation provide expressly the legal organisation of ownership when co-owners decide to suspend the division of co-ownership on a period longer than 5 years or none of them exercises the right to seek partition. An agreement of this type, in which it entered on an indefinite period, it would be fully void, the partition's indefeasibility being of public order (Deak, 2002: 493).

We agree with this point of view, having regard also to the circumstance that the New Civil Code underlines a change in conception and in the subject matter of extinctive

prescription which, although it remains a general interest institution, it protects preponderantly private interests (Nicolae, 2010: 1152-1153).

Under the old Civil Code provisions, in doctrine (Comăniță, 2002: 25) it was decided that where there is agreement to suspend partition, concluded under Article 672 Civil Code, personal creditors of the co-owner may not require separation of assets under individuals to achieve their claim. The provisions of the new Civil Code expressly resolve the situation by the provisions of Article 678 paragraph 4, under which, the conventions suspending the partition can be opposed creditors only if, before the birth of receivables acquired "certain date" (Leș, 2013: 422-423) where they were movable or immovable property and authenticated if they fulfilled the real estate advertising formalities prescribed by law.

From a legal viewpoint, the right to seek partition is a potestative one. Although it is not an economic value in itself, it may be qualified as a patrimonial potestative right, as it is exercised in relation to a patrimonial legal situation (Nicolae, 2010: 1152-1153). Being a potestative right, it is not susceptible to an abusive exercise. Returning to the provisions of Article 673 of the New Civil Code according to which partition may be sought at all times as "the court seized with the file for partition suit may suspend the partition's ruling for at most one year, so as not to cause serious prejudice to the interests of the other co-owners. If the danger of these prejudices is removed before the term, the court, upon demand of the interested party, shall revise the measure taken". Interpreting this legal provision, the conclusion is that suspension of the settlement of the partition action may be ruled by the court upon request of one or more co-owners, should they provide proof as to the division from that moment would seriously prejudice their lawful interests (Baias et al., 2012: 729).

This solution does not remove the potestative characteristic of the right to seek partition, nor does the conclusion that it is not susceptible for abusive exercise; on the contrary, it confirms both ideas. The possibility of the court to suspend for one year the division is not an offence for misuse of law, but an enforcement of the principle of equity. This is why the suspension period of division may not be longer than one year. Otherwise said, regardless of the other co-owners' interests, the partition shall be made. Suspension of division is not equal to the rejection of the file for partition suit. The first court shall be able to just postpone the case until the completion of one year from the date of filing the partition suit. During this period, it is obligated to administer the necessary evidence, the postponement of the solution not being equal to suspension of case settlement (Stoica, 2006: 91).

However, under procedural aspect, we think that the terminology utilized by this enactment is inadequate, as the Civil Procedure Code does not regulate an institution of "suspension of court ruling", and if a new process institution introduction would have been intended, an adequate regulation should have been given as well. Thus, from the view point of the civil process law, it may be about either suspension of judgment, or about postponement of judgment's rendering. As the postponement of judgment would not be an adequate measure to the situation considered by the law maker (not being a justification capable of laying conclusions on the floor, and the court to declare the debates closed, following to pronounce the order at a larger time span, without hearing the parties), it was shown that by provisions of Article 673 of the New Civil Code a particular case for optional suspension (by court) was regulated of the trial in the subject matter of partition by court (Boroi, Anghelescu and Nazat, 2013: 87).

The court of law shall have the authority to rule partition, by three concrete modalities (Pop and Harosa, 2006: 200-202) by partition in kind of the property or assets, by allotment of the joint property in exclusive ownership of one of the tenants or by sale of the property and division of the equivalent value in cash.

The rule on partition by court. Partition in kind – competitive insights

Award in kind of assets subjected to division constitutes the most important modality to shut down co-ownership by court, a modality having a principle value in the matter. Thus, as many times as possible, the court of law is obligated to resort to partition in kind of the property or of assets subjected to partition. It is the most equitable modality to ensure equality of rights for the former tenants (Supreme Law Court, Decision no. 1758/1981, 1992: 58). Also, the doctrine was unanimous on the principle of partition in kind (Ciobanu, 1996 - 1997: 343; Chirică, 1996: 222; Deleanu, 2013: 343; Leș, 1998-1999: 195).

In the New Civil Code, this principle is discussed at Article 676 paragraph 1, in which it is shown that "Partition of joint property shall be made in kind, proportionally with the share of every co-owner". The rule expressed in the new civil code arose previously from Article 736, paragraph 1 of the Civil Code and is found also at Article 983, paragraph 2 of the new civil procedure code "The Court shall make division in kind" by forming separate portions for each tenant, adequate to the share of each one, in compliance with Article 676 paragraph 1 of the New Civil Code, having regard to the value of assets circulation subjected to division. When portions are unequal, they are completed by an amount of money.

In previous jurisprudence of the New Civil Code, it was decided that "in order to ensure full equity in the partition of a dwelling house, respectively to ensure a full balance between the share transferred and its equivalent value, the assessment should be made to the value of assets circulation in the time of partition; this solution is accepted by the doctrine, which, as a rule, accepts the theory of unpredictability, which is based upon the search of a just balance between services of parties of an agreement, under the conditions of alteration of economic circumstances" (Timisoara Court of Appeal, Decision no. 331/2009, 2009: 10).

It is obvious that the division in kind is mandatory only if the property may be divided and is easy to partition in kind. Without co-owners' consent, the court of law may not derogate from this principle, as long as partition in kind is possible. If all co-owners agree, the court of law may allot the property to one of them or to sale. In the hypothesis in which one of them insists on making the division in kind, the court of law is obligated to resort to this partition modality.

Moreover, even in the hypothesis in which co-owners have agreed to the sale of the property, although it would have been easier to be divided in kind, to the extent to which the sale could not be made, the court shall rule, upon the request from one of co-owners, the division in kind or by allotment, as applicable, conclusion taken from provisions of Article 992 of the New Civil Procedure Code (Stoica, 2006: 102).

The main procedure in the partition by court process is composing the batches. In the literature (Comăniță, 2002: 166) in view of its importance it was appreciated that this procedure is subject to the principle of equality in nature acording to which, each co-owner receive equaly one batch with equal rights which are meant for him from the share mass.

Also, upon forming and awarding portions, the court shall be conditioned to take into account the agreement of parties, as well as certain factual circumstances as those

stated by the provisions of Article 897 of the New Civil Procedure Code: laying of the share due for each tenant from the partitionable assets' patrimony, nature of these assets, domicile and occupation of parties, the fact that some co-owners, before seeking partition, have made construction, improvements upon approval from the other tenants or other such acts (The Supreme Court, Decision no. 2589/1993, 1994: 88). Please note that none of the criteria listed should be generalized, even by the larger share of one of the co-ownwers (Supreme Court, Decision no. 467/1982, 1980-1985: 127; Supreme Court, Decision no. 5434/2001, 2003: 59). In a decision of specific case (Supreme Court, Decision no. 1847/1981, 1981: 29), it was established that it is possible to attribute part of the building which has a lower share ownership as no criterion is decisive (Supreme Court, Decision no. 2589/1993, 1994: 88). It was believed that these criteria should have regarded not only the court of law, but also the master to whom was asked to form portions by the expertise report (Tabarca, 2013: 733).

Another equity principle that the court should observe is that according to whom forming portions and composing shares shall recieve, as much as possible, in the same amount of movable, immovable, rights or debts on the same nature or value. Thus, it is inadmissible that, without tenants' consent, the court awards one or several of them all assets in kind, and others solely the compensation of equivalent value in cash of the share due, as long as it is possible to give assets in kind to each of them. The court of law shall avoid, as much as possible, excessive division of assets, preventing thus assurance of their rational exploitation. Thus, if, for instance, the joint property is a construction having title of dwelling place, the court of law should form the portions so as each of them be fit to be used as a dwelling place, even if arrangements would be needed, to the extent in which they are not expensive (Stoica, 2006: 102). Co-owners may not be obligated to receive shares of construction which, even with reasonable arrangements, would not be used according to their destination of dwelling place (Supreme Law Court, Decision no. 223/1979, 1979: 153-156). By enforcing this idea, judicial practice deemed the partition in kind of an intramuros land as impossible if, by division, it would become unbuildable (Supreme Law Court, Decision no. 419/1975, 1975: 162-174; Bucharest Law Court, Decision no. 453/1993, 1993-1997: 378-379), or of an arable land if, by division, its exploitation by agricultural mechanical means would become difficult (Appeal Court of Suceava, Decision no. 222/1999, 1999: 163).

In previous jurisprudence of the New Civil Procedure Code it was decided that "by awarding the building to the defendant, the courts deemed he is the most entitled to receive the property by taking into consideration certain elements of assessment in his favour, and that the apartment in which he lived, at the sixth floor is damaged from earthquakes, that the elevator shows permanent deficiencies and that his wife- suffering from a heart condition should avoid physical effort and that he donated to the plaintiff his share of half of the other inheritance property, the vehicle, under the condition that he may keep the house. Such criteria, if real, may be considered, but do not have to be taken as a rule, following to be confronted with criteria called down by the plaintiff, if they are acknowledged by evidence, such as the fact she utilized the house after the author's death, that she executed a series of improvements on the building and of enhancement of its degree of comfort, that she paid all taxes and maintenance fees and that she has no other dwelling houses as a personal property" (Supreme Court of Justice, Panel of 7 judges, Decision no. 25/1994, 1994: 65).

These criteria should all be considered, at the same time or just some of them, so as not to infringe the co-owners' rights, to meet their actual needs and so, that the partition

be equitable. Mostly award batching criteria are jurisprudencial created outlined before adopting new regulations. Thus, it was decided that for choosing the co-owner that is to be assigned with a specific lot it needs to consider a number of criteria (Supreme Court, Decision no. 399/1970, 1969-1975: 220; Supreme Court, Decision no. 1203/1971, 1971: 116; Supreme Court, Decision No. 1287/1978, 1978: 34; Supreme Court, Decision no. 23/1979, 1979: 135, Supreme Court, Decision no. 467/1982, 1980-1985: 129), such as for example, undivided share of mass, batch composition, nature of the goods, sealing needs and/or spiritual, co-owner possibility of purchasing other goods of the kind subject to partition, investments by some communicants goods from batch composition.

Under the circumstance in which the portions awarded in kind to co-owners are not equal from a value point of view, the difference shall be compensated by an amount of cash called balancing payment, which shall be paid by those tenants who have received portions of a higher value (Supreme Court, Decision no. 1022/1979, 1979: 67). So, if equitable partition is not possible, which covers fully the right of each co-owner, the inequality between the right due and the assets received is completed, in compliance with Article 983 paragraph 3 of the Civil procedure Code, by a compensation in cash.

Each tenant shall be forced to pay in title of balancing payment the difference between the value due, according to his/ her share, and the value of the assets he/she has received; thus, the legal practice has decided that if improvements have been made to the co-owned building solely by one of the co-owners, to whom it was ruled that should be awarded in property, the value of the balancing payment shall be determined by relating the share of the property right to the circulation assets value of the building as it was on the date of purchasing (Court of Appeal of Bucharest, Decision no. 185/2007, 2007: 734).

In practice (Supreme Court, Decision no. 1590/1989, 1990: 56), under the old regulations applicable to the new provisions, it was decided that, if more of the co-owners are required to pay any compensation, between them there is not a passive solidarity, motivated by the fact that, according to Article 1041 of the old Civil Code, solidarity between debtors is not presumed, but must be stipulated by law or agreement between parties. Currently, the legal and jurisprudential solution remained topical, as the provisions of Article 1041 of the old Civil Code were taken over by Article 1445 of the current Civil Code. Not far, there is no legal provision regarding the solidarity between co-owners liable to pay any compensation. In contrast, the co-owner liable to pay any compensation due to interest from the due date until payment in accordance with Article 1535 and according to previous practice enforced with the new Civil Code (Supreme Court, Decision guidance no. 3/1968, 1968: 13-14) it was decided that the interest shall be payable from the date of application for summons.

A mention should be made that the finality of partition (that of determining the termination of co-ownership status) is not made if the court, upon request, awards the property to several co-owners. The sole difference, as opposed to the situation prior to filing for partition action, consists in the increase of shares to fall upon them. The joint property continues to exist in the relations between them (Atanasiu et al., 2011: 232).

Conclusions

We cannot state that the new regulations are absolute novelty; on the contrary, the New Civil Code solely creates the legislative framework of certain rules used for a long time by the constant legal practice or the result of massive proposals of *lege ferenda*. It is true, setting forth new directions in certain situations was required, so the law maker has made the alterations needed, i.e. for the regulation of rules applying to the termination

of co-ownership by partition, which have become common law, applying also for inheritance partition, as provided by Article 1143, paragraph (2) of the New Civil Code, as well as for condominium, as stipulated by Article 686 of the New Civil Code. In the New Civil Code it is expressly provided, by Article 669, the rule according to which, the termination of co-ownership by partition may be made at all times, except for when the partition was suspended by law, legal instrument or judicial rule.

Thus, this juridical text gives two rules applicable to partition: the first imperative rule concerns the fact that the right to seek partition is indefeasible, partition being sought as long as the co-ownership lasted. The second rule concerns the fact that partition may be sought at all times, without needing a minimum duration of co-ownership. Award in kind of assets subjected to division constitutes the most important modality to shut down co-ownership by court, a modality having a principle value in the matter. Thus, as many times as possible, the court of law is obligated to resort to partition in kind of the property or of assets subjected to partition. It is the most equitable modality to ensure equality of rights for the former tenants.

Acknowledgement

This work was supported by the strategic grant POSDRU/159/1.5/S/141699, Project ID 141699 co-financed by the European Social Fund within the Sectorial Operational Program Human Resources Development 2007-2013.

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Article Info

Received: February 20 2015
Accepted: March 25 2015

RSP • No. 45 • 2015: 76-88

ORIGINAL PAPER

Balancing Romania-Russia Relations: A Grounding of the Balkan Crisis Through Proper Application of Political Conditionalities

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Abstract
This Article analyzes the evolution of political and diplomatic relations between Romania and Russia in the years 1885-1913. During the Balkan crisis of 1885-1886 there were marked Russian-Romanian divergences because the Romanian diplomacy supported the election of Ferdinand of Saxe-Coburg at the Bulgarian throne, the candidate backed by Austria-Hungary. In the late nineteenth century, Romanian-Russian relations, closely supervised by the diplomacy of the Central Powers, experienced a sensible improvement. It was due to the intention expressed by the two countries to maintain the status quo in the Balkans. However, there were some obstacles that separated Romania from Russia. Romania's attitude towards the Balkan crisis had a particular importance to Russia. Attracting Romania in the Russian sphere of influence would not only have created a bridge with the Slavic states in the Balkans, but also would have considerably diminished possibilities of Austria-Hungary to counter its policy in Southeastern Europe.

Keywords: Romania, Russia, Balkan Crisis, First Balkan War, Second Balkan War, international relations

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Balkan Crisis: a political conditionality?

From the last decades of the 19th century until 1916, Russia and Romania found themselves in two systems of opposed alliances, since both had divergent interests in the Balkan area. Russia's efforts to expand its influence in the Balkans met with the Austro-Hungarian resistance which aimed at the same objective. Since Russia's claims in the Balkans were sustained in most cases by the Triple Entente allies, France and Great Britain, and the Austro-Hungarian claims were sustained by Germany, the Balkan Peninsula was about to face the strong political pressures from both sides. After the proclamation of independence the main objective of the Romanian foreign policy was the recovery of all the Romanian territories.

In the 18th century and during the first half of the 19th century Romania was in a special situation. Its territory was situated between three powerful empires (Jurasco, 1913: 9-10). The Romanian Principalities, which were part of the Turkish possessions, awoke a conquering desire to both Austria and Russia. This gave a particular note to their political history. In fact, the geographical situation on one hand submitted them to great difficulties and on the other was favourable to them. By adhering to one of the powers against another or against the other two, the Principalities could obtain important advantages (Boldur, 2000: 35).

The Ottoman Empire stopped being a redoubtable opponent to Romania after the latter gained its independence. But Romania was facing two great empires: Russia and Austria-Hungary. The problem was: whom should it ally with? Practically, Romania couldn't have sincere friendly relations with neither of them, because both had got Romanian provinces and were trying to strengthen their domination over them. Economic interests were leading it towards Austria and its ally, Germany. On the other hand, Russia's aggressiveness, its projects for territorial conquers, its desire to forestall the gorges represented a real threat. Pan-Slavism, as a guiding idea of the Russian foreign policy, pushed Romania farther from Russia and made it look for support somewhere else. As a matter of fact, right before the proclamation of independence in 1877, Gheorghe Brătianu revealed Russia's lack of good faith, the latter having declared that it had no interests towards the Romanian Principalities. He also denounced the danger of the Pan-Slavic idea for the entire Europe (Brătianu, 1877: 53).

These suspicions made Romania sign a secret treaty with the Triple Alliance. Therefore, the anti-Russian attitude was getting worse or was fading away as the Russian peril became more or less threatening. We must mention that certain Russian literary Pan-Slavic currents were liable to cause violent reactions in Romania. The political situation in Russia between 1880- 1890 led to the appearance of a philosophical and literary doctrine, which sustained the theories of the social conservatism and the exaltation of the national idea, which gave Russia a worldwide mission. Danilevski, Strahov and Leontiev were all presenting, in their own manner, the well-known thesis regarding the imminent fall of the Western world to which they opposed the certainty of a future ascent of the Slavic spirituality, meant to overrule the entire Europe. These ideas echoed in Romania. Dimitrie A. Sturdza underlined the idea of the peril that Pan-Slavism represented for Europe (Sturdza, 1890: 25). He referred to Danilevski's project that aimed at the union of all Slavic people. He also drew a hypothetical map of Russia after an eventual takeover of the entire Balkan Peninsula.

Referring to the Romanian-Russian relations, Take Ionescu said that Romania's existence was incompatible with the ideal pursued by the Russian empire: "The Tsarist

Empire does everything possible to subjugate us". Among the three directions that Russia drew towards Persia, Far East and the Mediterranean, the last was the most important. There, on the shores of Bosphorus and Dardanelles, was the key to Europe. "All the efforts made by the empire, all its aspirations, all the Russian impetus are heading towards that point". The Russian conquests in this region would have threatened Romania's existence itself. "We cannot talk about agreements, compromises and concessions. If we still exist, Russia will experience a failure in its plans which have animated the heart of the Russians, for two centuries. If the neighbouring empire succeeds in accomplishing the dream it has pursued with so much confidence and tenacity, the Romanian state and people will become just a memory. This is the truth", concludes the author (Ionescu, 1891: 18-19).

In this way, in parallel with the idea of the Slavic special intrusion in Europe, stated by certain circles of the Russian society, in Romania an increasing peril began to shape. The near future proved that the suspicions regarding Russia's intentions to have an influence in the Balkans were not without base, since Russia tried to impose its authority in Bulgaria (Pogodin, 1910: 199-224), to control it and its military forces. The episode related to baron Kaulbars' mission in Bulgaria outlined the failure suffered by Russia (Jigarev, 1896: 221). The situation in the Balkans got worst in September 1885, when the mutiny from Eastern Rumelia outburst, leading to the proclamation of this province's union with Bulgaria, under the reign of Alexander von Battenberg. This union contradicted the Treaty of Berlin in 1878 which specified that it could not be done without the approval of the Great Powers (Jelavich, 2000a: 328-329).

On the other hand, the union of the two Bulgarian states was seriously affecting the force balance in the Balkans and that was why Serbia, supported by Austria- Hungary, declared war to Bulgaria in the same year, in November. The Bulgarian- Serbian war ended with the defeat of the Serbian army. Russia, who in 1878 had supported the creation of the Great Bulgaria, provided that it remained under its influence, was now against the union of 1885. The Bulgarian attitude of defying Russia changed Great Britain's reaction, the latter situating in a favourable position towards the events. After negotiations, which had been provoked by the British diplomacy at the beginning of 1886, the sultan accepted to name Alexander von Battenberg the governor of Eastern Rumelia, which remained formally under the Sublime Porte's suzerainty. In fact, in this way the union of the province with Bulgaria was recognized (Jelavich, 2000a: 329).

During these events the Romanian government brought up a moderate, neutral policy and was concerned with locating the conflict. As a token of appreciation of the Romanian state, for its just attitude and its role in maintaining the status quo in the Balkan Peninsula, the treaties for establishing peace, that was expected to end the Serbian-Bulgarian conflict started in 1885, began in Bucharest on the 23rd of January 1886 (The Service of the National Central Historical Archives, Bucharest, 1886: 2). Regarding the decisions that were adopted, soon reactions of the Great Powers appeared. Thus, Russia's prime minister, count Urusov, warned Mijatovic about his concern regarding the war preparations signaled in Serbia. Urusov emphasized the idea that The Three Emperors Alliance did not allow endangering the peace from Serbia's side. Consequently, the Russian diplomat said that Vienna, as well as Petersburg, considered that Serbia was working against its own interests if it ignored the opportunity of an honorable peace (Catana, 2012: 100). Ever since 6th/ 18th of February 1886, in the capital of the Russian Empire a strong feeling of discontent towards Serbia appeared, the latter being accused that through its demands it led to the quandary of the conference from Bucharest. The conclusion of Russia's chief of cabinet, Giers (1820-1895), in front of Serbia's prime

minister was that Belgrade did not want to make peace and it claimed Bregovo without accepting the possibility of changing the frontier, as Bulgaria had wanted. The peace treaty was signed in Bucharest on 19th February/ 3rd March 1886 (Ciachir, 1978: 147-149), without referring to the border issues that were to be regulated afterwards, by bilateral agreements between Serbia and Bulgaria. It also stipulated that the documents by which each state ratified the treaty were to be changed in Bucharest within 15 days (The Service of the National Central Historical Archives Bucharest, 1886: 21).

However, the Balkan crisis was not definitely solved by signing the peace Treaty of Bucharest. After only a few months the situation, far from being winded down, became more complicated. The Russian diplomacy was not at all pleased with the fact that Alexander von Battenberg had succeeded in unifying Bulgaria without the Russian approval, therefore they acted clearly against the Bulgarian prince. So, as a result of a conspiracy, prince Alexander von Battenberg was forced to abdicate (Jelavich, 2000a: 329-330) in the autumn of 1886, with Germany and Austria- Hungary's approval and in his place Ferdinand von Saxa-Coburg Gotha (1861-1948) was brought in 1887, this bringing the country closer to Vienna not to Russia (Catana, 2012: 106).

The support offered by the Romanian diplomacy in favour of choosing Ferdinand von Saxa-Coburg Gotha for the Bulgarian throne, a candidate which was supported by Austria- Hungary, has increased the Romanian-Russian disagreements (Boicu and Platon, 1980: 324), these also being heightened by the fact that in the autumn of 1885 the Romanian government sent troops alongside the Prut, officially declaring that they were taking measures against the crossing of pest ill cows. After Russia's protests the troops were withdrawn (Căzan and Rădulescu-Zoner, 1979: 135). Since Russia's influence on the south part of the Danube had been seriously shaken, at Bucharest the fear of a possible Russian intervention still existed. On the other hand, at the beginning of 1887 the breaking out of a European war seemed imminent, because of the crisis among the French-German relations. After the danger had been removed, the German- Russian Reassuring Treaty was signed in June 1887.

These circumstances have allowed Romania to maintain its external policy towards the Central Powers. In 1887 its diplomacy obtained from King Carol I and the decisional factors from Bucharest the extension of the alliance for another three years, despite of the Romanian- Austrian- Hungarian disagreements generated by the Romanians situation in Transylvania and heightened by the customs war that broke out in 1886. At Romania's request, Italy would also adhere to the Romanian-Austrian-Hungarian treaty in May 1888 (Căzan and Rădulescu-Zoner, 1979: 162-168).

Externally, the stability accomplished through the Bismarck system was abolished when Emperor Wilhelm II accepted the resignation of the chancellor in 1890 and denounced The Reassuring Treaty (Layton, 2003: 53-54). The German-Russian disruption was important for the matters in the Balkan area, if we consider that Germany's support was used, eventually, to sustain the Hungarian interests, this leading to the reappearance of the Russian-Hungarian antagonism in the area. After the Bulgarian crisis, the Balkan area benefitted from a period of relative peace. The European powers, in order to avoid a new conflict in the east, cooperated to maintain a calm atmosphere in the Balkans.

In the last decade of the 19th century, Russia and Austria- Hungary's interests were similar. Whereas the first focused on the Far East, the second led a discrete foreign policy due to the intern problems they were facing. Although the reasons were different,

the interests of the two powers were very similar, both wanting to maintain peace in the region (Jelavich, 2000a: 332).

The interests of the moment led to the closure of a Russian-Austrian agreement, signed in April 1897, at Sankt Petersburg, by which the cooperation of the two powers was established in order to maintain the status quo in the Balkans. For a decade this agreement has worked: the two governments collaborated in order to prevent any major crisis that could lead to the reopening of the Eastern Issue (Jelavich, 2000a: 333).

Towards the end of the 19th century, the diplomatic situation in the south-eastern Europe was generally relaxed. Even the Romanian- Russian relations, attentively overlooked by the diplomacy of the Central Powers, enjoyed a slight improvement. A proof in this direction was the visit that king Carol I and the inheritor of the throne, Ferdinand, made in July 1898 at Sankt Petersburg, as a response to the invitation made by Nicholas II. On this occasion the Russian diplomacy reassured about its good intentions and its desire to maintain the status quo in the Balkans (Boicu and Platon, 1980: 350-351). Actually, the foreign policy led by emperor Alexander III managed to secure peace and balance in Europe for quite a long period of time, between 1881- 1894. Under his reign and under that of Nicholas II, Russia restrained itself from any hostile act against Romania (Boldur, 2000: 32-33).

Nevertheless, such actions did not diminish the obstacles that separated Romania from Russia. They were in agreement with the Romanian diplomatic policy of maintaining good neighbouring relations with all the surrounding states, regardless of the territorial, national, cultural or other type of issues they might or might not have had. The development of the situation in the Balkan area, carefully supervised by the Romanian government, determined the Romanian foreign policy to remain under the guidance of the alliance with the Central Powers. The beginning of the 20th century has brought about new foreign problems to Romania. Ever since 1895, the southern neighbours had shifted their policy to get Russia's support. Hereby, the Austro- Hungarian influence in Serbia was replaced with the Russian one and the Bulgarian diplomacy's closeness to Sankt Petersburg became visible when the Romanian- Bulgarian tensions caused by the actions of the Bulgarian comitadjis in Macedonia broke out, knowing that the Romanian diplomacy supported the Aromanians' cause.

In the context of the Romanian- Bulgarian crisis, since July 1900, when the Aromanians' leader Stefan Mihăileanu, chief-editor of the Balkan Peninsula Journal, was assassinated by the Bulgarian nationalist Stefan Dimitriov, military negotiations began. The assassination of the Aromanian leader in Bucharest increased the Romanian government's discontent. The action led to military preparations on both sides and to the deterioration of the diplomatic relations as well. The Bulgarians have raised fortifications on the Danube and concentrated troops especially at the Dobrogea border. In reply, the Romanians have done earthworks on the Cernavoda bridge (Platon, 2003: 270). Russia's intervention on Bulgaria's behalf, by strengthening the army in Sofia with munitions and guns, made the Romanian political leaders realize they could not count on the Central Powers' help (Stanciu and Oncescu, 2004: 98-103). D. A. Sturdza reproached this to the Italian minister in Bucharest, Beccaria d'Incisa, stating that during the Romanian-Bulgarian crisis, Germany, Italy and Austria-Hungary did nothing to help Romania (Oncescu, 2011: 105-106). Romania's position towards the Bulgarian actions displeased Russia who had won the trust of the government from Sofia. The attitude of the Russian government put Romania in a difficult situation and proved that, in case of a conflict, Bulgaria had Russia's support. Based on the 52 Article from the Treaty of Berlin, the

Russian authorities protested against the earthworks done at Cernavoda and in August 1901 a few Russian torpedo boats reached up to Galati.

All these events, as well as the attitude adopted by the two governments, proved how fragile and sinuous the Romanian- Russian relations were. The latest events from the Balkans at the end of the first decade of the 20th century had consequences on the relations among the surrounding states as well as on Romania's foreign policy. They announced the shift of power between the Balkan states, if we are to consider the Macedonian issue in case of a conflict. The Austro-Hungarian policy in the Balkans has led to the change of the territorial status quo. Taking advantage of the situation created in the Ottoman Empire, as a result of the "Young Turk" revolution in 1908, Austria-Hungary proceeded to the annexation of Bosnia and Herzegovina. Almost at the same time Bulgaria's independence was declared (Jelavich, 2000b: 93). The latter, united with Eastern Rumelia, had already been strengthened by the independence proclamation. The Cabinet of Vienna's attitude, which supported Bulgaria instead of Serbia, was a major concern to Bucharest. These events announced the breaking out of a military conflict, either between Bulgaria and Turkey, or between Serbia and Austria-Hungary, not to mention Russia's dissatisfaction. At the same time, the Romanian authorities believed that Austria's gradual evolution would lead to its dissolution. This state represented such a strong ethnic mosaic that at the first serious shock it had to fall (Ghica, 1913: 12). But could Russia be considered a solid state? The experience of the 1905 revolution seemed to provide an affirmative answer to this question. Russia managed to maintain itself together with all the nationalities it dominated.

Regardless of the efforts made to win the trust of the Balkan people, in order to exploit it in its favour, Russia had not always found the sympathies it was counting on in the Balkans. It had lost Serbia's sympathy because it hadn't supported the latter enough in 1908, when Austria-Hungary annexed Bosnia and Herzegovina, but especially due to its policy towards Bulgaria. Russia sustained Bulgaria, hoping to turn it into an instrument submitted to the Russian power (Mihăilescu, 1944: 320). Thus, the secret military pact which was signed between the two countries in 1909 can be considered a success of the Russian diplomacy.

Russian Balkan policy

Under these circumstances, Romania's position was of great importance to the Russian Balkan policy. Convincing it to shift towards Russia not only would have created a connection with the Slavic states in the Balkans, but would also have diminished considerably Austria-Hungary's possibilities to counterattack its policy in the south-eastern Europe. The situation seemed to become favourable to Russia, especially after the Bosnian crisis, between 1909-1910, when the thought of organizing a confederacy of the Balkan states appeared in the minds of the south-eastern European states, out of their need to unite, in order to resist the expansion of the Austro-Hungarian influence.

It seems that during that time the Russian diplomacy did not take into consideration the fact that Romania, although not a Balkan state, had its own interests at the south side of the Danube and did not observe the contradictions that existed from this point of view between Romania and Austria-Hungary. Aiming especially at attracting Bulgaria, Russia could not exploit the disagreements between Romania and Austria-Hungary regarding the Balkan issues. Therefore, the fact that in 1910 Sazanov considered Romania as a "Danube state, not at all Balkan", having "no territorial interest in the Balkans" (The Archives of the Romanian Foreign Ministry, 1910: 253), was of great

significance. The modification of the status established by the Treaty of Berlin represented a warning alert for the Romanian diplomacy, making it reconsider its position. This was also favoured by the replacement of D. A. Sturdza from the government's lead with Ion I. C. Brătianu in 1909 (Platon, 2003: 276).

The decisional factors from Bucharest warned The Cabinets of Berlin and Vienna that a modification of the balance in the Balkan area would attract certain territorial compensations. Romania's relations with the Balkan states have oscillated according to their own interests at the south side of the Danube: the issue of the Macedonian-Romanians and the request to establish a strategic border at the south part of the Danube (Cliveti, 1998: 254), the Romanian-Bulgarian relations after 1878 causing the Romanian government enough tensions. Under these circumstances, although they continued to be in favour of keeping the status quo, the Romanian authorities searched for a solution in case it changed, by making an amendment to the Dobrogea border, which hadn't been solved in its favour in 1878. The amendment had to include Silistra (Boicu and Platon, 1980: 362).

Having as neighbours two empires, the Tsarist and the Austro- Hungarian one, made Romania extremely cautious with the southern border. Bulgaria, which had considerably enlarged its territory, could create a difficult situation, considering its relation with the two great powers surrounding Romania. Actually, during these years, Bulgaria shifted off from Russia only to get closer to Austria-Hungary. At any rate, Romania would have been caught between a great power and a young, dynamic and ambitious state. Romania's claim of the Silistra-Varna line (sometimes Rusciuk – Varna), was aiming at a strategic reinforcement, in case the distance between the Russian and Bulgarian border would have enlarged. The request has been presented as a possible compensation for the Aromanians' absorption into other states (Platon, 2003: 278-279). During the debates between 1909 and 1910 this point of view was not shared by the German-Austro-Hungarian diplomacy (Căzan and Rădulescu-Zoner, 1979: 295-296).

Until the Balkan wars Romania has remained consistent with the alliance that tied it to the Central Powers, but, after the conflicts between 1912-1913, important changes were about to be made in this regard. The first Balkan war has united, for the first time, the surrounding states from the area, namely Bulgaria, Serbia, Greece, Montenegro, into an alliance against the Ottoman Empire (Jelavich, 2000b: 94). The process of releasing Christian people from Ottoman domination, previously marked by important achievements, was not finished. The most complicated issue remained that of Macedonia, which was still part of the Ottoman Empire, its population being the object of many retaliations.

The abolishment of the Ottoman domination represented an essential objective of the Balkan states' foreign policy and it announced an imminent conflict between them and the High Porte. Its outbreak was rushed by the circumstances appeared after 1908. Constrained to accept Bosnia and Herzegovina's annexation, the Serbian government temporarily shifted its attention towards the territories inhabited by its conationals in the Ottoman Empire. In its turn, Bulgaria was trying to complete the success gained in 1908, when, united with East Rumelia, proclaimed itself Independent Kingdom, by annexing some Macedonian territories. Finally, Greece was leading a more active foreign policy, after the government's takeover by Venizelos, who had remarked himself as a leader of the national movement in Crete. The three governments' intentions were facilitated by the outbreak of the Italo-Turkish war, which gave the Bulgarians and the Serbians courage to close an alliance against the Ottoman Empire. At the same time, the Bulgarians were

trying to persuade the Romanians not to interfere and declared themselves in favor of a natural border in Dobrogea in change of allowing them to act against the Turks, their main objective being Macedonia. Take Ionescu, Titu Maiorescu and I. C. Brătianu were informed about this proposal (Iordache, 1998: 173), but a Romanian-Bulgarian agreement was no longer possible because in the Bulgarian press certain tempestuous Articles appeared, claiming that Dobrogea was a Bulgarian territory. Although not a Balkan state, Romania realized that it couldn't remain indifferent to the regional political situation, but it didn't intend to interfere either, trying to avoid the extension of the war and of the conflict area. Due to the close Serbian-Bulgarian alliance, a revival of the Romanian-Russian relations appeared, the Russians being aware of Romania's importance in the South-Eastern Europe. As a consequence of this war, the Ottoman Empire had to give up Tripolitania and Cyrenaica. The conflict had considerably weakened the empire and made it possible to be defeated by the reunited troops of the smaller Balkan states, especially since negotiations between them have started, being favoured by the support received from the Russian diplomacy (Ciachir, 1996: 149).

Forced in 1909 to admit Bosnia and Herzegovina's annexation without any compensation, Russia tried to get it back in the South-Eastern Europe, taking advantage from the circumstances created by the Italo-Turkish war. In the autumn of 1911, the Russian diplomacy had even thought about creating a Balkan federacy, part of which would have been Romania and the Ottoman Empire, asking the latter to revise the status of the Straits, in order to allow the passage of the Russian war vessels.

But, considering the fact that the Great Powers would not have allowed such an adjustment, the project was abandoned and replaced with the one involving an alliance of the Balkan Christian states against the Ottoman Empire. In order to achieve it, the Russian ministers have dynamically acted in Sofia and Belgrade. In fact, it was between these two capitals that the most important negotiations leading to the First Balkan War have taken place (Ciachir, 1996: 150). The main issue discussed was that of Macedonia. The impossibility of establishing an ethnic border made the agreement temporary, each of the two states was to receive a part of Macedonia, the status of the median area remaining to be established later, under Russia's arbitration (Platon, 2003: 281).

In order to be sure that the government in Bucharest had a friendly attitude, the Serbian prime-minister formulated an ampler plan, which took in consideration the possibility of uniting Transylvania and Romania. Considering the Romanian-Austro-Hungarian relations, the Bulgarian-Russian diplomacy reached an agreement that was against the Ottoman Empire and the northern neighbors. Bulgaria promised to intervene with a 200.000 people army, in case Austria-Hungary attacked Serbia and Serbia with 150.000 people in case Romania attacked Bulgaria. On these bases The Alliance Treaty was closed on 13th March 1912, completed afterwards by a military convention. In parallel, discussions between Bulgaria and Greece have taken place, leading to another alliance treaty.

Taking into consideration that on 26th of September/ 9th of October Montenegro was at war with the Ottoman Empire, the other Balkan states began the hostilities on 17th/30th of October. Regarding the war, king Carol I and the minister of foreign affairs Titu Maiorescu announced a neutral position, but in case certain territorial changes would appear in the Balkan area, the Romanian diplomacy warned that Romania would sustain the claims referring to the Dobrogea border (Maiorescu, 1995: 281-282). The Romanian coalition government, led by Titu Maiorescu and Take Ionescu, and the king decided to

negotiate directly with Bulgaria for a settlement regarding the Dobrogea border and if the treaties failed, they would ask Austria-Hungary and Russia for support.

In October 1912, when the anti-Ottoman coalition threatened Constantinople, the Romanian government dynamically interceded Ferdinand of Bulgaria and his government to start the negotiations regarding the Dobrogea border (Oprea, 1998: 53). The Romanian authorities thought that at a future conference, held by the Great Powers in order to decide upon the Balkan matter, Romania, due to its neutrality, would be invited to participate as a full rights partner (Hitchins, 1996: 169). When Romania's attitude towards the events from the south part of the Danube was decided at Bucharest, no one could have seen Turkey's rapid defeat by the Balkan coalition. Between the end of October and the beginning of November 1912, as the Balkan events followed their lead against the Ottoman Empire, the Romanian diplomacy turned to Russia for help. Titu Maiorescu, with the help of the Russian ambassador at Bucharest, asked the government in Petersburg to intervene, in order to make the Bulgarians more receptive to the Romanian claims (Hitchins, 1996: 169).

Russia's foreign affairs minister accepted to mediate the legal dispute between Romania and Bulgaria and appreciated that "the Great Powers had to value at the highest degree the European character of the Romanian policy" (Oprea, 1998: 54). Although Sazanov's answer to the Romanian request was favorable, he didn't make any actual commitments. Russia's government disposed that all its diplomatic missions would exercise their influence on the Bulgarian political circles. Petersburg's influence in Romania's favor proved more successful in Paris, where the French authorities agreed to support the claims of the Romanian government, in exchange that the latter would keep its neutrality towards the Balkan events (Platon, 2003: 282).

Following the same line, the Great duke Nicolas Mihailovici visited Romania between 26th November / 9th December-29th November/ 12th December 1912 (The Service of the National Central Historical Archives Bucharest, 1912: 3-17). In his memoires, Schebeko described the main moments of the visit. The Great Duke came to Bucharest accompanied by a numerous retinue. He was welcomed at the station by King Carol I and by the highest civilian and military officials. From the station, the king took the Great Duke to the palace where he was received by Queen Elisabeth. During his three days stay in Romania, a series of banquets and receptions had been organized in his honor. On 23rd November, during a great festivity at the Royal Palace, the king was handed the marshal cane. This ceremony was followed by a *Te Deum* at the Cathedral, in the presence of the Russian and Bulgarian military delegates in order to celebrate the 35th anniversary since Plevna's conquest. After the ceremony a wonderful troops' parade followed. During the reception at the Russian legation, the Great duke had the opportunity to meet the most important politicians of the kingdom, with which he had long conversations. Schebeko considered that this visit represented "a new prove of Russia's friendly disposition and its willingness to get closer to Romania" (Schebeko, 1936: 142).

As a prove of the important role that Romania played for Russia within its Balkan policy, it is worth noticing that the Great duke Nicolas Mihailovici proposed king Carol I that the Romanian state entered the Balkan Confederacy, proposal that the sovereign said he would accept only if he was at its lead (Diaconescu, 1937: 14-15). As a matter of fact this proposal was not carried out because it was not followed by external actions of the Romanian state. Moreover, the Balkan states had formed the Confederacy without Romania, actually against it, if it were to participate as an ally of the Central Powers, in case of an armed conflict. In addition, the fact that king Carol I accepted it under certain

conditions, without giving an actual answer, created difficulties regarding its acceptance from the Balkan states, which were accurately observed by Titu Maiorescu (Maiorescu, 1995: 52). Therefore, the prime-minister Titu Maiorescu declared that *"we must firstly see if it is viable"* (Maiorescu, 1995: 52). Referring to the Balkan Confederation, Tache Ionescu said: "It is true that this Confederation represents the ideal towards which the Romanian state had to aspire to; however, it is not less true that this ideal is far from its achievement" (Ionescu, 1891: 35). Under these circumstances, Russia's attempt to bring Romania within the Balkan Confederacy remained unsolved.

The Great Duke's visit to Romania marked an important moment in the Romanian- Russian relations during the Balkan crisis. However, it was negatively commented upon at Bucharest, in the newspapers (Conservatorul, 1911: 1) drawing attention to Bessarabia and the fact that a century has passed since it was lost (Zbuchea, 1999: 80). Anyway, this visit represented an opportunity to exchange ideas and it was another important step in improving the relations with Russia, although the future positions in case of a general conflict hadn't been established (Iordache, 1998: 196-197).

It is common knowledge that during the first Balkan war, the battlefield events were against the Ottoman Empire. Within six months the allied troops had reached Constantinople. The Ottoman Empire's imminent fall led to the intervention of the Great Powers, who demanded that the opponent parts sign a truce in December 1912 and on 30th May 1913 the terms for the peace preliminaries in London (Jelavich, 2000b: 95). The negotiations between the Romanian and the Bulgarian representatives, held in London from December 1912 until January 1913, in parallel with those between Balkan allies and Turkey, failed. The Romanian's request to establish the border in Dobrogea on the Silistra – Balchik line, respectively Tutrakan – Balchik, was inacceptable to the Sofia government. The answer given to Take Ionescu by the Bulgarian representative, in which he stated that he didn't have instructions from his government to accept changing the border, proved that the Bulgarians were trying to delay the negotiations until general peace was settled in the Balkans. Take Ionescu was recalled at London, the Romanian government being willing to take military actions in order to obtain the requested changes (Hitchins, 1996: 170).

Since an imminent conflict between the two parts seemed to outbreak, the Romanian-Bulgarian dispute came into the direct attention of the Great Powers. After the war had outburst, Austria-Hungary didn't seem eager to offer enough support to Romania regarding its requests and this attitude had negative consequences on the negotiations for renewing the alliance. Therefore, king Carol I postponed the ratification until February 1913. Nevertheless, the Central Powers had lost ground in Romania, an approach of the latter to the Triple Entente being more likely to happen (Boicu and Platon, 1980: 368-369).

Even if Romania had remained neutral during the first Balkan war, it watched with great interest this conflict that could modify the status quo which the Romanian politicians were so fiercely defending. The Romanian state representatives refused to enter in any alliance with the belligerents, although there had been proposals from the Ottoman Empire as well as from Bulgaria. With the latter one the negotiations had been difficult, due to the territorial requests of both sides: Romania was asking for the modification of the Dobrogea border because it considered that in Berlin an injustice was done, whereas Bulgaria wanted to get the whole Dobrogea region. This international context brought about a very rapid closeness between France and Russia, both states supporting Romania's territorial claims, even its participation at a peace conference, but a policy that was clearly

supporting Bulgaria, independent of the Austro-Hungarian one, was also noticeable. The London treaties did not manage to solve the problem of the Dobrogea border by bilateral treaties, therefore a European conference was to be organized in order to solve this matter. So, on 18th of March, 1913, the ambassadors of the Great Powers met at Sankt Petersburg in a conference in order to mediate the Romanian-Bulgarian dispute (Oprea, 1998: 56). The result of the debates was written in the Protocol, signed on 26th April/ 9th May 1913 by the six participant powers, by which they agreed that Silistra had to be given to Romania (Ionaşcu, Bărbulescu, Gheorghe, 1975: 402-403). The second Balkan war, that outburst in July 1913, with Bulgaria's attack against the former allies (Jelavich, 2000b: 95-96), brought a change of attitude among the Romanian leading circles, who, considering the danger in the area, decided to call up the troops and send them over the Danube. This moment has actually represented Romania's detachment from the alliance with the Central Powers (Hitchins, 1996: 172).

So that the Great Powers would not interfere once again, the winning Balkan states proposed that Bucharest should host the Peace Conference that was to end the second Balkan war, in this way emphasizing Romania's role in the unfolding and the ending of the conflict. By The Peace Treaty, signed on 10th August 1913 in Bucharest, Romania, Serbia, Greece and Montenegro managed to impose, mostly, their wishes. Bulgaria gave the Romanian state Dobrogea, acknowledging as border between the two countries the Tutrakan-Ekrene line (Hitchins, 1996: 173). Only the representatives of the belligerent countries took part at the treaties. This was the first time when the states from the South-Eastern Europe were making decisions without the interference of the Great Powers, the peace from Bucharest being a great success for Romania. The progress of the events from the end of the 20th century led to the change of the situation referred to in the Treaty of Berlin in 1878. After the two Balkan wars from 1912-1913, the Ottoman dominion in Europe has ended.

The Balkan crisis from 1912-1913 has deepened Romania's detachment from the Triple Alliance and has strengthened the contradictions of the Romanian-Austro-Hungarian alliance. The second Balkan war has brought about a new balance of powers, different from that in 1912, that is, instead of a single group under Russia's dominion, the group formed of Bulgaria and Turkey was beginning to gravitate more round the Central Powers. But its actions have diminished because of Romania's more and more clear shift towards Triple Entente. After the Treaty of Bucharest in 1913 certain closeness between Russia and Romania was visible. The presence of the Russian foreign affairs minister Sazanov in Romania, connected with the visit of the Tsar Nicolas II in Constanta, in June 1914, was the result of the two states' efforts to establish a friendly climate (Ciachir, 1996: 155). Tsar Nicholas II made this visit in order to reach an agreement with the king of Romania regarding a common action in case of closing the gorges to Turkey. From both Russia and Romania there were identical terms. However, both notes did not have a hostility character towards Turkey (Dascovici, 1915: 268-269).

On 1st/14th September 1913, Isvolski wrote to his successor at the Russian leadership's policy "I have considered as a political masterpiece your achievement to separate Romania from Austria. This has always been my dream, but I could not fulfill it or maybe I was not able to fulfill it". On one hand, the Romanian diplomacy wanted to detach from the Central Powers' dominion, and on the other to make Russia, who had a traditional sympathy towards Bulgaria, more trenchant in its attempt to maintain the Balkan balance established by the Peace of Bucharest in 1913. Under those circumstances,

the only power capable to support the Romanian government in its action to maintain the status quo in the South-Eastern Europe was Russia.

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Article Info

Received: February 27 2015
Accepted: March 20 2015

RSP • No. 45 • 2015: 89-98

ORIGINAL PAPER

Forecasting Recognition and Independence: An Intellectual Trait Analysis of di Vergano Diplomacy Effectiveness

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Abstract
After proclaiming its State Independence on May 9th 1877 and after its consecration on the battlefield in the Russo-Turkish war of 1877-1878, the Romanian diplomacy concentrated its efforts towards its international recognition. One of the most important features that gave a national state the international recognitions of its Independence was appointing a Resident Minister or an Envoy Extraordinary and Minister Plenipotentiary by the Great Powers (Germany, France, Great Britain, Italy, Austria-Hungary, Russia and the Ottoman Empire) in the newly independent country. Italy was one of the first Great Power to recognize Romania's State Independence by sending Count Giuseppe Tornielli-Brusati di Vergano as Envoy Extraordinary and Minister Plenipotentiary to Bucharest. The diplomatic activity of Count Tornielli in Bucharest was very important for Romania, as he was a sustainer of our independence in a very difficult period, as Germany managed to convince France and Great Britain to delay the international recognitions of Romania's independence until our country has resolved the railway problem with the German constructor company Stroussberg. As Austria-Hungary refused to mediate the conflict between Romania and Germany, the Italian diplomat in Bucharest was the one who tried to intervene in order to remediate the situation as he was facing the matter of delaying his official letters presentation to King Carol I because of the threatening attitude of Germany. On December 19th 1979, the Italian diplomat Giussepe Tornielli presented his official letters as Envoy Extraordinary and Minister Plenipotentiary to Bucharest regardless Germany's attitude and pressures.

Keywords: diplomacy, Italy, Romania, count Giuseppe Tornielli-Brusati di Vergano, international relations.

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Foreign Policy Approaches and Bounds

The changes occurring at international level due to the course of the new German foreign policy imposed by Emperor Wilhelm II and Russian-French rapprochement led to closer ties between Vienna and Berlin. Austria-Hungary, torn by internal problems, needed the support of Germany regarding the Balkan policy, and the latter, in turn, considered the control of Central and Southeastern Europe a required platform of its worldwide policy. In addition, both German and the Austro-Hungarian diplomacy, believed that the new international context was appropriate to extend the Triple Alliance Treaty, without waiting for the expiration of the one in effect.

Italy being under customs war with France, uneasy by the rapprochement between the latter and Russia also being engaged in a colonial policy in Africa also agreed to renew the Triple Alliance, despite pressure from Paris and differences with Austria-Hungary, due to the problem of Italians in the Dual Monarchy and also because of the Balkans issue (Stieve, 1929: 44). The government in Rome considered maintaining the Triple Alliance, "a necessary evil" – as first minister Rudini stated in a discussion he had with Giers at Monza in 1891, as still useful to Italy in providing security and support of its policy in the Mediterranean (De Stieglitz, 1906: 15). The unification of Italy and the establishment of the capital in Rome, recognition of Romanian independence and direct support of Italy contributed to the intensification of friendly relations of the two Latin countries (Șerban, 2006: 121-127). Although signing a trade agreement, whose negotiations started as early as the spring of 1876, or the Romanian diplomatic agency advancement to the rank of legation (December 5th, 1879) encountered problems mainly due to the need to comply with Article 44 of the Treaty of Berlin, which involved the review of Article 7 of the Constitution, which was supported by the Hebrew community in Italy, which due to censitary suffrage had a tenth of the seats in the Chamber of Deputies and could have decisively influenced the fate of the governments of Italy, though the two countries had common interests, especially after both became States of the Triple Alliance (HDAFMB, file no. 71D3 Roma/1877-1878, folio 110).

Count Tornielli alongside Augostino Depretis wanted to recognize the independence of Romania's State considering that the latter was conditioned by The Jewish Question and the Stroussberg issue. Italy was not in solidarity with Berlin, London and Paris and wanted to make this step unilaterally. On 4 April 1879 the Italian Ambassador in Berlin informed by a note the German Foreign Minister von Bülow that Italy is ready to recognize the independence of Romania (Bulei, 2003: 406).

After the resignation of the Depretis Government, Count Tornielli was appointed by decree envoy extraordinary and plenipotentiary minister of Italy in Bucharest, but between September 7th and December 5th, until clarifying the issue of Romania's independence he was transferred in Belgrade (Bulei, 2003: 406).

Count Giuseppe Tornielli Brusati di Vergano was part of a particularly well seen family in Italy, his father being a close friend of King Victor Emanuel II. Entered as a volunteer in the Foreign Ministry, he fulfilled various administrative tasks, so, that in 1863 received the first assignments outside Italy in Saint Petersburg and in 1867 in Athens. Along Maffei di Boglio was considered one of the promoters of Italian politics during the Oriental crisis. On May 11th, 1877 Mihail Obedenaru, knowing Tornielli as the secretary general of the Foreign Ministry, told about him that he was the one who took care of contacts with agencies of powers accredited in Rome (Bulei, 2003: 398-399).

His misunderstandings with Luigi Corti, the new foreign minister, determined him to wish to go on a mission abroad. As shown in the diplomatic correspondence of Obedenaru, he wanted to get to the important post in Constantinople, but because the opposition had to settle in choosing between Belgrade and Bucharest (Catană, 2009: 107). Apparently he preferred Bucharest due to its key position between Saint Petersburg and Vienna, but also because larger budget in Bucharest than in Belgrade (in Bucharest 50 000 pounds and 35 000 in Belgrade) (Bulei, 2003: 400).

Considered by some difficult, by others an excellent ambassador, Tornielli arrived in Bucharest presenting his credentials on September 18, 1879, as the first representative of Italy in independent Romania. Married to a Russian woman, he drew attention at the time being considered an incurable pro-Russian. Romania's diplomatic agent in Rome, Mihail Obedenaru, noted that Tornielli was pro-Russian largely because he was obsessively anti-Austrian (Dinu, 2007: 218-219).

As Camillo Cavour, he also was a supporter of the principle of nationalities that had made to triumph the unity of the Italian state. Thus, in the summer of 1878, in a discussion with Romania's agent in Rome said that the destruction of this principle was as impossible as had been viewed one year before the issue of independence of Romania (Bulei, 2003: 402).

During this period Italy did not have an appropriate strategy because of the weakness of character of foreign affairs portfolio holder, Cairoli, and the Secretary General Maffei di Boglio. Tornielli's recommendations, considered the true foreign minister during the government of Depretis, represented the basis of the actions of Italy in various problems such as the dedicated monasteries, the issue of Arab Tabia (1879-1880), the proclamation of Kingdom of Romania, March 14, 1881 and the Danube issue (1880-1881) (Bulei, 2003: 418).

Historical and diplomatical developments

The first two years after the Peace Treaty of Berlin, represented the period in which Romania tried to impose its independence to the European powers, conditioned by the provisions in 1878 which represented interference in the internal political life. Once these conditions were met in February 1880, Romania's independence was an accomplished fact for all European countries (Damean, 2005: 108). Romania's new political status imposed its presence in a system of alliances. To this was also added the discriminatory treatment that Romania was subject during talks on its status in Danube European Commission.

Despite the Romanian political class affinity for France, Romania could not hope for an alliance with it. This was due to the deterioration of French prestige in Europe since 1871, but also because of the attitude of France against Romania's independence and economic disinterest. French financial circles preferred to be the auxiliary of the German ones, especially after the discussion on amending Article 7 of the Constitution of 1866. With Russia, Romania could not have close relation, since in January 1879 the Romanian Army was practically on the verge of facing the tsarist army for the control of Arab-Tabia height, strategic point in the vicinity of Silistra. If Austria-Hungary supported Romania, from the desire to prevent the dominance of Russia in Bulgaria, Germany sided with Russia, because the latter to have no opportunity to get closer to France (Dinu, 2007: 221).

Regarding Austria-Hungary, Romania was in conflict because of its status in the Danube Commission, because of the economic boycott of the dual monarchy markets, but mostly over the issue of Romanians in Transylvania. Italy, which had a permanent attitude

of sympathy for Romania, was interested in obtaining economic concessions for its commercial products, being ready to join the signatory States of conventions with Romania, even before the conquest of state independence and its internationally recognition (Bușe, 2009: 123).

Despite the dynastic bond, Germany did not enjoy a favorable attitude in Bucharest albeit only because of the attitude of Otto von Bismarck at the Congress of Berlin, plus a number of his claims against Romanians. In addition, there was an anti-monarchical current, but they were not insurmountable difficulties (Dinu, 2007: 222).

Thus, we can consider that Romania had an interest towards an alliance, but also the European states themselves. Thus, Austro-German alliance from 1879 had to be strengthened. Whether in 1881, Serbia signed a treaty with Austria-Hungary, and in 1882, Italy became an ally, turning Dual Alliance in Triple Alliance, Austro-Hungary needed a certainty on the border of south and south-east, and it was provided by a treaty with Romania. Germany, whose orientation was toward the West, aimed cessation off any close French-Russian tendencies, was interested in having secured a surplus of Austrian troops in the West, in case Romania had become an ally with Austria-Hungary (Căzan and Zoner, 1979: 28).

The 1866 Constitution in Article 93 provided that the president was responsible for foreign policy, in the treaties of commerce and navigation and others. Omission of international treaties seemed justified until 1880, as Romania was not independent, but amending the Constitution in 1883, the situation remained the same. We believe that the sovereign wanted to take the initiative of foreign policy, avoiding the debate in Parliament. Regarding the validity of the document signed the head of state, in accordance with Article 92, it was assured by the Foreign Minister signature. As long as there was a unity of views between the two, the situation was good, complications coming only in case of disputes. Chance of a treaty with the Central Powers was assured that there were supporters in both parties that replaced each other, usually in government: liberals and conservatives (Platon, 2003: 237).

Not only Romanians were interested in an alliance with the Central Powers, but also with Austria-Hungary and Germany. At least so we can interpret Bismarck's interest. He was aware that in an eventual competition for signature of Romania, Russia could win because it could promise Transylvania.

In this context, strengthening relations between Austria-Hungary and Russia in 1881, without creating the impression that it feels affected by the problem of the Danube, Romania was proclaimed Kingdom. Romania hoped that if it accepted the role of President of Austria-Hungary could gain control of the European Commission on the Joint Committee, but French representative, Barrère, made a proposal that continued to keep secret control of Austria-Hungary, which remained permanent president under the formal control of European Commission exercised by a President elected every 6 months, and through Serbia which had an alliance with since 1881 (Platon, 2003: 238).

The message of the throne of 15th/27th of November 1881 criticized the abusive tendencies of Austria-Hungary on the issue of the Danube, attracting the hostility of Austria-Hungary that caused a diplomatic conflict (Alecsandri, 2001: 116).

Baron Nicolics mission started in Bucharest on 26th of March 1881 aimed integration of Romania into an alliance with Austria-Hungary. Although political circles in Bucharest refused the desired formula of Vienna, but they understood that they must give up, because Russia was unable to express an opinion and France sided with Austria-Hungary that practically meant the isolation of Romania. On 21th of May / June 2nd, 1882

the Danube European Commission presented the fluvial navigation and police regulations (applicable on the section Porțile de Fier – Galați) and adopted the Barrère's proposal (Platon, 2003: 239).

Between 8th February to 20nd and of 10th to 22nd of March 1883 the Conference of the 7 powers was held in London that granted authority to Russia as far as Galati, eliminating the Chilia brace under the authority of Danube European Commission. However its mandate was extended by 21 years. Romania protested, while the London Conference could not apply coercive measures. The only constant of time was reaching the peak of the Austro-Hungarian-Romanian dispute whose central point was the question of the Romanians in Transylvania (Platon, 2003: 240). Romania's diplomatic isolation was now complete. Ignoring the wishes of France that Romania to accede to the Treaty of London in conjunction with the rise of Russia in Bulgaria and frictions between Romania and Russia, Romania had no choice but to join the Triple Alliance. On May 20nd, 1882 in order to ensure the southern border of Austria-Hungary, Italy became a founding member of the Triple Alliance. Although strategic movement was masterfully conceived by Bismarck, lack of national support from Member States made it fragile (Pavel, 2000: 200). This view is reinforced by the fact that Romania and Italy had irreconcilable disputes at territorial level with Austria-Hungary.

So, in the first half of 1883, we can say that an alliance with Romania initiative was made by Germany, being also taken by Vienna, before having an echo in Bucharest. D. A. Sturdza, the holder of the foreign affairs portfolio in Bucharest was little influencial, compared with the Prime Minister Ion C. Brătianu, he was the one thought by the diplomacy in Wilhelmstrasse, as being the one who could provide the necessary support to Carol I to perfect the agreement. The summer of 1883 represented a maximum rate of tension of Austro-Hungarian-Romanian relations due to the incident caused at the inauguration of the statue of Stephen the Great in Iasi by Senator Petre Grădișteanu; he spoke of the crown ornaments missing, immediately perceived as offensive speech by the Cabinet in Vienna, that passed to veiled threats, by Transylvanian border inspections conducted by General Beck, Chief of Staff of the Austro-Hungarian Empire (Pavel, 2000: 224).

Disagreements between Prince Battemberg and Russian generals in Bulgaria created a new conflict situation that was likely to hasten actions of Allies on 26th of August / September 7th, 1883. Two meetings between Bismarck and Ion. C. Brătianu were held at Gastein. Romanian Prime Minister called into question the friction with Austria-Hungary the German Chancellor trying to allay irritation caused by the Cabinet of Vienna, to which persist for the same purpose. The fact is that both statesmen were aware that the Romanian-German alliance could not be viable unless through alliance with Austria-Hungary. Thus, German Chancellor refused to accept the Romanian party wishes to negotiate directly with Germany (bilateral treaty) and officially join the Triple Alliance (Alliance quadruple transformation), proposing a treaty between Vienna and Bucharest to which Germany would join (Platon, 2003: 243).

A less discussed problem of historiography was that of the absence of a treaty between Romania and Austria-Hungary during October 18th/28th 1891 and July 13th/25th 1892. In 1881, Italy was the first state to officially recognize the quality of Kingdom of the state proposing the exempt the existence of an agreement between the states recognizing the kingdom, as it was stipulated in the Treaty of Aachen on October 11th, 1818 (Boicu, Cristian and Platon, 1980: 347).

With the Mancini government, Count Tornielli ability to intervene in the political life decreased considerably. Tornielli offered the chance for Italy to have a worthy place for the Italian Embassy in Bucharest, when only the Russian Embassy and the General Consulate of Greece had such facilities (Bulei, 2003: 398).

During his diplomatic mission, Tornielli noted himself by an excessive detailing of the Romanian realities. Tornielli's most important work is *Relazione del Regalo Ministro d'Italia in Romania per il biennio 1882-1883* with 532 pages, considered by historiography as a comprehensive treatise on the constitution of the independent Romanian state, which led to its publication in Italy in 1885 "for its outstanding value" (Bulei, 2003: 398). His mission ended on December 25th 1887 finally becoming ambassador in Spain. The period between the recognition of Romania's state independence by Italy and the siging of the Treaty of 1888 can be divided into several stages depending on the level of intensity. Thus, between 1879 and 1881, during the government of Benedetto Cairoli, who was also temporary foreign minister, Italy rushed to recognize Romania's independence, dissociating from Germany. In this regard, on December 15th 1879, the Italian envoy in Berlin, De Launay, was sending a report in which he stated that Romania had become much bolder after Italy recognized its independence (DDI, II: 580).

The Government of Rome, which had no particular interests in Romania and did not want a strategy in the Balkans, has the task of mediating between Germany and Romania. On January 26th 1880 the law regarding the railway redemption was voted, which ended the dispute with Germany. On January 28th 1880, Cairoli wrote to De Launay that the Romanian agent in Rome, Constantin Esarcu, following the orders of his government, communicated to Cairoli that "this satisfactory solution for Germany is largely due to the good offices of Italy" (DDI, II: 580).

Italy was the first country to recognize the quality of the Kingdom of Romania on April 3rd 1881 (Dinu and Bulei, 2001: 10). Since 1882 the attitude changed when negotiating the status of navigation on the Danube (1881-1883). This can be explained by the signing of the Triple Alliance agreement in 1882. This alliance was formed as a result of the changes in the Balkans (Austria won protection over Bosnia and Herzegovina) and in the Mediterranean (France attached Tunisia in 1881 and Great Britain in Egypt in 1882). This explains Italy's support to the Austrian proposal regarding the status of the Danube, coldly regarded by the government and public opinion in Romania. Documentary sources show that Italy's attitude has led, at least indirectly, to Romania's closeness to Austria-Hungary (Dinu, 2007: 221).

Since October 1882, Ion Bălăceanu was accredited in Rome as extraordinary envoy and plenipotentiary minister. Its mission in Rome had two important moments. The first was related to the issue of Italy's supporting Romania at the Danube Conference in London. Foreign Minister Mancini decidedly expressed himself to support Romania in the Italian Senate, but at the conference did nothing for Romania. Dimitrie Sturdza, the Romanian and Minister of Foreign Affairs, protested against Mancini's attitude before Count Tornielli, who reported the case of Mancini. He said he hadn't promised any official support, which prompted Bălăceanu to resign. Afterwards, Mancini went back on its previous statement, confirming the correctness of the report sent to Bucharest by Bălăceanu (Bulei, 2003: 400).

The second issue was related to sovereign Carol I's visit to Italy, with Queen Elizabeth at Sestri. King Umberto wanted to see the king in Rome, but Cardinal Giacobini asked Bălăceanu to tell Carol that the Pope did not agree that a Catholic king visited a

state unrecognized by the Pope, even though the King was leading a non-Catholic state (Bălăceanu, 2002: 240-246). Tornielli, on vacation in Rome, asked Bălăceanu to convince his king that he had to honor King Umberto with a visit to Rome.

King Carol, not wanting to cause a diplomatic scandal between the Pope and the King of Italy sent king Umberto via Bălăceanu a letter expressing his regret for not being able to go to Rome due to personal reasons, among which was that of the need to return to Romania for the general election. King Umberto did not comment this reason in front of Bălăceanu, showing indifference (Bălăceanu, 2002: 240-246).

On July 26th 1883, Ion Bălăceanu, Romanian envoy in Rome was sending a secret report directly to King Carol concerning Romania's external situation, which required his presence in a system of alliances if he that did not want to be like before the recognition of independence, a transaction topic: "Top secret conversations took place at this time between Vienna, Berlin, Rome and London, about placing Romania under the collective guarantee of the great powers. This project, if it is not Austrian - might be of Italian origin, is presented in the best colors for us: of course, it is about what is good for us, to ensure us against our own tendencies, to prevent us to deviate from the civilizing and peaceful mission, which is reserved for us in the East etc., etc." (Bălăceanu, 2002: 246-249).

The project's authors, considered Bălăceanu, considered sparing Romania's economy which would have suffered if it complied with the specific military needs of joining an alliance. Under the mask of ensuring neutrality there cannot be hidden yet the Austrian intention to deprive Romania of military means indispensable in any claim of the Romanian territories under the administration of the dual monarchy: "It is equally about to evade, once again, the needs and concerns of an alliance, concerns which lead us to ruinous armaments paralyzing our economic development. At the same time, it would create, on the Danube, a new Belgium, no less prosperous, not less useful than the other, for the balance and peace of Europe" (Bălăceanu, 2002: 246-249).

Amid all this, there is a wish to be placed under guardianship as a son of the family whom they want to prevent contract an unhappy union... Austria convinced, wrongly or rightly, that we will not be with it, the day a war would break out between it and Russia, wants to make impossible an alliance against it. It was able to group together and make merits in the eyes of the friend powers, all the facts that can give us the appearance of a new Piedmont, attached to its flank. Count Kalnoky has made known, here and everywhere, that "Austria would know how to prevent this conflict when and how its security's interest would dictate it, without making the error, as before, to expect to be attacked in its own ground" (Bălăceanu, 2002: 246-249).

Bălăceanu had received through diplomatic ways all this information, which causes him to pay all the necessary attention to because he corroborated it with the assertion expressed by Mancini that Austria showed a special attention in the context of Romania's building defense works at the border with Austria-Hungary, because he was afraid of any conflict that would break out in Europe: "The idea of our neutralization found, in the four capitals, which we named, a favorable reception, there is a serious study. Here stops the letter I have received and that I summary for Your Majesty. But to this news I attach a statement that Mr. Mancini told me a few days ago, I find it timely to report it to the King: it was about General Brialmont's mission, and the Italian Minister was reported about it – he said – "this business that may not have gravity, by itself, would lend with this occasion a very particular importance" (Bălăceanu, 2002: 246-249).

Not being prepared in this regard, and, not knowing the Belgian general's mission, what the newspapers had said on this, I have summarized to His Excellency the

observation that, a priori, it would seem inconceivable that the defense works we have undertaken at our borders, can inspire anxiety to Austria: "I do not think at all that Austria is afraid of Romania" – responded Mr. Mancini, "but it must fear anything that can burn Europe" (Bălăceanu, 2002: 246-249).

A report written in Sinaia, on August 3rd/15th 1883 (CHSNAR, Royal House Found, file no. 18/1883, folio 1-8), presented Europe's uncertain situation as a fact apparent to the careful observers of the evolution of international relations. Regarding Romania, the report provides five benchmarks: 1. The conversation of Prince Bismarck with D. A. Sturdza in November 1882. From this discussion we distinguish three fundamental ideas: a. Germany's definitive distance from Russia, in the context of an increasingly strong opposition to Bismarck loans to Russia (Townson, 1994: 321); b. Germany's alliance with Austria-Hungary and Italy against Russia, especially by the fact that Russia was on anti-Italian positions on the issue of colonial competition; c. Germany could not influence Austria-Hungary on the Danube issue 2. The London Conference where, except for Russia, all the powers eliminated the disagreements on unresolved issues and the disputes with Russia were felt several times by the existence of a state of irritation, which influenced the attenuated writing of protocols; 3. Germany's attitude before, during and after the conference was felt in Bucharest only through reconciliation advice between Romania and Austria-Hungary, supporting the dual monarchy in everything it undertook; 4. Count Hatzfeldt's words to Liteanu, which could infer the imminence of a European war, as well as the efforts of the Triple Alliance to stop it (CHSNAR, Royal House Found, file no. 18/1883, folio 1-8); 5. The Emperor of Germany's letter to the Prince of Hohenzollern indicating a serious and dangerous situation for Romania.

In the report it transpires idea of approaching the Triple Alliance, perceived as the necessity of letting "a drift in the opposite direction of our interests to avoid the isolation indicated in an incisive manner by the letter from the Emperor of Germany", from which emerged the idea that "any future situation for Romania is based solely on the Danube issue" (CHSNAR, Royal House Found, file no. 18/1883, folio 1-8). The fact that King Carol personally went to Berlin (Damean, 2000: 109), it was stressed in the report, further boosted the need for Romania's entry into the Triple Alliance: "This trip is a political event. Under normal conditions and in a normal situation in Europe this trip would have had only a courtesy and politeness character: we would in vain seek to give now that impression. No one admits – no country or government. If the sovereigns avoid explaining the immediate business it is to keep intact the situation accurately creating the international disputes. By the force of things a decision has been taken in a manner contrary to the Austro-German alliance" (CHSNAR, Royal House Found, file no. 18/1883, folio 1-8).

A settling of the Danube issue was seen as necessary both for Romania as well as for Austria-Hungary. To the latter and Germany, the alliance with Romania was far from being a marginal issue. For Romania, the entry into the Triple Alliance – "the Central European league" – was seen as a matter of vital importance, "for thrown into the vortex of the Slavic action, it will not be able to get out of here except losing at least its political European basic situation" (CHSNAR, Royal House Found, file no. 18/1883, folio 1-8). A first finding of the report was that Romania's European future as an independent state would be ensured only by joining the Triple Alliance: "Before the Turks one could go with the Russians. Before the West one could only go with them" (CHANAR, Royal House Found, file no. 18/1883, folio 1-8).

The most important problem at the time was related to resolving "the Danube issue". Although it was admitted that Romania was entitled to settle in its favor to solve this issue: "How to reach an arrangement in the Danube issue? There is no doubt that in terms of the right of peoples and treaties Romania is not right. It is impossible not to realize that, of how complicated the very Danube issue due to the poor state of Europe is" (CHSNAR, Royal House Found, file no. 18/1883, folio 1-8).

However, Romania had an interest to ensure itself a good international future: "we cannot therefore ignore it, because there were sacrificed first order interests on which the very existence of Romania depends for an important issue, however, less considerable that time and events as well as Romania's development and strengthening can always change to its advantage. Has it gone unnoticed that for 25 years we have gone through the greatest difficulties to establish a fact, impossible to make by directly opposing the obstacles we have encountered in our way? Is it not true that all the states have acted when insurmountable difficulties arose before them and became threatening? This is the most important thing, to create reserves for the future" (CHSNAR, Royal House Found, file no. 18/1883, folio 1-8).

Conclusions

The report's conclusion was that Romania had to have an important position in the Danube issue, despite differences that might occur in the future: "in summary, we desire and possibly for our country's future interest to reach an arrangement that would be recognized that no change should be done to the Danubian in the future without Romania's effective participation, that the exercise of river police to belong to the residents which is exposed in Romanian project – that only resident states participate in the commission's expenses that would receive the title of Supervisory Commission, that no expenditure may be imposed on the residents without their consent. On the other hand it would grant Austro-Hungary the entry into the Supervisory Commission as it is formulated in the Treaty of London is still causing great confusion if the Presidency should go to Romania or Austria-Hungary" (CHSNAR, Royal House Found, file no. 18/1883, folio 1-8).

The final form of the future arrangement would have been an adherence act of Romania to regulate the aspects of understanding, act that would have been accepted by the powers through and that would become an annex to the treaty, signed by all the interested powers. (CHSNAR, Royal House Found, file no. 18/1883, folio 1-8). Baron Saverio Fava knew Romania's wishes to get out of isolation orienting itself towards Germany since 1879. In his turn, Tornielli, in March 1880, noted Romania's position in the following words "Facilitating Romania's access to anti-Russian alliance combinations. The complete lack of training to exercise in this country a counteraction that would have balanced the means available to Austria-Hungary" (ASDMAE, *Moscati VI - Rapporti in arrivo* Found, file no. 1396/1880).

Acknowledgment

This work was supported by the strategic grant POSDRU/159/1.5/S/133255, Project ID 133255 (2014), co-financed by the European Social Fund within the Sectorial Operational Program Human Resources Development 2007-2013.

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Article Info

Received: January 15 2015
Accepted: February 23 2015

RSP • No. 45 • 2015: 99-108

ORIGINAL PAPER

Military Aggression, Peace Selection and International Law: Core Themes and Debates

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Abstract
One of the challenges that the international community is facing today is the use of military force which causes the worsening of the conflict between the two camps. The use of military aggression, although not allowed by international regulations, prevents the use of peaceful means to defuse the conflict, which can generate an escalation of violence that can lead to the involvement of other countries into the conflict. Furthermore, one of the main problems that the international community is facing today is that of military aggression, which often is considered by some countries as a mean of extinguishing a dispute. This concept originated in the practice of states over time, with roots that stretch back to antiquity. However, there are currently a number of international regulations that prohibit these practices, rules that are based on the principles of international law. The evolution of international law in the last decades has resulted in the formation and affirmation of its fundamental principles.

Keywords: military aggression, global security, international public law, fundamental principles

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The fundamental principles of international law contains the general rules of conduct, compliance with which is essential for the development of friendly relations between states, to maintain international peace and security (Geamănu, 1967: 7). As in any area of law, fundamental principles of public international law represent its resistance structure, a structure on which the other legal institutions that operate international law are grafted. Given their overriding, fundamental principles assure the stability of international relations development, regardless of how they were born. In Western doctrine there have appeared attempts to challenge or minimize the role of the fundamental principles of world peace. These opinions do a service to aggressive policies pursued by some pressure groups that for pecuniary interests conduct violations of fundamental principles of international law. With no immutable and eternal nature, fundamental principles transform and develop on the extent and in accordance to the evolution of social relations. Due to the progressive development of international law its fundamental principles are enshrined in multilateral treaties of an universal or regional type (U.N. Charter, Article 2). Over time, along with the emergence and development of relations between states the fundamental principles of public international law arose and evolved that should govern relations between all states and are called to be the substance of new international relations, an essential component of a new international political and economic order (Geamănu, 1981: 126).

At the end of the feudal monarchy, the notion of sovereignty appears as a legal and political expression of the rule of monarchical power within the country, meaning over all feudal and at the same time, independence, externally to the Church of Rome, the Holy Roman empires, the German nation and other feudal monarchs (Geamănu, 1975: 23). A widely recognition has been noticed within the principle of sovereignty in the period of absolutism. Therefor, through the Peace of Westphalia ended in 1648, the independence of Holland and Switzerland is recognized. The feudal and dynastic character gets imprinted also on the principle of sovereignty and equality of states.

The proclamation of the principle of sovereignty created the foundation for the recognition of equality of states, which removed conflicts on the hierarchy of feudal states and their representatives (Geamănu, 1975: 129). Also, during this period was proclaimed the principle of non-intervention, which due to the imperialist subjugation and inequality had very limited content, which led to the admission of exceptions, that allowed the practice of the great powers to invoke various pretexts for the interventions made. The principle of non-intervention raises much the same issues today. States frequently condemn the acts of other states as intervention in their internal affairs (Jamnejad, 2009: 346). Writing in 1989, Damrosch pointed to a rather serious gap between what a broad view of the nonintervention norm would require and what states actually do (Damrosch, 1989: 83). The new international standards proclaimed by the French Revolution occurred on class interests of the bourgeoisie, the ascending class in the first period of capitalism who played an important positive role in the development of principles governing relations between states (Diaconu, 1981: 25).

Through the influence of progressive forces, the old principles of international law, namely the respecting of the international treaties, equality and respect for sovereignty have evolved. We note that in the same period, citing several examples of interventions, including the deployment of Prussia, in 1787, of an army in the Netherlands in order to restore the throne to Prince of Oranje (Redslob, 1923: 238). New principles are beginning to assert, such as non-aggression principle, the principle of cooperation and the peaceful coexistence, the principle of the peoples right to decide their own fate, moment

that marks a qualitative leap in the evolution of international law. Since 1815, at the Congress of Vienna, there has been recognized the freedom of navigation and in principle slave trade has been banned. In contradiction with the principle of legitimacy and the principle of proportionality within territorial acquisitions, which had been proclaimed by the absolutist powers of the Congress of Vienna as a criterion for restructuring the political map of Europe, making their way are the principles of sovereignty of nations, the right of each nation to fall off into a separate state, the principle of nationalities, the right of nations to unite in one state and territory establishment through the plebiscite way (Geamănu, 1975: 142).

However, during this period, principles as sovereignty, equality and non-intervention are violated through unequal treaties concluded between the great powers and semi-colonial countries, such as, for example, the treaties from Mankin (1840) and Tiantin (1860). Although peaceful means of international dispute resolution, such as mediation, arbitration and joint committees have met in the last decades of the nineteenth century an intense development, they contributed only a little to settlement of disputes, as they were applied only into small conflicts, in which the great powers were not involved. You can not talk about world peace as long as the international security can not be ensured (Titulescu, 2002: 8).

To ensure world peace Titulescu had a very simple solution: provide a unique front of peace. The Covenant of the League of Nations in 1919 in its preamble emphasized the need to develop cooperative relations among nations and the rejection of war. However, the rule of the cancellation of war was not mandatory but required a proceduralization of war. The Monroe doctrine supported the principle of non-intervention, citing in this regard the US policy not to interfere in European wars. Likewise, the United States, according to the Monroe doctrine will not allow the mixture of European powers in the Americas. A series of doctrines that opposed the intervention were formulated. We are talking about the Calvo and Drago doctrines, named after their originators. The Calvo doctrine opposes military intervention started for the recovery of damages caused to citizens as a result of civil war. Drago doctrine opposes armed intervention against a State which has not paid the debt. Political interference covers diverse situations where one state becomes involved in the internal political processes of another. This type of intervention encompasses acts of greatly differing intensity and coerciveness (Wright, 1960: 54).

In the interwar period new principles are developed, which are marked by the following points: Kellogg-Briand Pact, completed in 1928, which introduced as an instrument of national policy – renunciation of war; The Conventions from London of 1933, which gave a clear definition of the concept of bullying and aggression.

Numerous international conventions have contributed to the development of fundamental principles of international law. These include the UN Charter which defines the most important principles of international law.

The principle of sovereign equality and respect for the rights inherent to sovereignty

Traditionally, public international law was deployed as a means to regulate relations between states, and to protect sovereignty (Sandvik, 2010: 5). This principle is an essential element of public international law because it is based on many of the rules of this right. Representing an essential attribute of state, sovereignty consists internally in

the supremacy of state power and externally it consists in the independence of the state to any other power.

Sovereignty, as intrinsic attribute of the State, is a concept as old as it is the power and resolve without external influences and by his own will, problems that occur internally and externally, but without violating the rights of other State nor the principles and norms of international law. State independence and sovereignty means exclusive, inalienable and indivisible, with an originating and plenary character, the first one who defined this concept was Jean Bodin in the sixth volume of his work De Republic, published in 1576 (Floroiu, 2011: 24). Sovereignty is characterized by the following key features: exclusivity, indivisibility, inalienability, originating character and plenarity. The exclusive character of sovereignty is that a State can exercise only one sovereignty. This character is expressed in territoriality, in general laws and jurisdictional authority, the exclusive right of each state to establish the organization and functioning of its organs including administrative and exercise coercive power (Rosseau, 1974: 73). The indivisibility of sovereignty implies that it can not be shared with anyone. Acceptance of sovereignty would lead to fragmentation of old unlawful practices such as protectorate and colonialism. Inalienable character of sovereignty is that it cannot be dropped or transferred to other States or international organizations. Transferring it to another state would lead to emptying the sovereignty of any content.

The plenary and originating nature of sovereignty is due to the fact that each state's sovereignty is its own virtue of its subject of international law, it is not attributed to any entity outside and manifests itself in all areas of social, economic and political life (Ciuvăț, 2002: 73). This principle is part of jus cogens gentium, as by requiring a State to conclude a treaty would violate a norm of jus cogens, which would result, under public international law, the invalidity of the treaty. Sovereignty gives states the right to choose freely the political, economic and social system according to the will of the people living on its territory and, at the same time, to promote its own domestic and foreign policy. The report of the Special Committee for Coding Principles of 1964 stated that sovereignty is seen as "a general mandatory rule of contemporary international law".

The principle of territorial integrity and inviolability of borders

This principle could not be established as long as the war was considered a legitimate means of settling international disputes. The consecration of this principle was imposed, firstly, by the consequences of human and material losses caused by the First World War and, secondly, by the need to maintain the *status quo* established by the Peace of Versailles, signed ending June 28th, 1919. Article 10 of the Covenant of the League of Nations stated that members of the organization undertake "to respect and defend against any attack from outside territorial integrity and existing political independence of all members of the Society".

Territorial integrity and inviolability imposes a number of obligations for the states, one of which was to refrain from any interference with the territory of another state through military action, or otherwise, from any attempt aimed at the partial or complete rupture of national unity and integrity territorial of another State, from any act of using force or threat of force against another state territory leading to military occupation, annexation, dismemberment of another State; from any act of seizure or usurpation of the whole or part of the territory of another State (UNO General Assembly resolution – 26.25 XX). On the basis of territorial integrity are inalienable and indivisible state territory, allowing exercise of sovereign rights of a State on the entire national territory. Any

violation of the principle of territorial integrity at the same time lead to a violation of sovereignty.

The principle of equality of states

According to this principle all states enjoy equal status without discrimination, from which arising the ability of these countries to acquire rights and bounds equally. In other words the principle precludes a State or group of States to benefit from more rights than other countries in international relations. Equality means, therefore, that states are holding to the same rights and obligations under international law. This is an important factor, since it represents an evolution in international law and international relations at a time when the law was made by the great powers, at their discretion and without any regard for the opinions of smaller states, to a time when this behavior tends to take the path of history, being replaced by manifestation of the principle of legal equality of States in international relations (Floroiu, 2011: 25).

Professor Grigore Geamănu noted that "equality of rights means that no Member State is unable to arrogate in mutual relations greater rights than others so having an equal opportunity to acquire rights and assume obligations" (Geamănu, 1967: 100). Joining the principle of sovereignty to the principle of equality was made through the UN Charter summarizing the two principles in the principle of sovereign equality. Equality of rights plays a functional or absolute conception of equality. States have an equal legal capacity to acquire rights and assume obligations, rights and obligations that must be the same, regardless of the fact inequalities between states (Ecobescu, 1979: 107).

The principle of the right of peoples to decide their own fate

UNO Declaration 1970 provides that "all peoples have the right to decide their political status freely and without outside interference and to seek their economic, social and cultural life and all have an obligation to respect this right under the Charter". The claim to self-determination often encapsulates the hopes of ethnic peoples and other groups for freedom and independence. It provides a powerful focus for nationalist fervour, and it offers a convenient tool for ethnic entrepreneurs seeking to mobilize populations and fighters in pursuit of a secessionist cause. Indeed, self-determination conflicts are among the most persistent and destructive forms of warfare (Weller, 2009: 111). The Final Act of C.S.C.E. 1975 provides that under the principle of equality of peoples and their right to dispose of themselves, all peoples always have the right, freely, to determine their political status as they wish, internally and externally "without any outside interference and to perform according to their will the political, economic, social and cultural development" (Geamănu, 1967: 109).

By affirming and enshrining this principle, the national liberation struggle of oppressed peoples acquired a legal character. It is increasingly common for third states (often through international organizations such as the OSCE) to take a close interest in, and be free with their comments on, the conduct of the elections. This is often at the invitation of the state concerned. Indeed, that state's co-operation is important, as was evident from the problems with observing the Russian presidential elections in March 2008, which led the OSCE to cancel its mission. But state practice confirms that even without such consent, comment on the fairness (or otherwise) of elections is not contrary to international law (Asante, 1994: 235).

Legal consecration of this principle occurs in the moment of decolonization, particularly in the case of Namibia (1971), the Western Sahara (1975) and East Timor

(1995). International Court of Justice states the principle as fundamental and opposable *erga omnes*, deemed to apply to all people, not just those subject to colonial domination (Floroiu, 2011: 32). The principle allows oppressed peoples to resort to armed force if the force opposing oppressive state resists the self-determination struggle. By virtue of this principle both peoples shall freely establish their political status and economic, social and cultural development. An important issue discussed in this principle was whether this right is recognized national minorities or not.

The overwhelming majority of academic commentators have given a negative answer to this problem considering that it is absurd to assign this right to national minorities as they are part of a nation already. To give a positive answer to this problem would create internationally, artificially, the conflict related to a series of territorial claims, which would be made by national minorities. The ending of this action would be the fragmentation of the existing countries in a multitude of small states since, in principle, no nation is "pure", she comprising several national minorities. Titulescu stated that: Obligations of States towards minorities must be universal in the form of law or in the form morals ... minorities shall be treated with kindness, and the states that they are part of shall be treated the same (Titulescu, 1996: 121). Exercising the right to decide their own fate by a people under foreign rule aims to achieve independence and establishing a national state of its own. Economic measures can be directed against states or their leaders to force a change in policy (Bowett, 1975: 261).

The principle of non-interference in internal affairs

This principle is also called the principle of nonintervention. The concept of International Law Public intervention in problem solving involves an interference inside or outside the State, which leads to its illicit nature. The principle of non-intervention tends to be dealt with briefly in general works on international law (UNO Charter, Article 2 pt. 7). UNO Charter provides that "Nothing in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of a state, nor shall require the Members to submit such matters to settlement under the present Charter".

Thus it prohibits not only armed intervention but also any other form of direct or indirect interference in the affairs of other states, thus affecting national sovereignty, the right of peoples to decide their own fate (U.N.O. Doc. A/5746: 126).

In Western doctrine is argued that this principle undergoes a series of exceptions. It is mainly the case of "consensual" interventions and "humanitarian reasons" interventions. In the first case the legality of an intervention would be because it would take place at the request of the government. An example of this is the US aggression on Vietnam, supported by the fact that she made the request of the puppet government of that country. The second case refers to intervention for humanitarian reasons executed when the state is guilty of repeatedly cruelty and persecution of its citizens. An example of this is the US military intervention in the former Yugoslavia.

One reason given was that uncertainties over the scope of the law of intervention made it unsuitable for criminalization – the dangers of violating the principle of *nullum crimen sine lege* were too great. It was at no point proposed that a violation of the non-intervention principle (as opposed to aggression) should be included as a crime in the Rome Statute of the International Criminal Court, and there is no basis for suggesting that, as a matter of current international law, such a violation of itself involves international criminal responsibility (Linarelli, 1995: 25).

Compliance and the principle of noninterference in the affairs that fall within national competence of the Member is particularly important for the new international relations, to respect other fundamental principles of international law, particularly the principles of sovereignty, equality of rights and the right of peoples to themselves decide their own fate, and to ensure peace (Takacs, 1976: 45). Regardless of the pretexts that would be invoked to justify an intervention, it is prohibited by contemporary international law. This general prohibition is absolute and general, it representing the guarantee of sovereignty defense and equality of states and the right of people to decide their own fate (Geamănu, 1967: 191).

The principle of non-resort to force or threat of force

With the development of military technology and increasing economic disparities between States, the risks of unequal wars and considerable human losses were increasingly important. Thus, to mitigate these risks, in the late nineteenth century war was banned as a means of conquering territories, so that a little later, to also limit the use of force in the case of contractual debt recovery (Drago Porter Convention). In 1919, the war of aggression was interdicted, although the provisions of the SDN Covenant were relatively vague in this case (Floroiu, 2011: 26-27). It is enshrined in a number of international documents including the UN Charter. This principle could exercise with the outlawing of war. Because of this, war was allowed to be used only exceptionally, in two cases, namely: in the case of exercising a right to self-defense, in cases based on decisions of the UN Security Council. In the new millenium, the scope and limits of the use of force in international relations are still the subject of strong debate. Some legal scholars and state representatives favour an expanded interpretation of the right of self-defence which includes so-called pre-emptive and anticipatory self-defence (Ochoa-Ruiz, 2005: 499).

International sanction laws are necessary to provide guidance for coercitive action of non-military nature directed at guvernments or groups whose conduct is considered a threat to international security (Sponeck, 2002: 81). In the category of acts prohibited by this principle also include: organizing and supporting acts of civil war in another State; supporting terrorist acts in another State; tolerance to pursue activities in the State involving the use of force or threat of force. From the interpretation of the Charter of the United Nations Organization results that is prohibited not only the use of armed force but also the use of force manifested in other forms. Unallied countries Conference of 1964 in Cairo emphasized the idea that force can manifest in various forms both militarily and politically or economically, and all these manifestations of force are prohibited. Acts of aggression are classified into two broad categories: acts of armed aggression; acts of aggression by using other manifestations of force in international relations (economic pressures, political etc.).

Also, military aggression in turn is divided into two levels: direct military aggression; indirect military aggression. Declaration of war addressed to a State, while appearing in the work of the London Convention of 1933, in the definition of aggression, however this was not retained in UN documents since it does not amount to an armed attack. That argument, however, is contradicted by international practice, which proved that all these statements were followed by military action.

The Second World War demonstrated that excesses of dictators could threaten other countries, their people and democracy itself. Thus, international awareness about the need for international criminal tribunals that would ensure the punishment of the greatest crimes against humanity, started to reset, in order to avoid impunity and transmit to

dictators the message that nobody is above the law and that the law values the dignity of the human person (Floroiu, 2014: 46).

Indirect armed aggression materializes in the following forms: infiltration or incursions of irregular armed forces aggressor in another state; initiation of subversion, overthrow pursuing political order, social, legal of another state, fact on which is based the use of force. The moral reality of war is divided into two parts. War is always judged twice, first with reference to the reasons states have for fighting, secondly with reference to the means they adopt. The first kind of judgment is adjectival in character: we say that a particular war is just or unjust. The second is adverbial: we say that the war is being fought justly or unjustly (Allhoff, 2013: 1).

Threats of force consist of acts or actions of states, which is equivalent to express promises to use force against other states. These actions are materialized in: declaring war ultimatum; concentration of troops in border areas; military demonstrations, water and air; complete or partial interruption of economic relations or means of communication; propagating war against some states through mass media. These actions constitute violations of the principle of non-aggression. A final point to make is that peacebuilding requires bravery, particularly in societies emerging from violent conflict in which enmity still remains. It may require individuals and groups to put their heads above the parapet and to act in ways that are socially unacceptable to their own group. It is understandable that many people find it easier to follow group conventions. Yet there have been startling instances of individuals and groups who have gone against the grain, often at personal risk (Mac Ginty, 2013: 390).

It is generally recognized that the non-use of force or threat of force, is a peremptory norm of international law from which states may not derogate in relations between them. Although it was developed in conjunction with the UN collective security system, the principle of non-resort to force or threat of force has already acquired a customary rule statute, which applies independently of the action of UN institutions (Diaconu, 1981: 292).

The principle of resolving international disputes by peaceful means

It is a corollary of the principle of non use of force or threat of force. The United Nation Charter, Member States committed themselves to renounce the use of force and resolve possible conflicts only by peaceful means.

Regarding the war, Titulescu was convinced that “the war is never, but really never, the solution to a conflict. War in the best case, the victorious war, can only change the terms of the issue, tomorrow's dissatisfied will take place of today's dissatisfied. To a war held in the name of fairness will follow a war held in the name of justice. And so indefinitely. And at what price? With a huge price shall be paid by the international community for the objective reasons of one or more of its members” (Diaconu, 1981: 331).

This principle has been inserted into a number of international documents such as: The General Act on peaceful settlement of international disputes since 1928; UNO Charter 1945; Declaration on Principles of trade relations and cooperation among States in 1970 adopted by the UN General Assembly; UNO General Assembly Declaration the peaceful settlement of international disputes in 1982; The Final Act of C.S.C.E. 1975 Helsinki etc. The main rules that form the content of this principle are: the obligation to regulate international disputes by peaceful means only; the obligation to seek a quick and equitable resolution of disputes; free choice of means of settlement, the parties deem most

appropriate in the circumstances and nature of the dispute; the obligation of the parties as if that they do not reach a solution through peaceful means one continue to seek resolution of the dispute by other peaceful means; the obligation of states in dispute, as well as other countries to refrain from any action likely to aggravate the situation and endanger peace and security or make it more difficult to resolve the dispute; the obligation to settle disputes on the basis of sovereign equality of States and in accordance with the purposes and principles of the UN Charter (Diaconu, 1981: 294). The application of this principle shall be made over all disputes without exception. In the conception of Titulescu "the most valuable asset of a country is prolonged peace that alone allows a nation to find its way, that alone lets one to bring to the general civilization the creative benefits of the national genius" (Titulescu, 1996: 457).

In conclusion, the following of the fundamental principles of public international law has as consequence a climate of peace and security both regionally and universally, which causes the removal of all forms of military aggression. It requires energetic actions to halt the military actions of aggression, which can go up to the application of economic sanctions to the aggressor state from the international community.

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Article Info

Received: January 5 2015
Accepted: March 3 2015

RSP • No. 45 • 2015: 109-119

ORIGINAL PAPER

Racing Crimea: On Intervention, Realism and Liberalization as Steering Analysis of Russia

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Abstract
The aim of the research is to study the intervention of Russia in the Crimea Peninsule by using the theoretical framework of liberalizing and realistic theory of the international relations. The result of the research is to understand theses of which theories explain the intervention of Russia in Crimea. Two methods are used in the paper. First, the data collected through structured questionnaire with some connoisseurs of law and international relations in Kosovo. Second, the data collected from academic literature regarding to the realistic and liberalizing theory of international relations. Conclusion of the paper is that, the theses of realistic theory explain the intervention of Russia in the Crimea and not the theses of liberal theory.

Keywords: Russia, Crimea, intervention, realistic, liberalizing.

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Introduction

The theses of realistic theory presented in the current Article will explain the intervention of Russia in the Crimea and they will not represent the theses of liberal theory. Furthermore, the current research paper, it will be structured in two parts. In the first part, we will examine the review of existing literature.

In the second part, we will make the presentation of the data collected through structured questionnaire with cognitive of law and international relations in Kosovo. In the end, are the conclusions of the paper and bibliography.

Methodology

The methodology of paper addresses hypotheses, variables and methods of data collection. Hypotheses and variables of this paper are: a. The theses of realistic theory of the international relations explain the intervention of the Russian Federation in Crimea. Independent variable are the theses of realistic theory of the international relations, while the dependent variable is "explanation of the intervention of the Russian Federation in Crimea; b. The theses of the liberal international relations theory does not explain the intervention of the Russian Federation in Crimea.

To the second hypothesis, we have a case of exclusionary variable (or negative) in which case, the independent variables theses of liberal theory of the international relations" do not explain the dependent variable intervention of the Russian Federation in the Crimea.

After the variables, we will take into account the methods which are used. In this paper, several methods are used: a. data collected through structured questionnaire with some connoisseurs of law and international relations in Kosovo; b. data collected from academic literature regarding the realistic and liberalizing theory of international relations.

Literature Review

Within the literature review we will first analyze the layout of the problem: the intervention of the Russian Federation in Crimea. And then we will present the main theses of liberal and realistic theory of the international relations.

Presentation of the problem

Presentation of the problem refers to the Crimean Peninsula. Crimea is a multiethnic region populated by a majority ethnic Russian, Ukrainian and Tatar. Crimea was known in ancient times as Tauris (Tavrida in Russian), home to the tribes who took Iphigenia prisoner in Euripides' play *Iphigenia in Tauris.* For centuries the Crimean Peninsula, which occupies a strategically important location on the Black Sea and has arable land, has been fought over by various outside forces. Crimea untill separation, has been administered by the Ukraine and has the status of "Autonomous Republic" (Sasse, 2014).

The origin of the problem refers to the revolution of February of this year, in which case, President Viktor Yanukovych, traditional ally of Russia, was overthrown after comprehensive popular protests against the regime of political thereof; which followed the election of the President and the Interim Government.

Ukraine's new authorities were recognized as legal and legitimate by the United States and European Union member states. While the Russian Federation, described this as a punch-state and demanded reinstatement of the former – President Yanukovych, as

the only legitimate leader of Ukraine. Moreover, Russians hailed as punch – state supported by the U.S. and other Western European countries. Advisor to President Putin, Sergey Glazyev, stated that, "According to our sources, the U.S. has spent twenty (20) million dollars per week for financing the opposition and the rebels, including weapons" (Press Tv, 2014).

After these dramatic political developments, pro – Russian forces within the state administration of Ukraine, helped and pushed by Russia, and with the support of local residents Russian, began blackmailing, occupation and siege of the state administration facilities of Ukraine in Crimea. These developments culminated in the organization and holding of a referendum in the Crimea, by supporters of the idea of joining the Russian Federation. According to official results, ninety-seven (97%) voted for reunification with Russia. On 17th of March 2014 the Crimean parliament declared independence from Ukraine and sought union with the Russian Federation. On the same day, the President of the Russian Federation, formally signed the decree "On recognition of the Crimea as an independent and sovereign state" (Myers, 2014).

On 18th of March 2014 the Russian Federation and the Crimea signed a "Treaty of Accession of the Crimea in the Russian Federation" (Dahlburg, 2014). In the series of the Crimean crisis, "pro-Russian militants have also won the eastern part of Ukraine" (Smale et. al., 2014); on the other hand, Russia denied such a news.

On the other hand, authorities in Ukraine have declared that "They will never recognize the annexation of the Crimea by the Russia" (Smith and Gumushian. Accessed data: 08.04.2016). On 27th of March 2014 the UN General Assembly approved the non-binding resolution which declared as "void referendum in the Crimea and Crimean involvement within the Russian Federation" (Charbboneau, 2014). Also, the President of the United States of America (hereinafter: the U.S.), Barack Obama, has stated that "Neither the U.S. nor at any European country have no interest in checking Ukraine" (Warren, 2014). For U.S. President Obama, "The fact that Russia has a deep history with Ukraine, it doesn't mean that it has right to determine the future of Ukraine" (Warren, 2014).

President Barack Obama joined the new leader of Ukraine in emphasizing that the United States stands with the country in its simmering conflict with Russia, and that a diplomatic resolution to the crisis in Crimea is the best way forward. With Russian troops controlling the Crimea region of Ukraine and Crimea preparing to vote on a referendum to split from Ukraine, Obama said the new government in Kiev remains open to negotiations with Moscow "that could lead to a different arrangement for the Crimean region, but that is not something that could be done with a gun pointed at you" (Nicks, 2014). Also, NATO member states decided to "Suspended cooperation with Russia" (Croft and Siebold, 2014). German Foreign Minister Frank-Walter Steinmeier said, "Future NATO relations with Russia will depend, among other things, whether Russia has begun withdrawing troops from the Ukrainian border" (Croft and Siebold, 2014). The annexation of Crimea by Russia was followed with the removal of many foreign invesitorëve located in Crimea, as is the case with Mc Donald's.

Theoretical framework: realistic and liberal theory

The main thesis of realistic and liberal theory of international relations which explain the intervention of the Russian Federation in Crimea are several.

Initially, the thesis of the realistic theory are: first, the state is a key actor in international relations, and others (such as international organizations) can, in certain circumstances to exert influence.

And, states have interests and they are led by these interests, respectively these interests dominate their behavior; second, "Realism recognizes and accepts not only the central role of power in all types of policies, but also the limitations that it recognizes or the way it can become self-destructive" (Dunne et al., 2001: 67); third "States act in the circumstances of the anarchic international system that lacks the central mechanisms of the obligation" (Dunne et al., 2001: 67).

On the other hand, the thesis of liberal theory are: first, the international system isn't anarchic; UN exists and the whole structure of institutions and transnational organization. Liberals "propose establishing new principles in international relations and based on them a new structure in international relations" (Reka, 2010: 10; Dojçi, 1994: 147); second, the trade promotes interdependence in relations between countries in avoiding wars and conflicts. John Milli thought, "... it is trade that makes the war unnecessary, strengthening and multiplying the personal interests which act in natural contrary to the war" (Stumpf: 345-350; Wessels et al., 2004: 240). Mill was a strong believer in freedom, especially of speech and of thought. He defended freedom on two grounds. First, he argued, society's utility would be maximized if each person was free to make his or her own choices. Second, Mill believed that freedom was required for each person's development as a whole person; third, international relations explained from the viewpoint of diplomacy and common values (Van de Haar, 2009).

Liberalism holds that state preferences, rather than state capabilities, are the primary determinant of state behavior. These theses constitute the theoretical framework.

Analysis of results

Explaining the intervention of the Russian Federation in Crimea by the corner of liberal and realistic theory of international relations was the subject of a structured questionnaire conducted by experts of law and international relations in Kosovo.

The reason why we focused on Kosovo is that the President of the Russian Federation, Vladimir Putin, in the speech held in the context of Russia's intervention in Crimea said, "We will have conditions for free and fair elections. Look, for example people in Kosovo who are allowed to vote, then why should deny it to the people of Crimea". Initially we will see data analysis, and then we will discuss for findings.

Analysis of data collected through structured questionnaire

Initially, we will present the results of data collected through a structured questionnaire. Data result we have settled on the following four tables.

The first table presents the main characteristics of respondents.

The second table presents the respondents' level of knowledge about the intervention of the Russian Federation in Crimea.

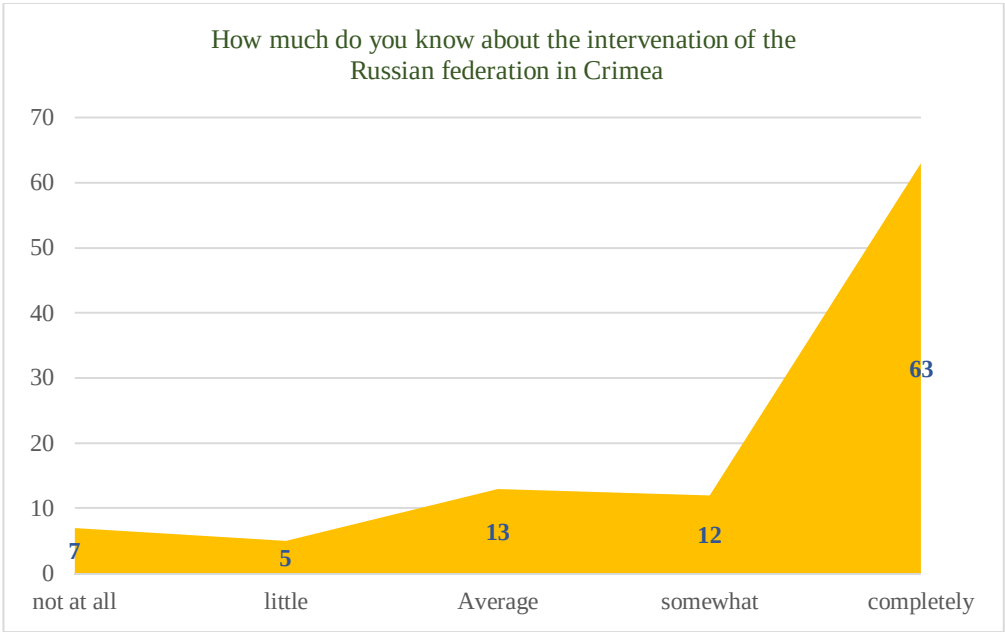
The third table presents the main research content. And the fourth table presents comments from respondents about content and research.

Table 1. Details of respondents who have participated in research

Data for respondents							
Age		Gender		Education		Ethnicity	
Variable	Number	Variable	Number	Variable	Number	Variable	Number
15 – 21	24	M	67	low	0	Albanian	86
22 – 34	56	F	33	average	11	Serbian	0
35 – 44	20		0	high	89	Bosnian	9
45 – 54	0		0		0	Turkish	5
55 – 64	0		0		0	Others	0
65 +	0		0		0		0

Source: Data collected by the authors

Chart 1: How much do you know about the intervention of the Russian Federation in Crimea



Source: Data collected by the authors

The content of questions:

Question 1 (Q1): Has the Russian President Vladimir Putin compared the situation in Crimea with that in Kosovo, saying that the island's citizens have the right to self-determination similarly as Albanians in Kosovo?

Question 2 (Q2): Has Russia's president said that he respects the right of Kosovo Albanians to self-determination?

Question 3 (Q3): If indeed the President of Russia respects the right of Albanians in Kosovo for self-determination, then do you think that so far Russia had to recognize the independence of Kosovo?

Question 4 (Q4): Or do you think this statement of Putin (respects the right of Albanians in Kosovo for self-determination) is his disingenuous ploy to legitimize the intervention of Russia in the Crimea?

Question 5 (Q5): Did the Russian president said that Russia's intervention in Crimea does not constitute a violation of international law?

Question 6 (Q6): Comparing the right of Crimean citizens for self-determination, Putin noted the assessment of International Court of Justice according to which Kosovo's declaration of independence was not unilateral and was in accordance with international law. Do you think the referendum held in the Crimea for secession from Ukraine and union with Russia is in accordance to international law?

Question 7 (Q7): Do you think the intervention of Russia in Crimea is really done to ensure the right of self-determination to the citizens of Crimea?

Question 8 (Q8): Or is it done to ensure the annexation of Crimea by Russia?

At the end of the questionnaire has been an open question for comments of respondents regarding the content and survey. Five of the respondents provided comments.

Table 2. The research results through structured questionnaire

The research results through structured questionnaire								
Question / Answer	Q1	Q2	Q3	Q4	Q5	Q6	Q7	Q8
I completely agree	6	61	88	81	13	0	1	67
I agree	11	6	12	6	18	4	2	22
I do not know	3	2	0	0	22	7	3	11
I disagree	24	4	0	0	14	9	53	0
Strongly disagree	56	27	0	13	33	80	41	0

Source: Data collected by the authors

Table 3. Comments from respondents

In the last question of the structured questionnaire, "Do you have any additional comments?", five respondents provided comments.	
The first respondent	The annexation of Crimea is done purposely. Russia's goal is known to exit in the warm seas of Europe, this is the historical purpose. Taking into account the project of TAP and Southstream, this is part of preventing the extension of the TAP gas pipeline with the aim of bringing Southstream network that would make Serbia as a distribution point for Russian natural gas for this part of Europe. Now is the time to stop Russia in achieving this goal.
The second respondent	I think that the tendency of the Russian President to compare the case of Kosovo with Crimea is unsustainable taking into account the circumstances in which Kosovo has passed.
The third respondent	I think that should be looked as if Crimea was Russian territory earlier, to see if there is right now to join with Russia. If we put parallel with Kosovo, Kosovo since 1913 has been occupied by the Kingdom Serbo - Croatian - Slovenian, while historically has not previously been part of this now-defunct state.
The fourth respondent	After that, the paper is treated within two positivist theories of MN, in addition to the field survey coverage of international law, has been well taken up some questions in political and diplomatic connotation.
The fifth respondent	Russia's action in Crimea is not legitimate because it is made through force.

Source: Data collected by the authors

Discussion of findings

From the analysis of realistic and liberal theories and responses received through structured questionnaire with cognitive of law and international relations in Kosovo, we see that the theses of realistic theory explain the intervention of the Russian Federation in Crimea and not liberal theory theses. There are three main arguments supporting this view.

First, as realistic theory thinkers claim in the case of the intervention of the Russian Federation in Crimea was highlighted that the state remains a key actor in international relations and not individuals or international organizations. "Deep concern" of Ban Ki Moon and his assessment that "There are moments in history like this in the Crimea that may make the situation out of control" does not influenced in non-intervention of the Russian Federation in Crimea (Salem, Walker and Harding, 2014).

When it comes to the actions of the Russian Federation in Eastern Europe and the Euro-Asia, in the context of the absence of a global central authority, some authors call it as: "post – new world order" (Reka, 2010: 32). Thus, "... negotiations of US – Russian for

nuclear arms reduction and clashes between them for (not) the construction of U.S. antimissile system in Europe, just as recall the bipolar race of the Cold War period, which was considered to have ended two decades ago" (Reka, 2010: 32). Besides these two factors, even "NATO, according to Moscow (especially with maneuvers in the North Atlantic Alliance in Georgia), was that "the logic of confrontation is restore from the period of the cold war, while the EU with the launch of the new policy, the Eastern partnership, which was considered to be against the interests of the Russian state" (Reka, 2010: 32). As reaction, "Russia signed in Moscow with two former - Georgia's breakaway provinces: Abkhazia and South Ossetia "agreement for the protection of state borders", against which had reacted NATO, on charges of' destabilization of the region of South Caucasus from Moscow" (Reka, 2010: 33). The thought of professor Blerim Reka argued by assertion of Deputy Secretary-General of NATO, Alexander Vershbow, according to which "Russia is now an enemy, not a partner" in the context of the crisis in Ukraine. In addition, in an effort to extend geopolitical influence in this region, "the European Commission recommended the liberalization of visas for citizens of Moldova" (Radio Free Europe, 2014).

Also, the answer given by respondents on the fifth question (5) and the sixth (6) argue the opinion that, the intervention of the Russian Federation in the Crimea is not driven by liberal theory thesis, but the thesis of realism. Thus, on the fifth question (5), "Russian President said that Russia's intervention in Crimea does not constitute a violation of international law?", respondents gave different answer, but most of them thirty-three (33) stated that, 'I do not agree at all'; although thirteen (13) of them stated that "I agree completely". While on the sixth question (6), "Do you think that even referendum held in the Crimea for secession from Ukraine and union with Russia is in accordance with international law?", Most of respondents eighty (80) answered that, "I do not agree at all", what means that the referendum held in Crimea is not in accordance with international law.

Second, as realistic theory thinkers claim, in the case of the intervention of the Russian Federation in the Crimea, states in foreign policy guided by national interests, and not by commercial interests as liberal theory thinkers claim. Respectively, the trade is in the function of national interest of the state. For example, the President of the Russian Federation, Vladimir Putin, had offered Ukraine "15 billion worth of government bond and lowering the price of gas" (Isachenkov and Danilova, 2014). Help of the Russian Federation was not sincere, but was offered to support pro Russian political regime; when this regimen was changed not only aid was not realized, but the Russian Federation, called the meeting to discuss economic cooperation with Ukraine and "For gas price rise" (Radio the voice of Rusia, 2014).

Not only this, but the goal of the Russian Federation to maintain influence in Ukraine refers to what some authors call as "geopolitical energetic transistors" (Reka, 2010: 75). So, "Why, for example are so important Ukraine, Georgia or Armenia? Why Turkey? Or, after all why the Balkans, which has no energy resources?" (Reka, 2010: 75). This is because the "transit of energy was as important as the production. In energetic geopolitics they are inseparable parts of a system" (Reka, 2010: 75). In this sense, "Control of energetic transition road was as important as that of energetic producers" (Reka, 2010: 75). Even go so far in this direction as it is thought that, "... the wars in former Yugoslavia and in Kosovo also was war consequence for trajectory control of not started gas pipeline AMB, respectively, of the clash of energetic interests between Western (then-AMBO, now NABUCCO) and Russia (respectively South Stream gas pipeline)" (Reka, 2010: 75).

Also, the data collected from respondents argue the opinion that, the intervention of the Russian Federation in the Crimea is driven by the interest of the annexation of the Crimea. Thus, the seventh question (7), "Do you think the intervention of Russia in the Crimea is really done to ensure the right of self-determination for the citizens of Crimea?", Most of respondents fifty-three (53) stated that, "I Disagree", forty-one (41) stated that, "I do not agree at all"; while one (1) stated that, "I completely agreet". While in the eighth question (8), "Or it is made to ensure the annexation of the Crimea from Russia?", sixty-seven (67) respondents stated that, "I agree completely", twenty-two (22) stated that, "I Agree", and eleven (11) said "I do not know".

The third, as realistic theory thinkers claim, in the case of the intervention of the Russian Federation in the Crimea, was highlighted that the international system is anarchic, and there isn't a superior transnational authority that would make decisions and ensure the implementation of those decisions, as liberal theory thinkers claim with the occasion of creation of the international organizations. Despite calls and statements for non-intervention in Crimea, Russian Federation intervened allowing the referendum and the annexation of the Crimea. Will the Russian Federation intervene in Crimea, if Ukraine would possess a military power balanced with Russia? Or, if Ukraiana wand a member of NATO?

Under the influence of these ideas, President Obama said, "The U.S. Army is superior to the power of Russia", a statement which was not taken very seriously considering Obama's policy not to deploy "missile defense system in Poland". So there is no doubt that the international system is anarchic, and the only occasion when this system becomes superior to the states is when the self-states, especially the five (5) permanent members of the Security Council of the UN, make such. Hypocrisy of the Russian Federation in this case lies in the fact that while on the one hand, the Russian Federation ignores the calls of international organizations, other countries and humanitarian organizations not to intervene in the Crimea, therefore, ignores the rule and international structures, on the other hand, President Putin refers to the case of the Kosovo and the International Court assessment proving to justify intervention in the Crimea.

This fact is proved by the answers of the respondents given to the first question (1), second (2), third (3) and fourth (4). On the first question (1), "Russian President Vladimir Putin has compared the situation in Crimea with it in Kosovo, saying that the island's citizens have the right on self-determination similarly as Albanians in Kosovo?", Most respondents disagreed with this statement. Fifty-six (56) of them stated that, "I do not agree at all", while twenty-four (24) of them stated that, "I do not agree". In the second question (2), "Russian President said that he respects the right of Kosovo Albanians to self-determination?", Respondents have distributed response. Twenty-seven (27) of them stated that, "I agree completely", while sixty-one (61) stated that, "I do not agree at all". In the third question (3), "If indeed the President of Russia respects the right of Albanians in Kosovo for self-determination, then do you think that so far Russia had to recognize the independence of Kosovo?", Eighty-eight (88) respondents answered that, "I agree completely", twelve (12) respondents answered that, "I agree". In the following question (4), "Or do you think this statement by Putin (respects the right of Albanians in Kosovo for self-determination) is his disingenuous ploy to legitimize the intervention of Russia in the Crimea?", Eighty-one (81) respondents answered that, "I agree completely", six (6) responded that, "I agree", while thirteen (13) answered that, "I do not agree at all".

So, by the findings of this study confirmed the hypothesis of the paper that the thesis of realist theory explain the intervention of the Russian Federation in Crimea and not liberal theory theses.

Conclusions

Thesis of realistic theory explain the intervention of the Russian Federation in the Crimea and not the liberal theory theses. Intervention of the Russian Federation in Crimea argued that the state remains a key actor in international relations, states are guided by its national interests in foreign policy and international system is anarchic.

Although international relations are developed in the nineteenth 21th century and many issues emerged from traditional theoretical paradigms, nevertheless, like Hans Morgenthau thought, theses of realistic theory remain absolute to bring "Rule and understanding of many phenomena, which in the other circumstances are expounded and nonsense" (Morgenthay, 1993).

By the opinion of the author of the paper realistic theory remains absolute to explain the actions of the Russian Federation in Crimea, especially the logic of action of its current president, Vladimir Putin. Putin recognizes only the logic of force. Putin was encouraged by soft course of Americans toward Russia, which justified, the need of the U.S. for alliance with Russia against Iran, or to Syria now. Washington's access, that summed up in the principle that, Europe remains the strategic points for Washington, but the Euro-Asia, primarily Afghanistan, Iraq and Iran. Security of Eastern European in front of Russia was not questioned, but equally the alliance of U.S. - Russia against Iran, encouraged President Putin to return as conqueror and hegemon in Crimea. The only logic that Putin understands is the logic of force and balancing that offers the realistic theory. Putin still believes that the return home of Ukraine's Crimea peninsula to Moscow's control would forever remain an important chapter in Russia's history.

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Article Info

Received: December 29 2014
Accepted: February 12 2015

RSP • No. 45 • 2015: 120-134

ORIGINAL PAPER

Framing International Protests on Romanian News Portals

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Abstract
This Article outlines some of the contemporary approaches of the framing theory and argues on the fact that media usually conveys the protests as violent. Within the protest framing context by different media, the Article investigates how one mainstream Romanian news website (hotnews.ro) framed – both in terms of text and images – four different protest occasions: the Egyptian protests that took place in Tahrir square in Cairo, the protests that took place in Taksim square in Istanbul, the Indignants movement that took place in different countries, and the Indignants movement that led to Occupy Wall Street movement. The challenging question of the present study is: what kind of representations is mostly raised by the mainstream Romanian news websites with regard to international protests? The goal of the study is to go beyond the surface and underline the mechanics of media coverage of contemporary protests.

***Keywords**:* social movements, news portals, online engagement, media coverage

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Introduction

Computer mediated communication is a kind of communication that allows individuals to interact with each other through electronic devices. This type of communication is an alternative communication to face to face communication. Currently, the extended use of Internet, social network sites, podcasting, text messaging and Web logging (Kelsey and Amant, 2008) have led to their outstanding popularity. First and foremost, the Internet ensures the freedom of expression and free access to information, two fundamental conditions for a strong and healthy democracy. The Internet has become an important component of the existing relationship between politics, civil society and the individual. Taking into consideration the actual trends, Ingelhart (1997) believes that in the last decades we have witnessed an increase of the potential for people gathering in associations or civic movements compared to similar political actions. Other considerable studies demonstrate that the continuous use of the Internet in the civic scheme has led to the increase of the civic engagement, has stimulated the participation to important political events and has led to various social movements all around the world (Kahn and Kellner, 2003; Rasanen and Kouvo, 2007; Shah, Kwak and Holbert, 2001; Wellman, 2001). The new technologies of communication have become both channels of interaction between citizens, between citizens and the government, as well as means of active participation.

When it comes to the impact of the Internet on the political, there are two opposite theoretical flows. The first incorporates the views of the so-called "cyber-optimists" who favour the hypothesis according to which the new information technologies will transform the entire political system, making the direct, participatory and deliberative democracy possible (Morris, 1999; Grossman, 1996; Toffler and Toffler, 1995; Rheingold, 1993; Rheingold, 2002). Similar optimistic predictions have also appeared in France. Thus, according to Crouzet (2007), the Internet, because it allows social networking and the dissemination of information, could subsidise in time to the decline of what we call "mainstream media" and the emergence of a new power, the fifth power in the State, not unaptly called "people in touch" (Crouzet, 2007).

On the other hand, according to the already mentioned theories, the use of new communication technologies enables governments to constantly identify those citizens who wish to engage in the political life; the democratic deficit being a contemporary problematic issue for all the EU countries and especially for those societies where democracy is immature or suffers severe limitations (Lynch, 2003; Yu, 2004). Several scholars summons us about the dangers brought by the development of the new communication technologies in relation to democracy, civic engagement and freedom (Wilhelm, 2000; Wilhelm, 2004; Streck, 1998; Sunstein, 2001).

These two contemporary approaches used to explain the political impact of the use of the new communication technologies, known as "the thesis of engagement" or "the thesis of corroboration" were widely discussed and are still dominating the current literature (Foot and Schneider, 2002; Norris, 2000). The online engagement alone is able to amplify the traditional political participation, if we take into consideration that some of the costs that are associated to it are low enough if compared to the off-line participation (Brady, 1995; Verba, 1995). Therefore the individuals are being encouraged to participate to the online political process, increasing the diversity of the current social and political behaviours. However, Peter Dahlgren (2005) notes that, in spite of this undergoing process, the online political interactions (like democratic deliberation) still remain minimal compared to other internet uses such as consumerism, entertainment, chatting and non-political networking. Dahlgren (2005) states that: "the Internet has not made

much of a difference in the ideological political landscape, it has not helped mobilize more citizens to participate, nor has it altered the ways that politics gets done (Dahlgren, 2005: 154).

In the present article we seek to examine the representations of protests on news web pages in Romania (www.hotnews.ro), analysing which particular cases attract the journalistic interest and in what sense. The present research relies theoretically on the framing analysis approach, having as purpose to investigate how do online news media in the above mentioned country present the contemporary protests and social movements.

The contemporary economic crisis has had impact on almost all the people regardless of their occupation. The austerity measures often led to major public strikes all around the world (Mitu, 2011). In the past several years the word crisis has become a constant of our discourse. As a matter of fact, the recent economic crisis has affected each and every European country, the efficiency of the political system have influenced their political response and differs on each country based on their own political and media system. Economy is an important key to comprehend social behaviours, but as Marcel Merle stated, it would be a mistake to explain the current issues of the European Union (more Europe- less Europe), as problems caused only by the economic crisis. Lately, upon the introduction of austerity measures in many European countries and the unfolding of a multifarious crisis- social, political, and economic- we also witness an unprecedented wave of riots, protests, as well as the formation of new social movements. As noted in one of my previous studies, social movements began to exercise a special attraction for the specialists in social sciences in the last century. Since then scholars and students with different backgrounds have shifted their academic focus to the emergence of social movements. Along the years various theorists have tended to define and redefine social movements. The wide-ranging definitions and typologies of social movements that currently exist complicate the possibility to offer one single definition for this concept (Mitu, 2011). Manuel Castells (2003), defines social movements as "collective initiatives whose impact, in victory and defeat, transform society's values and institutions" (2003: 31). Another scholar, Herbert Blumer (1993), states that social movements "can be viewed as collective enterprises to establish a new order of life. They have their inception in the condition of unrest, and derive their motive power on one hand from dissatisfaction with the current form of life, and on the other hand, from wishes and hopes for a new scheme or system of living" (Blumer, 1993: 199). Also Doug McAdam (1982) claims that social movements are "those organized efforts, on the part of excluded groups, to promote or resist changes in the structure of society that involve recourse to non-institutional forms of political participation" (McAdam, 1982: 25). Moreover, Sydney Tarrow (1994) offers a different view by stating that "rather than seeing social movements as expressions of extremism, violence, and deprivation, they are better defined as collective changes, based on common purposes and social solidarities, in sustained interaction with elites, opponents and authorities" (Tarrow, 1994: 4).

In Romania the Communist release was followed by the still unfinished transition period towards what everyone hopes to be democracy (Mitu, 2011). Having been used excessively during the last 23 years, this term – transition period – entails the switching of a society from the communist system to the capitalist one. Jean Francois Revel shows that „it is not enough for a post-communist nation to set itself free from the communist regime in order to get rid of communism; it also has to set itself free from the consequences of the communism" (Revel, 1993: 137). In Romania, as soon as they gained the power, the communists have destroyed the civil society, manipulating and indoctrinating the rest

of the population, which was reduced to the mass state. The Communist regime was not accepting any form of free, uncontrolled association of the citizens. The lack of a long practiced civic spirit had deprived Romania of the only possible form of organized opposition, since the political and cultural elites were eliminated. The Romanian Post-communism is hard to describe. Romanian as an ex-communist country strives to find its way to the capitalistic economic growth. This path is not at all easy, since this country has suffered some serious social turmoil too, due to austerity policies implemented by the democrat-liberal government in 2012. In Romania, as everywhere, the internet no longer acts only as a communication tool. The functionality of the internet ushered in the freedom of expression and freedom of the press (Stevenson, 2003). As in other EU countries, in Romania the internet use went beyond a common tool of communication to become an active and important political tool (Ferdinand, 2000). During the last decades, the Romanian society has known some important transformations, due to the emergence and development of the new information and communication technologies. For a long time after 1989, the Internet used to be an unknown term for most of Romanian people. The Internet began to be used in the '90, but not all Romanians had access to the Internet. Officially, Romania became connected to the Internet on the 26th of February 1993. That was the moment when the ".ro" domain was created, a domain that was internationally recognized by the Internet Assignment Numbers Authority. The Romanian Association of the Internet Service Providers became functional on the same date of Romania's connection to the Internet.

Today the Internet is used both in the urban areas and in the rural areas. The power of this digital medium is represented by its ability to integrate various media. During the '90s the development of the Internet in Romania had occurred very slowly, as the state's investments in this area were almost nonexistent. Although many projects aiming at the development of the informational sector were drafted, those projects were never achieved. Even if until 2001 the state's investments in the area of information technology were low, this was the time when the basis of the private IT sector was created, through the emergence of companies like SIVECO, SOFTWIN, SOFTNET etc. After 2001, the number of the Romanian Internet users has grown substantially. But there still is an inequality in terms of the Internet access. The total liberalization of the information and communication technologies in Romania starts to take place in 2003. The evolution of the number of users has known a timid growth during 1998- 2003 and a fast growth during 2003-2008 and is still growing.

Hypotheses

The notion of frame analysis has become a controversial issue of considerable debate and constant disagreement. The framing theory is central in the communication of collective action (Snow et al. 1986; Benford and Snow, 2000). Goffman was the first scholar who outlined the idea of framing in a media message. Goffman's frame analysis (1974) has generated much controversy, particularly when it comes to the influences of frames. Goffman's critics (Gonos, 1977; Sharron, 1981; Denzin and Keller, 1981) underline the static nature of the frame analysis, including feelings and also personal and interpersonal histories. Gitlin (1980) believes that frames are "principles of selection, emphasis and presentation composed of little tacit theories about what exists, what happens, and what matters" (Gitlin, 1980: 6). While Entman in his works acknowledges that "to frame is to select some aspects of a perceived reality and make them more salient in a communicating text, in such a way as to promote a particular problem definition,

casual interpretation, moral evaluation, and/or treatment recommendation" (Entman, 1993: 52). Gamson and Modigliani (1987) consider that frame is "a central organizing idea or story line that provides meaning to an unfolding strip of events weaving a connection among them. The frame suggests what the controversy is about, the essence of the issue" (Gamson and Modigliani, 1987: 143). Other scholars, like Chong and Druckman (2007) or Scheufele (1999), believe that the term "frame" is generally used in two general-accepted ways: a. frame in communication or the media frame- refers to words, images, phrases, and presentation styles that a speaker (e.g. a politician, a media outlet) uses when relaying information about an issue or event to an audience (Gamson and Modigliani, 1987, 1989). The chosen frame reveals what the speaker sees as relevant to the topic at hand (Chong and Druckman, 2007: 100); b. frame in thought or the individual frame – this frame refers to an individual's cognitive understanding of a given situation (Goffman, 1974). Unlike frames in communication, which reflect a speaker's emphasis, frames in thought refer to what an audience member believes to be the most salient aspect of an issue (Chong and Druckman, 2007: 100).

In short, frames guide people's perception and representation of reality. Bertram Scheufele (2006) suggests that " a frame can be looked at in three ways: (1) as a cognitive complex of issue-related schemata for different aspects of reality; (2) established in public, political or inter-media discourse; and (3) becoming manifest as a textual structure of messages such as press releases or newspaper Articles" (Scheufele, 2006: 66).

When it comes to social movements, Koopmans (2004: 25-26) argues that the mass media play a crucial (though understudied) role in the diffusion of protest in contemporary democracies. Gamson and Wolfsfeld (1993) suggest that media can serve social movements in three ways: a) mobilization of political support; b) legitimization (or validation) in the mainstream discourse, and c) to broaden the scope of conflicts. Many times the media coverage of social movements follows a specific strategy, which involves downgrading the aims and the dynamic of the protest and portraying them as a threat to the national good or international economy (Harlow and Johnson, 2011), emphasis on protesters' violent actions; downgrading and delegitimation of the aims and reasons of the manifestation. Mainstream media often discredit and marginalize protest actions, with journalists relying on a Chan and Lee's "protest paradigm" (1984) that focuses on tactics, spectacles, and dramatic actions, rather than the underlying the reasons and purpose of the protest (Chan and Lee, 1984; Gitlin, 1980). At the same time, protesters need to rely on the media if they want to reach the public and policy makers (Rucht, 1991). Chan and Lee (1984) protest paradigm shows that media tends to: support of the status quo and marginalization of groups that may challenge it; portray the protesters as an isolated minority characterized by overt deviant behaviour; ignore social movements that challenge governments' policies. Some examples of negative media coverage through negative framing are: the press and television coverage of a mass demonstration against the Vietnam War in London (27th of October 1968); the U.S. mainstream newspapers' coverage of social protests in the United States between 1967 and 2007; the national television coverage of Orange Revolution in Ukraine (2005); the coverage of the protests against the US invasion in Iraq (2003); the US media coverage of women's movement in the United States from 1966 to 1986; the media coverage of the World Trade Organization protests in Seattle (1999) and the World Bank/ IMF protests in Washington, DC (2000). However, there are exceptions of media supporting collective actions, such as Georgia's non-mainstream media who challenged the legitimacy of authoritarian government led by President Eduard Shevardnadze (Sulkanishvili, 2003) and the Serbian non-mainstream

media (particularly Radio B 92) who supported the street protest and facilitated the regime change (Barker, 2008). Lately, people all around the world, have turned to online media and use social network websites like Facebook and Twitter to mobilize pro-democracy protests and start revolutions, illustrating how the Internet has become a key alternative media tool for activism (Kenix, 2009) and that is what led Harlow and Johnson (2011) to state that new media are creating a new protest paradigm.

Snow, Rochford, Worden and Benford (1986) consider framing very important when analysing protests because it helps to determine whether a movement will mobilize and how successful a protest action will be. Previous studies have shown that media coverage of social movements tended to frame various protest activities in negative ways. Within the protest framing context, the current research focuses on how one mainstream Romanian news site (hotnews.ro) framed- both in terms of text and images- four different international protest occasions: the Egyptian protests that took place in Tahrir square in Cairo, the protests that took place in Taksim square in Istanbul, the Indignants movement that took place in different countries and the Occupy Wall Street movements. The hypotheses of the present study are: 1. Given the fact that we examine mainstream media, we expect – according to critical protest theory – a rather negative overall representation of the movements the current research focuses on, mainly by the focus on violence caused by the protesters, both in terms of discourse and image, either still or motion; 2. Given the mainstream character of the examined media, we also expect the official sources to be the main sources of information regarding the protests; 3. Apart from the above, we expect the framing of the protests as illegal by the mainstream media; 4. Within the financial crisis context, we expect that media will also focus on the economic consequences of the protests, mainly in a negative way; 5. Another way of presenting the protests in a negative way is through downsizing the protest, i.e. through the reference to the size of the protest in a negative way.

Method

The research methodology used for the goals of the current research is quantitative content analysis, which was conducted with the use of a coding protocol. The data for the analysis were gathered from one news website (www.hotnews.ro). The specific news site was selected due to the fact that it is considered to be among the most popular one in Romania in terms of number of visits, hence it constitutes significant possible influencers of the public opinion on issues of public interest like protests, political, social or economic issues.

The selection of the Articles was made through research adapted to the peculiarities of the search engines and the archives of the different web pages that I examined. The keywords used for the site's search engine were "Taksim square", "Tahrir square", "Indignants" and "Occupy Wall Street", choosing afterwards the most relevant Articles to each protest.

The selection of the Articles was conducted mainly based on qualitative rather than quantitative criteria, due to the restrictions of the archives and the relevant search engines of the website. As far as protests are concerned, the media strategy has always rested on three basic pillars: obscuring, de-legitimization and assimilation of the protests. In a previous work I was arguing that the implementation of each one of these tactics depends on the phase that the movement is in. Usually, in its beginning stages the movement is ignored and goes unnoticed by the journalists.

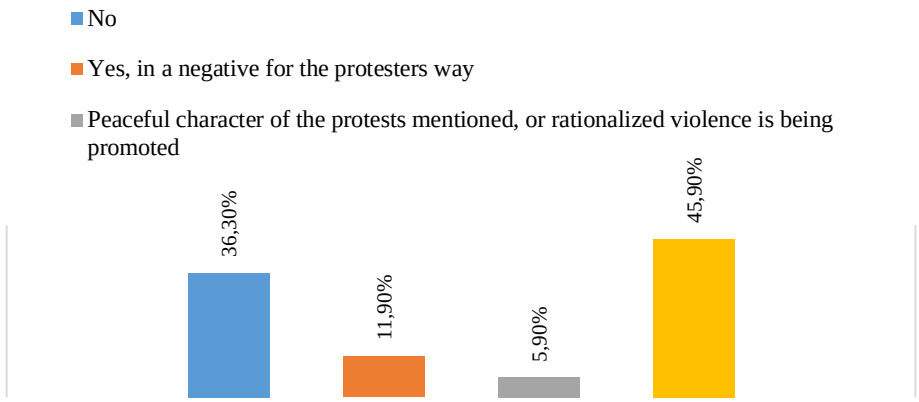
The media ignores it, arguing that it is not a legitimate movement, it lacks social relevance, it is not an official protest, their leaders are not officially recognized or authorized by the government, or it represents a threaten to the common good (Mitu, 2011). The sampling rationale chosen for this particular Article serves the goals of the current research, since the most relevant Articles are in most cases the ones published during the days each protest is taking place, providing an as extensive as possible report on the facts as they occur.

The coding unit was the Article. The Article has been used frequently as a coding unit by many communication researchers on social movements and protests (Dardis, 2006; Armstrong and Boyle, 2011; Xu, 2013), and this method can be more efficient in capturing the content and themes of the overall coverage. Articles were coded for the presence for or against the protesters, or absence of several frames (conflict, violence, downgrading, economic consequences, illegal character, human interest, devaluation of causes and aims, marginalization).

Results

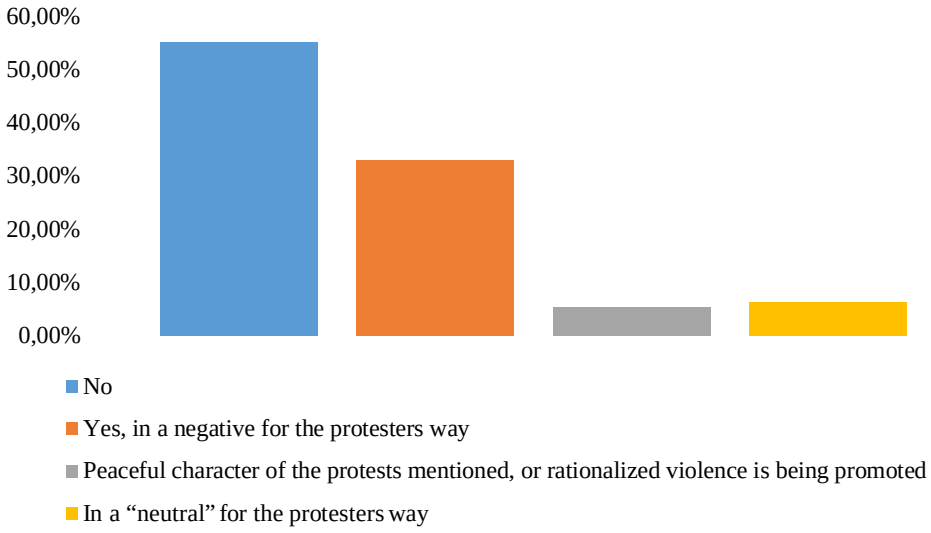
The results show that when it comes to the coverage of protests media seems to be against violence. When we examined the focus on violence (in a negative way)- our data showed that we could partially accept our first research hypothesis, meaning that we found a rather negative overall representation of the examined movements mainly by the focus on violence caused by the protesters. The Articles we examined did focus on violence- especially through their discourse or pictures, but not in a negative sense for the protesters (Chart 1 and 2).

Chart 1. Violent acts in discourse



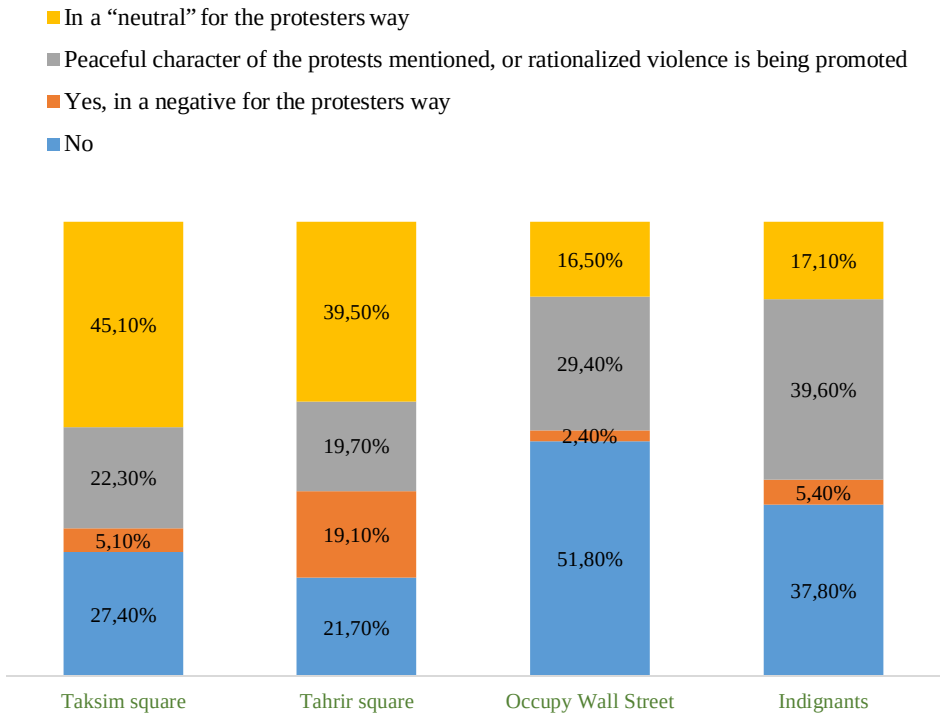
According to Chart 1, hotnews.ro (45.9%) focuses on issues of violence related to the protests through their discourse but in a neutral way for the protesters, whereas Chart 2 shows that 55.3% of the Articles did not depict violence in photos or videos, which creates a contradiction between text and images/videos.

Chart 2. Violent acts in photo/ video



It is also interesting to see how hotnews.ro focuses on issues of violence for each analysed protest in Chart 3.

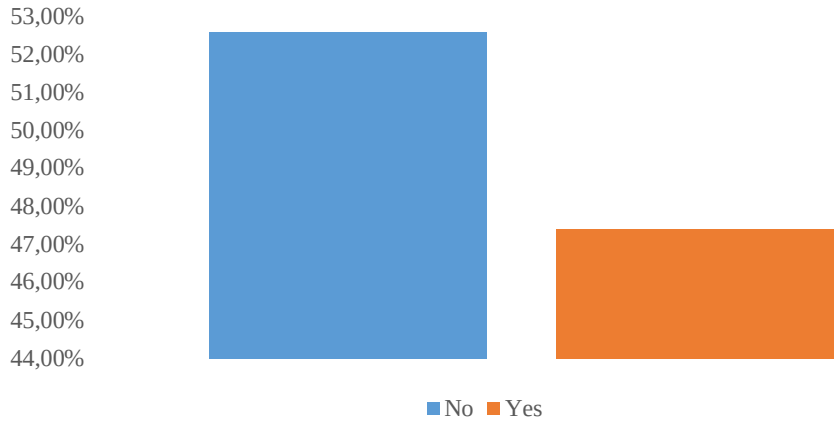
Chart 3: Violent acts in discourse for each protest



As far as the depiction – either through photos or through videos – of violence is concerned, through images and videos, one could again notice a lack of focus on violence of hotnews.ro. Despite that the majority of the Articles (55.3%) do not focus on violence, the Articles containing images or videos depicting violence show it mostly in a negative frame for the protests way (33%). The second research hypothesis – the use of official non-journalistic sources (governments, police etc.) in the majority of cases regarding the reports from the protests – hotnews.ro, do not seem to rely on official sources and that is lately a common practice for the journalists in Romania. According to Chart 4, hotnews.ro mentions official sources in the majority of the Articles (52.6%).

The inclusion of official sources in the reports has to do with the presentation of views of the officials on the protests, which in most cases are negative, since the protesters in most cases are against the political or economic elites.

Chart 4. Use of official sources



The mainstream news website hotnews.ro avoids considering the analysed protests as illegal. Still, on the other hand, they also avoid characterizing them as legal/fair, since this option received very low percentages too. Accordingly, we reject our third research hypothesis that stated that we expect the mainstream media to frame the protests as illegal (Chart 5 and 6), especially in a post-communist country as Romania where people's mentality towards protests is still narrow. The Romanian people are still afraid to protest on things that concern them or their country although they agree with others who do so and admire other people who fight for their rights.

Chart 5. Illegal frame in discourse

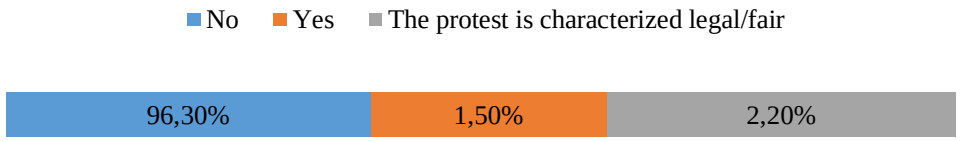
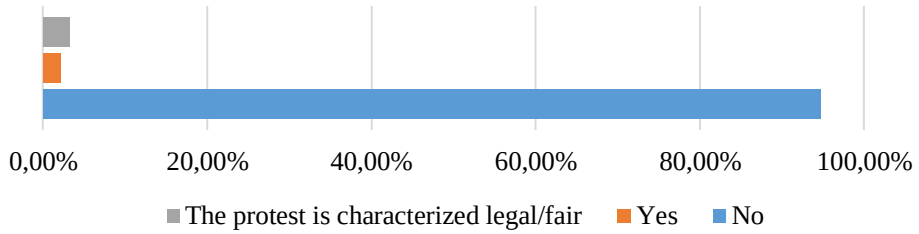
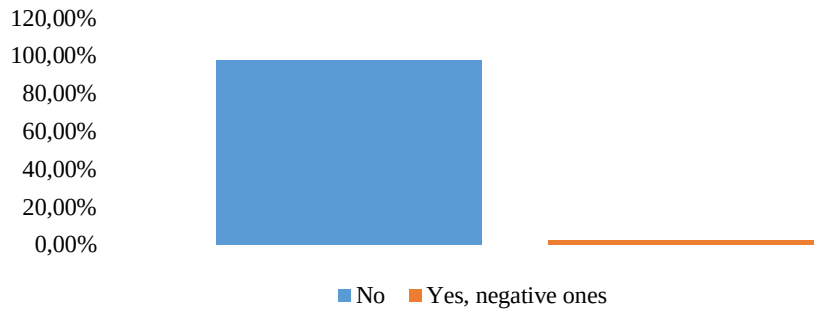


Chart 6. Illegal frame in photo/ video



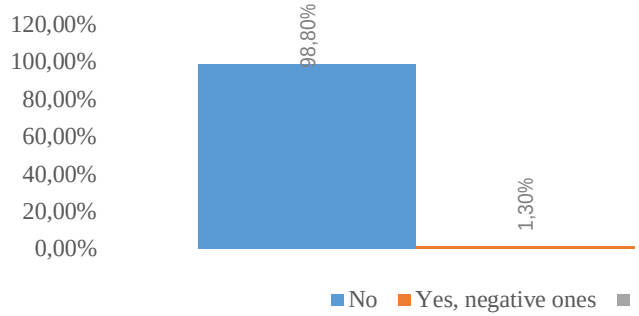
The economic crisis that has emerged in various countries worldwide and constitutes one of the reasons for the outburst of some of the protests we examined, is expected to play a significant role in the media coverage of the protests. Under this rationale, we expect the media to focus on the negative economic consequences of the analysed protests (Chart 7).

Chart 7. (Negative) economic consequences frame in discourse



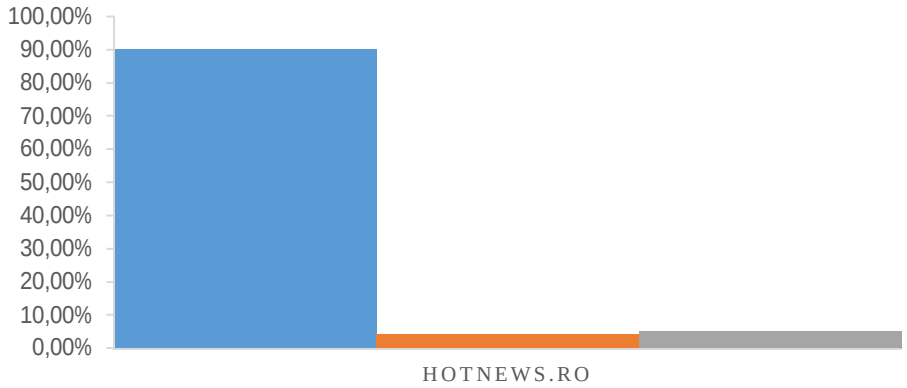
The collected data gave us a picture similar to the one of the "illegal frame", meaning that, again, the journalists do not link the protests to any negative economic consequences. As shown in Charts 6 and 7, hotnews.ro avoids linking the protests to negative economic results of the countries in which these protests took place. Based on these results, we reject our fourth research hypothesis as the media did not focus on the economic consequences of the protests mainly in a negative way.

Chart 8. (Negative) economic consequences frame in photo/ video



Another important frame playing a significant role in the presentation of protests according to the critical protest paradigm is the marginalization frame. As Chart 8 shows, the news portal avoids marginalizing the protests. Hence they do not marginalize the protests in a negative way. On the contrary, there are few cases, where the protests are being marginalized in a positive way, in a sense that they try to resist against the corrupt and inhumane actions of the government. This kind of (positive) marginalization can be found in five percent of the Articles found on hotnews.ro. Based on the above mentioned results, we reject our fifth research hypothesis.

Chart 9. Marginalization frame in discourse



Discussion and conclusion

As outlined previously, the existing literature on topics regarding the connection and relevance of the Internet for the contemporary society emphasizes the increasing tension between the new communication technologies and the desire of the political sphere and economic sector to impose restrictions upon them (Bagdikian, 2004; Papacharissi, 2002; Papacharissi, 2004). On the other hand, the importance of the so-called new media for the modern states has been mentioned in numerous studies that analyse the contribution brought by the new communication technologies to the democratization of society (Dertouzos, 1997; Bennett and Fielding, 1997; Bimber, 2001). Mudhai (2003) asserts that these new information technologies are, in fact, a way to the "third way" for the democratization of the society. Scholars like Graber et al. (2004), Krueger (2002) or van Dijk (2000) talk about the potential of the Internet in promoting dynamic interpersonal and distinctive information who could reinvigorate the democratic process both on-line and off-line. The present Article examined the representations of protests on news web pages in Romania (www.hotnews.ro), analysing which particular cases attract the journalistic interest and in what sense. The research question of the present study was: what kind of representations is mostly raised by the mainstream Romanian news websites with regard to international protests? To answer that question we can easily notice from the above data that generally, protests are not presented in negative ways by the Romanian news portals like hotnews.ro, contrary to what Chan and Lee (1984) state when they have created the protest paradigm. Great emphasis is placed on the violence during the protests (even though this violence is usually not attributed to protesters) and on the situations that generated the protests. The journalistic discourse – in most of the cases – is positive

towards the protesters but not always towards the protests as a whole. News items include a great number of positive references to the size of protests, journalists considering that a protest becomes important when many people are participating to it. An outstanding fact is that the results show that references to the illegal character of the protests, marginalization and economic consequences are almost absent from the news. Protests are usually presented as individual events, isolated from a broader socio-economic context. When protests are associated with the wider context, a great emphasis is placed on the conflict against the local government or the police. Protests are not depicted as social movements and readers are given a rather superficial impression of them. We can also notice the journalists' tendency to describe protests more by posting images or videos and less text in order not to influence the readers in interpreting the protests and allow them to see by themselves what is happening. The lack of an in-depth political discussion on the aims of the protests and the lack of references to the organizational structure of the movements allow the "convenient" adoption of a positive stance towards the analysed protests, which is actually superficial and not real. However, this study has its limits because it only examined one representative news portal and therefore the results cannot be generalized to all mainstream, alternative, or social media sources. Further studies should examine how much media coverage of the international protests influence protests in the countries in which the mainstream media covers them.

Acknowledgement

This paper is supported by the Sectorial Operational Programme Human Resources Development (SOP HRD), financed from the European Social Fund and by the Romanian Government under the contract number SOPHRD/159/1.5/S/136077.

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Article Info

Received: February 22 2015
Accepted: March 15 2015

RSP • No. 45 • 2015: 135-147

ORIGINAL PAPER

Accuracy Data of the Presidential Voting Outcomes to an Inferential Bias of the New Romanian Electoral Code and Electronic Vote (2014)

Mihaela Bărbieru*

Abstract
The purpose of this study is to analyze the presidential elections in Romania, in November 2014, elections which have highlighted a number of problems of the Romanian society. For solving these problems there is an urgent need for the participation of all decision makers, local politicians and Romanian civil society. Election Code or electronic voting are just two of the debates, in the opinion of the author and specialists in the field, requiring special attention from both decision makers and the public. Perhaps the most important conclusion that emerges from our analysis is that no matter how secure victory seems for a party or a political organization, the electorate is the one who has the last word and can make a safe situation to become unsafe. Thus, although it was a difficult year for the local political class, 2014 gave Romania the first liberal president in its history of 140 years, in a complicated and agitated political context, practically exhausted by the struggle between a president-player and a dominant social-democrat party.

Keywords: presidential elections, voters, electoral code, diaspora, social media

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Aspects of the political context

The presidential election of November 2014 has meant the election of a new President of Romania, Traian Băsescu ending his two successive mandates on time, although two referendums were held for his dismissal in 2007 and 2012. Thus ended a busy period on the political stage, with much controversy and disputes, not few times the President being the one who maintain this state. Recent years have been for our country load of electoral events, transformations and political changes that has occurred in the context of premieres, surprises and twists of situation (Bărbieru, 2014a: 191), and 2014 presidential election did not come out of this pattern. Having as preamble the European Parliament elections, which had as central figures politicians who had to run for President (Bărbieru, 2014b: 134), the tour's results were however accompanied both in Romania and in Europe, by the word "surprise".

Naturally the question arises what exactly caused the loss of the election by the Prime Minister Victor Ponta, who had the first chance in carrying out its electoral commitments (Buti, 2015: 41). He was catalogued by public opinion and by independent institutions of public opinion polling, devoted to performing and publishing surveys regarding elections, the candidate with the greatest chance in winning the Presidency of Romania. In November 2014, PSD came after a period in which recorded an increasement in local elections in June and the parliamentary ones in November 2012 and a real success at the European Parliament elections in may 2014. Also, in his capacity as Prime Minister, Victor Ponta held important levers of power and had on his side an important number of local election officials (mayors and Presidents of the County Councils), the latter having a very important role in mobilizing voters (Buti, 2015: 41). Thus, it was considered that basically he did not have a challenger strong enough, and his victory was expected as a cert fact. 16th of November proved that it was not at all the case, and chances were played until the last voter.

National and international press has cited the victory of Klaus Iohannis, the candidate ranked on second place in the first round of elections, as a spectacular comeback in the second round, and his victory was able to amaze both local society and political class, as well as international politics class. The foreign press has reported extensively on the outcome of elections in Romania and foreign journalists could not overlook any incidents abroad, giving them wide spaces in media. Deutsche Welle reported that Romania is at a crossroad and the results of the presidential election will have an effect on the whole Europe, and the country is in a political and economic crisis. After 25 years of democracy, society was divided into the young people educated which were on the Liberals side, on the one hand, and the loyal voters of the "ex-Communist" Social Democratic Party, on the other hand. Deutsche Welle also stressed that Iohannis, a representative of the German minority in Romania and successful mayor of Sibiu, fights for Romania to remain in the European family and considers "social democrats barons" guilty of political and economic problems of the country (Bănilă, 2014). The German broadcaster has written extensively about the protests that were organized in Bucharest, spontaneous and in solidarity with the Romanian diaspora who were forced to wait in long lines to vote, but also about judicial independence promised by Iohannis.

The presidential institution in Romania

In Romania, the presidential institution is part of the executive power and is subject to the rules laid down in the Constitution of Romania. The constitutional system in Romania is characterized by two-headed executive, the executive power being divided

between the Head of State, the President of Romania, on the one hand, and the government led by the Prime Minister, on the other hand, their tasks being clearly defined by organic law (Iorgovan, 2005: 69). Article 80 of the Constitution defines the role of the President which represents the Romanian State and is the guarantor of national independence, of territorial unity and integrity, ensuring the observance of the Constitution and the proper functioning of public authorities. For this purpose, he shall act as a mediator between state powers and between state and society. Through Article 83 of the Constitution, his tenure may be extended, by an organic law, in the event of war or catastrophe (Constitution, title III, chapter II). The Government is appointed by the President on the basis of the vote of investiture granted by Parliament. The President of Romania shall be elected as a result of universal suffrage, for a term of five years which shall be exercised from the date of exerted oath, which gives legitimacy and makes it representative and legally equal to Parliament. The difference between the two representative bodies is that Parliament represents the people, while the President represents the State. The legitimacy conferred upon his election by the population is the main reason why we can say that Romania is based on a semi-presidential system (Avram and Radu, 2007: 300). The Romanian President is expressly vested by the Constitution, with the prerogative to represent the Romanian State both internally and externally (Constitution, Title III, Chapter II). In relation with the Government and with Prime Minister implicitly, its powers are limited. Between the President and the Government there are no subordination relationships, but only cooperative. Relations between the President and Parliament, under the Constitution, are reports which consist of messages asking the Parliament, convening and dissolution of Parliament, the promulgation of laws, as well as other duties that involve some form of cooperation with Parliament, as in the case of the referendum (Constantinescu, Muraru and Iorgovan, 2003: 77; Constantinescu, Iorgovan, Muraru and Tănăsescu, 2004: 146).

Presidential election. Aspects of the election campaign

In our study, we will analyze, in particular, the events relating to the two main candidates to the Presidency of Romania, considering that a thorough analysis of all the candidates is not necessary.

On October 2, 2014, an online newspaper from Romania titrated on the front page "the 2014 presidential elections: last day of peace, the first night of the electoral campaign" (Marin, 2014: Politica). Now we can appreciate that being true this title taking into account the hardness of the presidential campaign in November 2014, many attacks used by both camps, social-democratic and national-liberal, arrived in the final round or distractions unrelated to the presidential debate.

Although in the first round have been enrolled 14 candidates, from 2nd of November remained in presidential race Victor Viorel Ponta (42 years old), the Prime Minister of Romania from the PSD-UNPR-PC Electoral Alliance, the Chairman of the Social Democratic Party, a candidate for the first time in the presidential election, and Klaus Werner Iohannis (55 years old), the Mayor of Sibiu, from the PNL-PDL Christian-liberal Alliance, President of the National Liberal Party, candidate for the supreme function in the State after the former President of the Liberal Party resigned.

In the 2014 presidential campaign faced two different strategies. Ponta has turned to known classical methods, involving a strong mediation of the candidate, negative campaign against his opponent, political advertising, and the deliberate incitement of positive or negative emotions. Iohannis has taken a different approach, atypical for the Romanian politics, which involves orientation towards the market, new trend in political

marketing. This included the notion of authenticity and missing spectacular speech. He wanted a campaign devoid of aggressiveness and negative messages, based on confidence in voter's evaluation, on the mobilization of youth and online communication (Mihalache and Huiu, 2015: 32).

Victor Ponta has officially launched his candidacy to the highest office in the State with great fanfare in the presence of more than 70,000 people on the National Arena, the day when he turned 42 years old. The launch on the National Arena was the reason for which he was harshly criticized by numerous political analysts, opposition members and even the President, Traian Băsescu. The opposition accused him of organizing an event similar to a Communist rally and compared him with Nicolae Ceaușescu or, furthermore, with the Korean leader Kim Jong-Un (Vintilă, 2014). He also has been criticized extremely rough for the very high costs required for such an event. Launch speech had centered around the ideas of change and unity: "We have 55 days and another battle to win, and I call on everyone to start on the road of change, on the way to the great unification of all Romanians," or "I want you to think of something we've forgotten in these 25 years: that we can be united, and help ourselves", "I invite you to join me in the great battle for the unification of Romania", etc. In addition, throughout his campaign he has kept the message from the European Parliament elections "Proud that we are Romanians" which called for collective emotion (Mihalache and Huiu, 2015: 35).

Previously, he had launched his candidacy in Craiova, in a National Congress of the party. His launch speech at the Polyvalent Hall of Craiova, from 29 July 2014, had inserted a series of messages of nationalist, religious, patriotic nature, but also regarding its draft as President. The main messages were built around slogans "Change to the end" and "Strong Romania" and its defining position remained the one with regard to the fight against the President, Traian Băsescu, and the end of his regime. We could define it as a campaign error because this campaign issue was no longer topical, as had happened in 2012.

Klaus Iohannis has launched his candidacy in the presidential election, at a rally organized by ACL in front of the Government, to which PDL and the PNL, in a desire to get closer to the performance of Victor Ponta launching, mobilized approximately 30,000 party members and sympathisers. The prime minister was refered to in all the speeches on stage, Secretary General of the EPP Antonio Lopez said that "Victor Ponta can not and must not become President of the European Romania". Klaus Iohannis's vision was "Romania of the job well done" and Lopez said about him that he was "a man of deeds, not of empty words", "a man of promises honored, not of scandal and show", "a man who builds, and does not destroy" (Manciu: 2014). His campaign themes were based on the words "can" and "less noise and less scandal, more seriousness and bending to the people's problems". In other words, it was about changing the way of doing politics.

The results of the first round were not surprising, following the path indicated by the institutions of public opinion polling. The result was the practical expression of political voting, Ponta managing to harness the electoral potential of his structure, the difference of 10 percent keeping him as the favorite (Buti, 2015: 42-43).

The day of November 2nd, 2014 ended with widespread protests both in the diaspora and in the country. They were driven by images broadcasted by media from polling stations abroad with voters who stood in queues to vote and by the Government's refusal to extend the voting program in these sections. There were protests in London, Paris, Munich and Rome. In Paris, disgruntled that they could not vote, several citizens forced the Romanian Embassy, the French police being forced to intervene. The images

of people beaten by French Gendarmerie for the simple reason that they wanted to exercise their constitutional rights have been sent to all media in Romania and on Facebook in real time. It was enough for generating ample reactions in Romania. Romanians protested in front of the headquarters of the Foreign Ministry and demanded the dismissal of Titus Corlățean, as well as of the Prime Minister Ponta, whom they blamed for the situation in the Diaspora.

Table 1. According to the Central Electoral Bureau, in the first round of presidential elections in Romania were recorded following results

No.	First name, last name	Party / Political Alliance	Valid votes	Percentage First round
1.	Kelemen Hunor	Democratic Union of Hungarians in Romania	329,727	3.47%
2.	Klaus-Werner Iohannis	Christian Liberal Alliance (PNL–PDL)	**2,881,406**	**30.37%**
3.	Cristian-Dan Diaconescu	People's Party – Dan Diaconescu	382,526	4.03%
4.	Victor-Viorel Ponta	PSD–UNPR–PC Alliance	**3,836,093**	**40.44%**
5.	William Gabriel Brînză	Romanian Ecologist Party	43,194	0.45%
6.	Elena-Gabriela Udrea	PMP–PNȚCD Alliance	493,376	5.20%
7.	Mirel-Mircea Amariței	PRODEMO Party	7,895	0.08%
8.	Teodor-Viorel Meleșcanu	Independent	104,131	1.09%
9.	Gheorghe Funar	Independent	45,405	0.47%
10.	Zsolt Szilagyi	Hungarian People's Party of Transylvania	53,146	0.56%
11.	Monica-Luisa Macovei	Independent	421,648	4.44%
12.	Constantin Rotaru	Socialist Alliance Party	28,805	0.30%
13.	Călin Popescu-Tăriceanu	Independent	508,572	5.36%
14.	Corneliu Vadim-Tudor	Greater Romania Party	349,416	3.68%

Source: Author′s own compilation based on the Central Electoral Bureau (hereinafter BEC official data)

Throughout the two weeks of the campaign until the second round, the protests continued and had the main aim of overturning the result. The effect was of domino, the pictures in the media and on the internet have led to the historical changing of situation of 16 November (Drăgulin and Rotaru, 2015: 18-19). The theme of the vote of the diaspora was approached constantly by the Prime Minister's political opponents and the press. The Government and the Prime Minister were the main accused of voter situation abroad. The

reason they did so was that they did not wanted a repeat of history in 2009 when Traian Băsescu was elected president with the help of votes from the diaspora.

On this emotional background electoral mobilization was exemplary, statitics recording the highest turnout since 1992 (Buti, 2015: 47). Klaus Iohannis managed to turn the result in his favor, achieving a clear victory and becaming the 5th President of Romania and the first head of state who belonged to ethnic and religious minorities. In the Romanian diaspora he has registered 89.73% of the votes (Canae, 2015: 142).

Victor Ponta was forced to admit defeat. His defeat was the more painful since it was the third consecutive time when social democratic party was not able to give a president for Romania. As in 2004, when Adrian Năstase, premier and party leader, lost the presidential election, history repeats itself 10 years later, in 2014, when Ponta, premier and party leader, lost the presidential election.

Table 2. According to the Central Electoral Bureau, in the final round of presidential elections in Romania were recorded the following results

No.	First name, last name	Party / Political Alliance	Valid votes	Percentage Second round
1.	Victor-Viorel Ponta	PSD–UNPR–PC Alliance	5,264,383	**45.56%**
2.	Klaus-Werner Iohannis	Christian Liberal Alliance (PNL–PDL)	6,288,769	**54.43%**

Source: Author's own compilation based on BEC official data

Presidential elections in Dolj County

The following tables will highlight the results of the presidential election in a restricted area, namely in Dolj County. The figures presented show that the County results of presidential election in both rounds had the Social Democrat Victor Ponta as winner. As highlighted in previous Articles in which the author analyzed the elections in Romania in the period 2012-2014 (Bărbieru, 2014a: 190-200; Bărbieru, 2014b: 134-147), Dolj is one of the counties in southern Romania where the Social Democratic Party came first in voter voting option in the last 25 years, regardless of the results at national level. In 2014 PSD won again the elections in this county.

Presidential elections in Dolj were not disrupted of negative events, being held in the normal range, with moments of excitement or failures that did not disturb the electoral process. Social democracy was successful in all areas of the county, including Craiova where have been recorded 54,604 votes for Ponta and 37,814 votes for Iohannis in the first round. In the second round, Ponta recorded 78,660 votes in Craiova and Iohannis 77,201 votes, the difference between the two candidates being small. There were a few places where, in the second round, the winner was Iohannis: Apele Vii, Galicea Mare, Ghindeni, Giubega, Goiești, Mischii, Rojiște and Siliștea Crucii.

Table 3. According to the Central Electoral Bureau, in the first round of presidential elections in Dolj County were recorded the following results

No.	First name, last name	Party / Political Alliance	Valid votes	Percentage First round
1.	Kelemen Hunor	Democratic Union of Hungarians in Romania	796	0.25%
2.	Klaus-Werner Iohannis	Christian Liberal Alliance (PNL–PDL)	**73,290**	**23.64%**
3.	Cristian-Dan Diaconescu	People's Party – Dan Diaconescu	13,424	4.33%
4.	Victor-Viorel Ponta	PSD–UNPR–PC Alliance	**173,687**	**56.03%**
5.	William Gabriel Brînză	Romanian Ecologist Party	801	0.25%
6.	Elena-Gabriela Udrea	PMP–PNȚCD Alliance	12,119	3.91%
7.	Mirel-Mircea Amariței	PRODEMO Party	154	0.04%
8.	Teodor-Viorel Meleșcanu	Independent	2,581	0.83%
9.	Gheorghe Funar	Independent	683	0.22%
10.	Zsolt Szilagyi	Hungarian People's Party of Transylvania	272	0.08%
11.	Monica-Luisa Macovei	Independent	6,767	2.18%
12.	Constantin Rotaru	Socialist Alliance Party	941	0.30%
13.	Călin Popescu-Tăriceanu	Independent	15,306	4.93%
14.	Corneliu Vadim-Tudor	Greater Romania Party	9,121	2.94%

Source: Author′s own compilation based on BEC official data

Table 4. According to the Central Electoral Bureau, in the final round of presidential elections in Dolj County were recorded the following results

No.	First name, last name	Party / Political Alliance	Valid votes	Percentage Second round
1.	Victor-Viorel Ponta	PSD–UNPR–PC Alliance	226,696	**60.60%**
2.	Klaus-Werner Iohannis	Christian Liberal Alliance (PNL–PDL)	147,367	**39.39%**

Source: Author′s own compilation based on BEC official data

Social media

Novelty of November 2014 presidential election comes by social media. This had a marked influence on the election campaign and actually led to the twist of situation between the two rounds. The effect was unexpected and has to be considered for future elections because voters abroad which were mobilized through social network Facebook, proved an unexpected potential (Covaci, 2015: 85).

Klaus Iohannis is the first politician in Europe who managed to gather over one million likes, although in the first round had approximately 500,000 likes, on final election day about 850,000 likes, and immediately after the election, on November 28, reached a number of 1.2 million people who appreciated his page (Andriescu and Constanda, 2014). In this context, we wonder if social media has decided the final outcome of the presidential election. We think the answer is YES.

In 2013, the possibility of mobilizing the internet was underestimated due to lack of optical fiber that placed Romania on 23 rank in Europe, but in 2014 fiber channel connection managed to increase by 80% and reach 5th place, ahead of countries like Hungary and Bulgaria (Covaci, 2015: 86). Facebook, social network that was also present in the 2012 election campaigns (Ghionea, 2014: 212), Twitter, Instagram, etc. are known and used by a substantial segment of the population in Romania and distributed information come mostly from friends, companies or organizations in which the user is confident, having in this way, a greater power of persuasion.

Iohannis's online campaign has a well thought out social media strategy, which provided various and quality materials to supporters of the virtual environment, and consistency between the candidate image and message, between the message and the needs of the electorate was its strength. It has also been set a target – 18-35 years, urban – and created a virtual campaign for this age group, knowing that is the segment the hardest to be persuaded to support a candidate or to exercise right to vote, completely uninterested in politics in general. The message was clear and consistent with the image of the candidate. The chosen strategy was determined by avoiding clichés, effective transmission of messages to the target group and focusing the reader on what differentiated Iohannis of his opponents, namely simple language and decency in speech and behavior.

Klaus Iohannis won the presidential election with the help of social media, Facebook being an important communication channel that managed to far exceed traditional media channels (TV or print media). People are more informed than 15 years ago, more open and unwieldy. After some analysts diaspora had a very important word to say, others think that the Prime Minister's mistakes had weight, and yet another group brings into question the charcater of candidate Iohannis. We believe that we must take into account all three factors. Also, social media has worked not for or against candidates, but sought a single candidate, and he was Iohannis.

The Electoral Code - subject of public debate

Presidential elections in Romania, held on November 16th, 2014 highlighted the existence of various problems the Romanian society was facing, problems that require quick solving so things to be able to enter in a line of normality. Difficulties in Romanian electoral process, which recorded its peak in the presidential elections are determined by the existence of electoral legislation without consistency, with a large number of laws, governmental decisions or emergency ordinances (Pîrvu, 2014: 19). The large number of amendments to the electoral law through emergency ordinances, even if modifications were absolutely necessary, was mentioned by the Constitutional Court of Romania in

Decision no. 39 of 14th of December 2009 (Case CCR no. 39: published in the Official Gazette no. 924 of 30th of December 2009), Decision no. 61 of 14th of January 2010 (CCR Decision no. 61: published in the Official Gazette no. 76 of 3rd of February 2010) and Decision no. 51 of 25th of January 2012 (CCR Decision no. 51: published in the Official Gazette no. 90 of 3rd of February 2012) referring to the need to adopt an electoral code to unify the electoral law.

Thus, an Electoral Code to unify procedures for elections, political parties law, law on financing political parties, voting abroad and punishing the guilty for violation of the rights of voters in the elections of 2014 are problems in public discussion that policy makers must find answers in the shortest time.

For all of this to be achieved, it is imperative that new regulations and legislation provide transparent discussions, clarity, professionalism and be developed in consultation with direct interested factors (Pîrvu, 2014: 19). It is necessary that the electoral legislation include provisions related to computer system verification of CNP (personal number code) in real time, but also strengthening the rights of observers, reforming appeals and tools through which to reduce the pressures of local actors abusive involved in voting process.

Although electoral laws are constantly debated in the Romanian Parliament, the legislator failed until November 2014 into adopting legal norms allowing the organization of elections in which the possibility of fraud to become invalid. The last presidential election showed the limits of legislative and institutional framework and stressed the need for a responsible and courageous decisions regarding a substantive reform of legislation (Pîrvu, 2014: 20).

Another issue that emerged from the presidential elections was represented by the ease with which the right to vote of the Romanians abroad could be violated. Determined in this direction was the lack of reaction, delayed decisions and bureaucracy of the Ministry of Foreign Affairs and the Central Electoral Bureau, and especially poor organization of the vote, no polling stations and the lack of personnel in areas with large numbers of Romanian or insufficient personnel in other areas, and the transfer of responsibility from one institution to another, practice so often used in such situations. Unfortunately, the only sanction, if we can call it that, for the poor organization of elections and restricting the right to vote of the Romanians in the diaspora have been filing mandate by the foreign ministers Titus Corlățean and Teodor Meleșcanu, the latter starting the foreign office mandate on the date 10th of November 2014, in full electoral process, and registering his resignation on 18th of November 2014, just two days after the elections. It became very evident the need to introduce on the election agenda electronic voting or election by mail systems already used in the European Union.

In post-communist Romania have been several initiatives which sought exposure to public debate a draft of the electoral code to increase the predictability and transparency and simplify the administrative system, but all were unsuccessful. Further, political parties amended the electoral legislation in line with the interests of time, often changing the rules during the game (Pîrvu, 2014: 22).

It thus becomes imperative to align the Romanian electoral law to normality of the legislation, and the existence of the Electoral Code that will include clear rules and strategies that do not allow modifying them through various acts and amendment decisions, but with some time before the election, remains an issue that should be included in the folder for urgent debate of the entire political class of Romania.

Electronic voting - a necessity for Romania?

Presidential elections in November 2014 in Romania have raised a number of questions of civil society to which the political class and specialists must find an urgent reply. Is electronic voting a reliable system under current conditions of digital technology? It is a question that specialists and states try to find the correct answer given that, lately, more and more complaints have arisen in European countries. In this context, but having in view the obstruction of diaspora vote for presidential elections in November 2014, the obstruction to which we referred in the previous lines, the natural question arises whether Romania needs and can implement such a voting system.

In 2002, the European Commission urged Member States to use the electronic voting system through "CyberVote" Program, which was tested for the first time, as "AceProject" (The Electoral Knowledge Network) on 11th of December 2002 in the city of Issy-les-Moulineaux in France for local council elections, then in Germany from 13th to 15th of January 2003 at the University of Bremen and in Sweden from 27 to 30 January 2003. Electronic voting has been tested successfully in many other countries, Australia (October 2001), Austria, Canada, Estonia, France, Germany, Japan, Switzerland, and in 2011 in Norway. Of all these countries, a real success was registered in Estonia in 2011, when 24% of voters voted on this system (Chilea, 2014: 34-35; Trechsel and Alvarez, 2008: 1-19). Problems and suspicions of fraud on the voting system were recorded in some European countries, including Germany, a country which overturned the full use of electronic voting in March 2009; the Netherlands, a country which set off a wave of distrust against this system; Ireland who, after having introduced it in 2002, gave up due to suspected fraud; UK, who tried this method in some local elections, but not generalized it; Spain, Italy, Portugal, which have tested it, but have not adopted it by law (Chilea, 2014: 37).

Given that some countries receiving legislative stability, dropped or question this voting system, is Romania ready to adopt it, a country which, as we have shown, records legislative gaps and must take into account the particularities of its electoral system that requires the adoption of an electoral code? A number of voices of public opinion believes that such a commitment is possible, while other voices, those of specialists in the field, believes that what our country needs first is reforms to implement such a system and, consequently, using it widely and as a constant in the European Union so that Romania would have to adapt to new situations. The problems encountered and the scandal in the elections of 2014 generated a lot of discussion about the alternative voting system enabling efficient electoral process. In Romania electronic voting was used in 2003, Năstase government adopting an emergency ordinance (Government Emergency Ordinance no. 93/2003: published in the Official Gazette no. 716 of 14 October 2003) for the Romanian military in theaters of operations to be able to exercise their right to vote on the revision of the constitution (Chilea, 2014: 35). In 2007 there was the first parliamentary initiative in this direction, but without success, the proposal being rejected at the meeting of 3 December 2007 (Romanian Parliament: House of Representatives). To introduce electronic voting is mandatory to ensure adequate legal and institutional framework.

Conclusions

Beyond the surprising result, presidential elections in Romania have raised in public discussion a series of problems that our country faces for a long time and must find urgent resolution. For a normal institutional and socio-political development Romania needs allowing ambitious political approach (Olimid, 2014: 76, Georgescu, 2014: 39-50),

with a political class where corruption is much diminished, and achieving the development of institutions within a given political system determined by changes in government and public policy making, with a healthy and sustainable society in which practices of past centuries must be totally eliminated (Gherghe, 2014: 123-133; Ilie, 2014: 203-212).

Another conclusion that can be drawn from the events in November 2014 is definitely the vote for change. Klaus Iohannis is unusual and somewhat a new figure on Romania's political arena, coming from Sibiu. His professional training, few and pressed words, the principle that has guided his campaign "less talk and more facts", rhetoric devoid of spectacular gestures are qualities that Romanians are looking for testing at a politician.

If the President Iohannis will conduct a smart foreign policy, and will reset the internal system by promoting sustainable reforms and removing corruption from all levels we believe that Romanians' need of change fulfilled its objectives.

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Article Info

Received: January 12 2015
Accepted: March 6 2015

RSP • No. 45 • 2015: 148-159

ORIGINAL PAPER

Explaining European Parliament Voters' Choice: Competing Insights on Elections and Elected from Vâlcea County – May 2014

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Abstract
In 2014, Romania was facing the third round of European Parliament elections in its history. Following the two on term ballots (2009, 2014), we were able to make a comparative analysis about the manner in which the main actors of the Romanian political scene performed, from the general point of view, and in Vâlcea, from the particular point of view. The low voting presence proved that the citizens were less interested in the European parliament elections, for the Romanian public opinion the stake being lower due to the fact that the European topics were not perceived as having a direct impact on everyday life. Vâlcea County did not diverge, being perfectly framed in the limitations imposed by the rest of the country, with a low presence to voting and with results similar to the national ones.

***Keywords*:** Vâlcea County, political parties, electoral process, election campaign, European Parliament elections**.**

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Introduction

Both internationally and nationally, 2014 was a year rich in electoral events. Between 22nd and 25th of May, 400 million Romanian citizens having the right to vote were requested to report to the polls to choose their representatives in the European Parliament. Judging by the average presence to the voting, decreasing as compared to the previous years, citizens' contentment as concerning the evolution of the European Union is not satisfying. The European elections on May 25th, 2014 were held in our country according to legislation in force, Law no. 33/2007, republished in the Official Gazette of Romania, Part I, no. 627 of 31st of August 2012 as a basic law, and modifying documents - Law no. 187/2012, published in the Official Gazette no. 757 of 12th of November, 2012, Government Emergency Ordinance no. 4/2013, published in the Official Gazette, Part I, no. 68 of 31st of January, 2013, Government Emergency Ordinance no.4/2014, published in the Official Gazette no. 111 of 13th of February, 2014 (Bărbieru, 2014: 137). Romanian representatives in the European Parliament are elected by universal, equal, direct and secret suffrage based on the voting list and the applications of independent candidates. In this Article we have intended to stop, beyond making an electoral analysis on the European Parliament elections from Romania in 2014, on the research of the phenomenon from Vâlcea County. For the drawing up of the material, we chose the analysis of the past voting, the polls and the consulting of electronic data bases that contain specialised publications, useful for the chosen topic. All these were completed after the reviewing of the studies containing this subject in the country, studies that offered us a general image on the way in which the elections for the European Parliament from 2014 took place, along with the way in which the main "actors" performed, generally, on the Romanian political scene, and particularly in Vâlcea County.

The European Parliament elections from 2014

The European Parliament elections from 2014 were characterised, both at European and national level, by a low voting presence of the electors. The specialised studies explained that these elections are perceived by the public as "second order" elections, having secondary importance, a tendency that persisted during the three ballots (2007, 2009 and 2014) from our country (Reif and Schmitt, 1980: 3-44; Dima, 2009: 32; Turşie, 2011: 83; Mihalache, 2014: 3). For the Romanian public opinion, the stake of the European Parliament elections from Europe is a low one, because the European interest topics – the economic situation of the European Union, the budget of the Union, the jobs, the quality of life, the role of the European Union in the world – were not regarded as having a direct impact on everyday life (Bărbieru, 2014: 138). Moreover, when these topics were included in debates, they were either lacking the interpretations for the understanding of all citizens, or they were presented from the national or local perspective, the citizens finding themselves in the impossible position of comprehending the European problems or to attribute political responsibility to some actors and institutions of the Union. The studies realised on this theme, shown that an important part in changing the attitudes towards the European Union is played by mass-media, which should adapt the European problems to the requests of people from a specific country. This adaptation was named "domestic adaptation with national colours" (Risse et al. 2001: 1; Schifirneț, 2011: 34), or "the transfer of an exterior message towards interior, from outside the nation-state, into the nation-state" (Slaatta, 2006: 12). In a brief questioning, from 2014, of the citizens who had the right to vote, their response of them, on addressing the interest towards the European Parliament elections, was displayed as following: 4.8% - not interested; 21.7% - little interested; 35.1% - relatively interested; 20.1% - very interested; 2.8% - answered: Don't know; 15.7% - did not answer (IRES, official source). During the electoral campaign is decided, most of the times, the faith of the elections and, "if it does not always change the winner – said Vâlsan C. – then it definitely changes the percents" (Vâlsan, 1992: 15). Depicted

in many specialised papers as "the period before the day the citizen makes the political decision", the period of the election campaign was the moment when the candidates and the political parties presented their electoral offer, and the electors, according to the information they had received, pointed towards their electoral preferences, expressed by voting on the day of elections (Ghionea, 2014: 203).

The same as in the electoral fights from the previous years, both the political parties and the independent candidates, resorted to different means to send the electoral messages to the electors. We were easily able to notice the fact that they resorted to campaign sites, blogs, socialising networks – Facebook – through which they informed the potential electorate, and even their supporters, about the events they were going to attend, the manner in which these events were taking place and the approached topics. All these means constituted a way of rapid, systematic and precise information, offering the advantage of a higher speed for the accomplishments of their projects, with reduced costs too (Abraham, 1995: 294-303). The studies, realised over the last years on these modern means of socialising with the electors (especially the young ones, less interested in the European Parliament elections, or for the first time voting), have proved that they regard them as having a more credible character than the other traditional mass-media components (Stoiciu, 2000; Pripp, 2002; Beciu, 2002; Balaban, 2009; Foux, 2006: 38-39). A short incursion in the campaign sites, socialising networks, press and television, shows us that the dominant *political characters* were those of political people who were going to run for the presidential elections from November 2014, not those who ran for the European Parliament elections. This was the reason for which there appeared information saying that the ballot from May preceded, from the electoral point of view, the presidential elections from November 2014, playing the part of the preliminary test for the political parties (Bărbieru, 2014: 138). With a total number of 5,911,794 citizens who went to vote, from a total of 18,221,061 registered on the electoral lists, the rate of attendance was 32.44%, with 4.77% higher than in 2009, when had gone to vote 5,035,299 citizens (27.67%) from 18, 197, 316 registered. As regarding the valid votes, in 2014 there were validated 5,566,616 (94.16%) and 345,011 votes (5.83%) were declared null. Following the socio-demographic characteristics of the voters, we noticed the next aspects: 28.69% of the present voters were from the urban environment, and 36.88% were from the rural one (Canae, 2014:16); as regarding the age categories, the situation was presenting as following: 18-35 years old – 16%; 36-50 years old – 32%; 51-65 years old – 33%; 66 years old and over – 19% (Radu, 2009: 22).

Table 1. The results of the European Parliament elections from the 7th of June 2009

No	Electoral performer	Votes %	Mandates No.
1.	Social Democrat Party-Conservatory Party (PSD-PC)	31.07	11
2.	Democrat-Liberal Party (PDL)	29.71	10
3.	National Liberal Party (PNL)	14.52	5
4.	Democrat Union of the Hungarians from Romania (UDMR)	8.92	3
5.	Elena Băsescu	4.22	1
6.	Christian Democratic National Peasant's Party (PNȚCD)	1.45	-
7.	Abraham Pavel	1.03	-
8.	Civic Force	0.40	-

Source: BEC

Table 2. The results of the European Parliament elections from the 25th of May 2014

No.	Electoral performer	Votes %	Mandates No.
1.	Social Democrat Party – National Union for the Progress of Romania - Conservatory Party (PSD-UNPR-PC)	37.60	16
2.	National Liberal Party (PNL)	15.00	6
3.	Democrat-Liberal Party (PDL)	12.23	5
4.	Mircea Diaconu	6.81	1
5.	Democrat Union of the Hungarians from Romania (UDMR)	6.29	2
6.	Popular Movement Party (PMP)	6.21	2
7.	Dan Diaconescu Party of People(PPDD)	3.67	-
8.	Great Romania Party (PRM)	2.70	-
9.	Civic Force	2.60	-
10.	Romanian Ecologist Party	1.15	-
11.	National Alliance of Farmers	0.95	-
12.	Christian Democratic National Peasant's Party (PNȚCD)	0.89	-
13.	Capsali Pericle-Iulian	0.89	-
14.	Costea Peter	0.74	-
15.	Ungureanu Georgiana-Corina	0.49	-
16.	Green Party	0.34	-
17.	New Republic Party	0.27	-
18.	Social Righteousness Party	0.24	-
19.	Purea Paul	0.20	-
20.	Liga Dănuț	0.19	-
21.	Socialist Alternative Party	0.17	-
22.	Dăeanu Valentin-Eugen	0.15	-
23.	Filip Constantin-Titian	0.11	-

Source: BEC

If we trace the two statistics, the first thing that we can notice is the increase in number of the electoral performers, in 2014, as confronted to 2009. If in 2009, the competitors were six political parties and electoral alliances and two independent candidates, in 2014, in the electoral race, there were registered 15 political parties and eight independent candidates. Because the electoral threshold for the designation of the mandates was of 5% from the total number of valid votes, in 2009, five political parties and an independent adjudicated the European Parliament mandates, while in 2014, six political parties and an independent obtained the mandates. For both ballots, PSD, PC, PNL, PDL, UDMR obtained the European deputy mandates.

In 2014, the main political parties entered the competition with their well known images. PSD participated as part of an alliance, along with PC and UNPR, after PNL denounced the functioning protocol and left USL political alliance. The debates around "the national pride" and the promoting of Victor Ponta's image – Prime-Minister and president – were the main themes proposed by the electoral alliance, that were actually representing a national and not European concern.

The campaign of the alliance took place under three slogans: "USL is alive", "A strong Romania in Europe" and "Proud to be Romanian". PSD-UNPR-PC alliance won the elections

detachedly, obtaining 37.60% from the valid votes, a much lower rate that the party's leadership had hoped for (40%) (Mihalache, 2014: 8).

On the second place, at a considerable distance from the first place, there was PNL, which succeeded in surpassing the electoral threshold of 14%, which it had obtained in 2009. The main concept of the PNL campaign was "The Euro-champions". Under the slogan "Support the champions", the party presented its team, formed also from the European Members of the Parliament that were already filling the position and who were running for a new mandate (Mihalache, 2014: 8-9). The liberals' campaign was done under the traditional logo and colours – yellow and blue, detaching themselves in this way by their former partners, of USL alliance.

PDL, the third political party, approached the electoral campaign for the elections from the position of opposing party against USL and Ponta governing (Mihalache, 2014: 10). The campaign led by PDL, under the slogan "Europe in each household", had as a public image their own most known European MPs: Monica Macovei (former prosecutor and lawyer) and Theodor Stolojan (former Prime-Minister of Romania). PDL lost in percentage, as confronted to 2009, situating on the third place with 12.23% (835,531 valid votes), adjudicating 5 mandates. One of the surprises of the 2014 voting was the Popular Movement Party, which resulted after the dissidence from PDL. Founded only few months before the European Parliament elections, it participated, in a new formula, to the first electoral race under the slogan "We raise Romania".

As we can notice from the above statistic data, the elections from 2014 had the largest number of independent candidates. Generally, they militated for: the promoting of natural family (Iulian Capsali), Romanians' right to free medical and social assistance in Europe (Constantin Filip Tiţian) or the promoting of interests in the private business environment (Valentin Dăeanu).

The European elections were the only type of national voting from Romania, where the independent candidates registered success (Mihalache, 2014: 5). Therefore, in 2009, the mandate was obtained by Elena Băsescu, and Mircea Diaconu was the big surprise of the European Parliament elections from May 2014. The candidate obtained a good percentage, 6.8%, even bigger than that of some political parties, as PMP or UDMR. The electoral actor built his campaign on an "anti-system message" and succeeded in adjudging 379,582 votes. We considered to be interesting the characteristics of the social-democrat Mircea Diaconu, that were displayed as following: 78% in the urban environment and 22% rural environment; on age categories: 6% – 18-34 years old; 22% – 65 years old and over; 28% – 35-49 years old; 44% – 50-64 years old; on geographical areas: in the southern part of Romania, the actor obtained a percent of 37%; in Transylvania and Banat – 31%; and 16% for each Bucharest and Moldova (IRES, official source)

At national level, according to the information offered by the Central Electoral Office, the counties that registered the highest percentage were: Olt (46.57%), Ilfov (42.26%), Mehedinţi (40.17%), Teleorman (39.84%), Giurgiu (39.12%), and a lower percent was registered in Maramureş (25.31%), Ialomiţa (27.12%), Tulcea (27.66%), Timiş (27.94%) and Vaslui (28.22%). In Bucharest, the same official sources, noted a percent of 26.93% (BEC, official source). From the evidenced percents, there can be easily noticed the low voting presence, even for the counties with the higher percentage.

As concerning the situation of the European Parliament from 2014, at national level, we can reach to the next conclusions: the results were not the expected ones, for neither of the electoral performers. PSD-UNPR-PC Alliance obtained a rate below the percent of 40%, a situation observed also in case of PNL, PDL and PMP, which obtained much less than they had proposed at the beginning of the campaign. Altogether, 17 political formations and independent candidates succeeded in reaching the electoral threshold of 5%.

From national to local, Vâlcea County case

In Vâlcea County, the County Electoral Office received, for the elections, 373,088 voting papers; among these, 253,278 of them were annulled, and 112,068 were valid. 7,742 votes were declared null. There were 119,810 electors who came to voting (BEC, official source). Following the electoral hierarchy in the already mentioned county, we noticed that PSD-UNPR-PC Alliance won the election detachedly, obtaining 40.90% of the valid votes, on the second place being PNL, with 20.55%, a good return, if it is to consider the fact that the county organisation surpassed the country average number of the party, of 15%. As we can effortlessly observe, the voting difference, between the first and the second place, was double. At a smaller distance from the second place was PDL, which managed to obtain 12.78% from the total number of the valid votes (in Rm. Vâlcea Municipality, the party obtained only 10.77%, a result with 2 percents lower than that registered in the county). The surprise of Vâlcea County, the actor Mircea Diaconu, who surpassed the threshold of 6% (in Râmnicu Vâlcea Municipality he even reached 13 percents, and in the second Municipality – Drăgăşani – he passed over 8 percents).

The branch from Vâlcea of the Popular Movement Party reached a score of 5.56%, slightly under the national percentage of the political formations. Dan Diaconescu Party of People was excluded (3.26%), a party that at the local and parliamentary elections from the previous years had surpassed the Democrat Party and Civic Force (2.06%), and Great Romania Party had the same faith of exclusion (3.41%) (Vâlcea County Electoral Office, official source). On addressing the situation of the other political formations and independent candidates, they were distributed as following: Christian Democratic National Peasant's Party obtained, at the county level – 0.99%; Capsali Pericle-Iulian – 0.80%; National Alliance of Farmers – 0.62%; Romanian Ecologist Party – 0.57%; Socialist Alternative Party – 0.42%; UDMR – 0.38%; Ungureanu Georgiana-Corina – 0.30%; Costea Peter – 0.25%; Green Party – 0.21%; Social Righteousness Party – 0.21%; New Republic Party – 0.15%; Purea Paul – 0.14%; Liga Dănuţ – 0.13%; Dăeanu Valentin-Eugen – 0.11%; Filip Constantin-Tiţian – 0.05% (BEC, official source).

The percentage of 40.90%, obtained by PSD-UNPR-PC alliance, in Vâlcea County, proves that there was followed a direction traced for the rest of the country too, the alliance being able to impose itself in most of the county localities. It won in 72 of the 89 localities, PNL was the winner in 15 of the localities and PDL in two of them. Mircea Diaconu did not succeed in obtaining the majority in any of the county's localities. The socialists registered – according to the information published in Vâlcea County Electoral Office – record returns in the following localities: Prundeni (little over 70%), Buneşti (65%), Cernişoara (65%), Guşoeni (67%), Pesceana (69%), Voiceşti and Scundu (69%); PNL, led by the deputy Cristian Buican managed to impose himself in the northern part of the county in Perişani (73%), Titeşti (47%) şi Câineni (49%), but also at Băile Govora (45%), Grădiştea (43%), Măciuca (54%) and Orleşti (59%).

The same sources informed us that a special situation took place in Lungeşti, where PSD-UNPR-PC alliance and PNL, had a tied rate, each of the two groups getting 36.23% of the votes. PDL obtained bigger returns in two localities from the county: Oteşani (37.49%) and Mitrofani (35%). As regarding the Popular Movement Party, it passed over the percent of 10% in Ghioroiu and Voineasa (16%) (ziare.com, 2014). The situation in the cities and municipalities from Vâlcea County was presented this way: PSD-UNPR-PC alliance won in ten on the 11 localities: Râmnicu Vâlcea, Olăneşti, Călimăneşti, Drăgăşani, Ocnele Mari, Bălceşti, Berbeşti, Brezoi, Horezu and Băbeni; PNL won only in Băile Govora, and PDL had a good return at Berbeşti (19%) (ziare.com, 2014).

Teacher and municipality counsellor, Adina Dobrete – the candidate of PSD Rm. Vâlcea, place 21 on the electoral register of PSD-UNPR-PC alliance – started the election campaign with the clear intention to not just make promises to the electorate, but to explain

the people both the importance of the elections from May 25th 2014 and how "significant it is for Vâlcea County to have a representative in the European Parliament".

Her electoral campaign was a dynamic one, the candidate proving, above all, seriousness. Intensely mediatised, the performance of the PSD candidate came to be appreciated as a winning one, not only locally, due to the correctly led campaign, observing the law, and considering the respect and the common sense. The main topic for which the above mentioned candidate militated was "Oltchim Chemical Works". The company has been in insolvency since January 2013, it functions at approximately 23% of its capacity, with 2,300 employees. The future of the Chemical Works from Vâlcea – as Adina Dobrete declared – will be decided in the summer and all depends on the majority of the European Parliament. Having a left government at Bucharest and a left European Commission at Brussels too, we can create a successful team for Romania (Ramnic.ro, 2014). The results obtained by PSD Rm. Vâlcea were not satisfying for the staff of the campaign. "I have worked in a team and I am proud of the work I have invested in. I have traversed thousands of kilometres, over a thousand on foot. I thank the people from Vâlcea because they have chosen to vote, I thank them because they have trusted us and have put us on the first place" – said Adina Dobrete.

Table 3: For exemplification, we are presenting the percents obtained by the main electoral alliances and political parties in the cities and municipalities from Vâlcea County

No	Locality	PSD-UNPR-PC	PNL	PDL	PMP
1.	Rm. Vâlcea	35.26	10.75	10.80	8.76
2.	Băile Govora	29.39	45.18	4.10	2.84
3.	Băile Olăneşti	56.38	8.82	9.38	4.89
4.	Brezoi	29.42	22.64	10.96	8.90
5.	Călimăneşti	37.52	13.75	16.49	5.97
6.	Drăgăşani	44.90	13.82	10.00	6.15
7.	Horezu	31.89	28.17	15.67	4.36
8.	Ocnele Mari	51.86	9.57	15.99	2.79
9.	Băbeni	34.22	27.22	18.35	9.00
10.	Bălceşti	41.96	27.32	12.69	4.90
11.	Berbeşti	41.21	21.38	19.13	4.78

Source: BEC

The list of the Liberal National Party for the European Parliament elections started with Norica Nicolai, and the next *six positions were filled in by* Adina Ioana Vălean, Ramona Mănescu, Cristian Buşoi, Renate Weber, Eduard Hellvig, Mihai Ţurcanu. Some of these were designated due to their previous activity from the European parliament, others because of their activity inside the party. On the list, *Victor Giosan* from *Vâlcea* was also present, who had the 14th position *(viatavalcii.ro, 2014). The candidate is a graduate of the Faculty of Economic Planning and Cybernetics from Bucharest. A PNL member since June 1995, vice-president of the county organisation (1995-2009; 2013 – present), counsellor of Rm. Vâlcea Municipality*

(1992-2000), vice-mayor of the same municipality (1996-2000), Victor Giosan was remarked both through his political activity and his quality of state secretary at the General Secretariat of the Romanian Government(2005-2009). His experience and training, in the public management, financial and budgetary management were just few of his strengths that recommended him for filling a position on the list for the European Parliament elections. In his television appearances, but also in his interviews in the press, the candidate exposed few of the projects for which he entered the election campaign, briefing them as following: the consolidation of the European common market; the promoting of the Romanian culture – Romanian culture, as part of the European culture; the promoting of the tourism in *Vâlcea, especially the balneary one; the promoting of fruit growing, viticulture, zootechny and agriculture in Vâlcea, generally through specific European programmes* (Barbu, 2014: 1) etc.

In Vâlcea, the Liberal Democrat Party obtained very low returns. Five representatives of the party also entered in the European Parliament: Theodor Stolojan, Monica Macovei, Traian Ungureanu, Marian Jean Marinescu and Daniel Buda (who was registered on the list in the last moment). As regarding Ştefan Prală, the candidate proposed by PDL Vâlcea, he was on the list for the European Parliament on the 24th place. The county organisation of the Popular Movement Party considered that this party has the best list of candidates for the European Parliament elections. The president of PMP Vâlcea branch, Marian Mirea said that at PSD and PNL, "the candidates placed on eligible places are related or are friends with the leaders of the sustaining parties". Marian Mirea criticised harshly some people who he considered to be non-competitive, among which: "Ecaterina Andronescu and Maria Grapini, both of them with weak results as ministers and recognised for their non-reformist options". Moreover, Marian Mirea underline that PMP "promoted on the eligible places the candidates with results in the European Parliament, young people with a remarkable professional activity and people with a respectable professional career and policy". On the list with candidates proposed for the European Parliament elections, there was also a candidate from the region of Drăgăşani, Marius Condoiu (place 28), a lawyer, the vice-president of the PMP Vâlcea County and leader of the PMP Drăgăşani organisation (Bălteanu, 2014: 1). "The obtaining of European funds, the development of industry, the subvention for agriculture" were only few of the points on which the candidate from Drăgăşani insisted, for the European Parliament elections.

In the European Parliament, the party has two MPs: Cristian Preda (professor) and Siegfried Mureşan (BEC, official source). The two visited Vâlcea County during the election campaign. Initially, the actor Mircea Diaconu was on the list of the Liberal National Party at the European Parliament elections. Being excluded after the incompatibility decision, he ran as an independent, the former minister being able to reach an unexpected high percent at the national level – 6.81% – but also in the county, where he obtained a percent of 6.03%. At the county level, the hardest loss was suffered by Dan Diaconescu Party of People. Although the political formation has county and local counsellors, along with a member of the Parliament, who also fills the position of county leader, he obtained but 3.27% of the votes. The percentage placed the party way low below the returns from the local and parliamentary elections, a situation similar to that of other two parties: Great Romania, 3.41% and Civic Force, 2.06%.

We cannot reach a conclusion before presenting the data that refer to the situations registered in Drăgăşani Municipality (the second municipality from the county). At the elections from the 25th of May 2014, the voting presence was of 23%, below 2007 and 2009. Among the urban localities from the county, in Drăgăşani, PSD-UNPR-PC alliance obtained the highest returns – 44.8%. On the second place there were PNL, with 13%, at a distance of 4 percents from PDL – 9.8% and 5 percents from Mircea Diaconu – 8.3%.

We show below the situation of the European Parliament elections, registered in Drăgăşani Municipality.

Table 4. The situation of the European Parliament elections on the 25th of May 2014, in Drăgăşani Municipality, on constituencies

Const. no.	Name	Potential electorate	Valid votes
1.	Tudor Vladimirescu School	1,487	**300**
2.	Tudor Vladimirescu School	1,553	**360**
3.	I.C. Brătianu School	1,486	**192**
4.	I.C. Brătianu School	1,423	**265**
5.	Cămin Copii Al. Muncii (Fireplace Baby Al. Labour)	1,445	**271**
6.	I.C. Brătianu Garden	908	**139**
7.	Nicolae Bălcescu School	1,165	**239**
8.	Gib Mihăescu National College	1,563	**321**
9.	I.C. Brătianu School	1,176	**253**
10.	Birsanu School	974	**282**
11.	Rudari Garden	530	**176**
12.	Nicolae Bălcescu School	1,334	**279**
13.	Momoteşti School	809	**221**
14.	Capu Dealului School	814	**216**
15.	Zlătărei School	1,221	**286**
16.	**Total %**	**17,888**	**3,800**

Source: BEC

Table 5. The situation of the European Parliament elections on the 25th of May 2014, in Drăgăşani Municipality, on constituencies

Const. no	Name	Party				
		PSD	PNL	PDL	PMP	**Mircea Diaconu**
1.	Tudor Vladimirescu School	114	43	21	28	**29**
2.	Tudor Vladimirescu School	148	52	26	39	**46**
3.	I.C. Brătianu School	81	24	16	12	**17**
4.	I.C. Brătianu School	126	27	14	24	**30**
5.	Cămin Copii Al. Muncii (Fireplace	127	30	18	18	**40**
6.	I.C. Brătianu Garden	54	19	14	4	**18**

7.	Nicolae Bălcescu School	96	37	16	14	**27**
8.	Gib Mihăescu National College	143	35	34	20	**29**
9.	I.C. Brătianu School	105	20	59	15	**14**
10.	Birsanu School	157	24	29	10	**25**
11.	Rudari Garden	117	10	34	2	**1**
12.	Nicolae Bălcescu School	122	45	21	19	**20**
13.	Momoteşti School	98	30	22	10	**17**
14.	Capu Dealului School	107	17	37	7	**16**
15.	Zlătărei School	107	111	18	11	**9**
	Total %	**1,702** **44.78%**	**524** **13.78**	**379** **9.97%**	**233** **6.13%**	**338** **8.89%**

Source: BEC

The reports of observers, relating to the way in which the local elections took place, showed that: in neither of the polling stations the vote was suspended; there were no cases of lost or stolen stamps during the voting; there were not registered situations of voting papers removed from the polling stations, except for those necessary for the mobile ballot box; there were no cases of prolonging the voting process after 9 p.m.

Conclusions

At both national and local level (the case of Vâlcea County), the USD-UNPR-PC electoral alliance obtained in 2014 a good percent, keeping its leading position. The outrun parties, PNL and PDL, did not succeed in obtaining the electoral returns expected at the beginning of the campaign. The weak results obtained by PNL attracted a lot of resignations, both at national and local level. The new formed party, PMP, succeeded in adjudging two mandates, which represented a success for a party that was for the first time in such an electoral competition. At national level, and not only, the elections proved to be a failure from the point of view of the reduced attendance. They played the role of a preliminary test for the political parties, because they preceded, electorally, the presidential elections from November, the same year.

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Article Info

Received: January 14 2015
Accepted: February 18 2015

RSP • No. 45 • 2015: 160-172

ORIGINAL PAPER

Electoral Boundaries: Local Convergence Proof of Policying in Bălcești (2012)

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Abstract
From the political point of view, 2012 was a year full of surprises, with spectacular events, premiers and upheavals that led to important changes for Romania. Regarding the local elections, they had been expected with great interest both by the political class in Romania and the electorate, taking into consideration the PDL failure the governing process, the street protests and the discounted among all the categories of the Romanian society. In our study, wee took into account the local elections from Bălceşti, Vâlcea County, a small town, preponderantly agricultural, situated at the southern border of Vâlcea County. The result of the elections was not a surprise, the representative of USL, Ion Curelaru, being reconfirmed in the position of town mayor.

***Keywords*:** general elections, local elections, 2012, Bălceşti, Vâlcea County.

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For the first time in the post-communist Romanian policy, we came face to face with a special situation, when a leading coalition was replaced by an opposing one, just before the legislative elections. This fact was only partially the consequence of the parliamentary fights, a significant contribution having the social street movements that had started in 2012, resulted in protests and manifestations against PDL, the government and the president. These manifestations led to the decrease of trust in politicians and the parties that had been dominated the Romanian policy during the previous three years.

The main political parties and alliances that entered the election campaign from 2012 were: Social Liberal Union (USL), integrating of three parties: Social Democrat Party, National Liberal Party and Conservatory Party, the co-presidents being Victor Ponta and the liberal Crin Antonescu, the presidents of the first two political formations: the Social Democrat Party (PSD) led by the prime minister Victor Ponta, co-president of USL; the National Liberal Party (PNL), the only "historical party", led by Crin Antonescu, co-president of USL; the Conservatory Party (PC), led by Daniel Constantin; the Democrat-Liberal Party (PD-L), led at that time by Emil Boc; UDMR – the representative formation of the Romanian citizens of Hungarian ethnicity from Romania, led by the deputy Kelemen Hunor; the National Union for the Progress of Romania (UNPR) led by Gheorghe Oprea; Dan Diaconescu Party of People (PP-DD) founded and led by Dan Diaconescu, a populist party that lacked political identity and precise doctrine. This party was a surprise for the local elections from 2012, succeeding in changing the electoral expectations of the other political formations.

The purpose for the constitutions of the Social Liberal Union, in 2011, was that to become a strong political adversary against Băsescu's regime. It must be noticed that, although in most of the counties, the three political parties approached the elections under the common sigle of USL, there were plenty of counties where the social-democrats, the liberals and the conservatories kept their own sigle, or combined two parties (PSD+PNL, or PSD+PC, or PNL+PC) (Pavel, 2012: 22).

Following the evolution of the political parties during 2004-2012, we can observe that they had a fluctuant direction. Thus, PSD had, in the first two mandates, a descendant course. If at the local elections from 2004, it obtained 32,715, meaning 2,957,617 votes, in 2008, it obtained only 28.22%, signifying 2,207,745 votes. Unlike it, PNL had an ascendant trend, reaching in 2004 a percent of 15.99%, meaning 1,445,674 votes, and in 2008 it managed to obtain 18.64%, with 1,458,490 votes. The situation changed in 2012, once with the constituting of USL, a moment in which it was obtained a percent of 38.46% of the votes. An ascendant course had also PD, which in 2004 obtained 12.79% of the votes (1,156,867), and after the process of reorganization, through the fusion with PDL, in 2008 it obtained 28.38%, more exactly, 2,220,313 votes. In the election campaign from 2012, PDL knew a considerable decrease, obtaining only 15.44%. A descendant route can also be met at UDMR, PRM PC/PUR. UDMR registers a slightly descendant result, from 5.67% (513,165) in 2004 to 5.43% (425,218) in 2008; PRM - from 8.1% (732,935), four years before, to 3.65% (285,475) presently, and PC/PUR also falls from 6.01% (543,860) to 3.31% (258,891) (Buti, 2008; Buti, 2012: 35).

The spectacular evolution obtained by PDL, during 2004-2008, led to the winning of the elections from June 2008, even if the difference from the second place was relatively small. The austere measures: wages reduction, frozen pensions, increasing the retirement age, reduction of the number of employees from the public sector, reduction of public spending, income taxing, VAT increase, excise duties increase, the raise of other income

taxes, closing of hospitals along with the offending declarations as regarding the teacher, doctors, mothers or retired people, had as a result the loss of the Romanians' confidence in the governing party. The soft spot was constituted by the closing of hospitals. Even if the citizens accepted reduced income, increased taxes, they were not willing to accept their right to living, a fact that determined them to protest against the adopted political measure, which had been presented as a necessity by the government led by Emil Boc and Traian Băsescu in 2010. This decision led to the closing of 200 public hospitals from the 450 existing at that moment. The reasons for imposing this measure were petty: they were not able to have the standards of the hospitals from the university cities; they did not have and there was not possible to obtain the resources for their endowment with the necessary apparatus and the medical staff were insufficient for their proper functioning.

Moreover, the voting presence during 2004-2012, was a sinusoidal one. If in 2004, there were 9,043,072 people who reported to the polls, in 2008 the percent were reduced to 13.51%, being registered 7,812,148 valid votes. The wish for change of the existent political regime, from 2012, brought to the polls 58.9% of the people who had the right to vote, more specifically, 10,802,641, with almost ten percent more than four years earlier (Buti, 2008; Buti, 2012: 35).

Unlike the local elections from 2008, which had foreshadowed the passing from the extreme pluralism to the moderate pluralism, along with the phenomenon of tripartitism, the local elections from 2012 prefigured a return to the extreme pluralism. If the elections had been previously framed in two electoral systems, for the election of the local and county counsellors, there was used the proportional representation, with blocked lists, and for the election of the mayors and county councils leaders was practiced the majority electoral system, with uninominal voting, in 2012, the new element was represented by the organisation of a single ballot for the mayors and the county councils presidents (Bărbieru, 2013: 220-221).

At the electoral elections from June 2012, the options of the electors were presented as: 1,324 mayor mandates from USL (41.57%); 498 mandates for PDL; 378 – PSD; 264 – PNL; 203 – UDMR; 31 – PP-DD; 27 mandates – ACD (Daniel Buti, 2012: 35). According to the previously mentioned data, the victory of the formation led by Victor Ponta, Crin Antonescu and Dan Constantin was obvious, winning the elections detachedly and imposing itself to all the categories.

If studying the electoral hierarchy, we can observe, that at the national level, the political formation named USL obtained 38.46% of the valid votes, on the second place being PDL, with 15.44%, followed, at a noticeable distance, by PP-DD with 7.29% of the votes (Buti, 2012: 35). There were also registered situations when the political formations that had constituted USL to not have a common candidate. In this situation, in the electoral classification, there were included: PSD with 6.94% of the votes, PNL with 5.50% and PC and ACD, with subunit percentages. In order to counteract the force of USL, PDL was present, in its turn, in many localities from our country, as local alliances and different names: "The Alliance for Bacău", "The Alliance for Argeș and Muscel", "The Alliance for Constanța", "The Alliance for the Future of Brăila", "Popular-Christian Alliance" etc., most of them not being able to pass the threshold of 1% of the votes (Buti, 2012: 35).

According to the Central Electoral Office, the Social Liberal Union was situated in front of the classification, both for the Town Halls and Local Councils and County Councils and County Council presidents. In the case of the voting for the local councils, on the first place there was USL with 37.77%, followed by PDL with 14.47% PP-DD with 8.75%, PSD with 6.59%, PNL with 5.11% and UDMR with 4.30% of the votes (Buti,

2012: 35; Bărbieru, 2014: 193-194; Ghionea, 2014: 203). USL victory was confirmed for the county council presidents too. Thus, USL obtained 36 from the 41 mandates, on the next places being UDMR with 2 mandates, PDL with a mandate, the Liberal European Progressive Popular Electoral Alliance, a mandate, Christian Liberal Movement, one mandate (Buti, 2012: 35). In Vâlcea County, in the election campaign from 2012, the voting was of 61.65%, the county being on the 10th place in the classification for the reporting to the polls. Ion Cîlea was re-elected as the president of the County Council from USL. The valid votes in his favour were 112,833, meaning a percent of 65.57%. At a considerable distance, there was the PDL candidate, Jurcan Dorel, who obtained only 17.58%, signifying 30,262 of the votes. On the third place, there was the PP-DD candidate, Butnaru Florinel, with a percent of 6.81%, meaning 11,733 of the valid votes. As regarding the structure of Vâlcea County Council, the situation was as following: 21 USL councillors, 6 PDL councillors, 3 from PP-DD and 2 representatives of UNPR (The Official Gazette from Vâlcea County. Special edition – II, 2012: 5-6; Ghionea, 2014: 203).

Table 1. County counsellor 2012-2016 – Mandate

No. crt.	Surname and name	Profession	Function	Political affiliation
1.	Cîlea Ion	Engineer	President	**PSD**
2.	Andreianu Mihaela	Economist	County counsellor	**USL PSD/PNL-PC (PNL)**
3.	Belciu Ion	Economist	County counsellor	**USL PSD/PNL-PC (PSD)**
4.	Bulacu Romulus	Engineer	County counsellor	**PDL**
5.	Buşe Dumitru Gery	Engineer-Economist	County counsellor	**USL PSD/PNL-PC (PSD)**
6.	Buşu Adrian	Jurist	County counsellor	**USL PSD/PNL-PC (PSD)**
7.	Butnaru Florinel	Engineer	County counsellor	**PP-DD**
8.	Cârstea Aurelian	Teacher	County counsellor	**USL PSD/PNL-PC (PSD)**
9.	Filip Teodosie	Economist	County counsellor	**UNPR**
10.	Folea Gheorghe	Medic	County counsellor	**USL PSD/PNL-PC (PNL)**
11.	Grigore Petre	Jurist	County counsellor	**UNPR**
12.	Grigorescu Remus	Teacher	County counsellor	**USL PSD/PNL-PC (PSD)**
13.	Jinaru Adam	Engineer	County counsellor	**USL PSD/PNL-PC (PNL)**
14.	Liţă Ioana	Economist	County counsellor	**USL PSD/PNL-PC**

				(PSD)
15.	Lupu Alina	Administrative Science	County counsellor	**PDL**
16.	Marin Victor	Economist	County counsellor	**USL PSD/PNL-PC (PSD)**
17.	Militaru Claudia	Jurist	County counsellor	**USL PSD/PNL-PC (PNL)**
18.	Moise Iuliana	Engineer	County counsellor	**PDL**
19.	Nicolae Ion	-	County counsellor	**PP-DD**
20.	Oproaica Alexandru	Engineer	County counsellor	**USL PSD/PNL-PC (PSD)**
21.	Păsat Gheorghe	Engineer	County counsellor	**USL PSD/PNL-PC (PNL)**
22.	Persu Dumitru	Economist	County counsellor deputy-president	**USL PSD/PNL-PC (PSD)**
23.	Petrescu Remus	Engineer	County counsellor	**PDL**
24.	Pistol Bogdan-Alexandru	Economist	County counsellor deputy-president	**USL PSD/PNL-PC (PNL)**
25.	Pîrvu Constantin	Technician	County counsellor	**USL PSD/PNL-PC (PSD)**
26.	Poenaru Mircea-Constantin	Engineer	County counsellor	**USL PSD/PNL-PC (PNL)**
27.	Popescu Victor-George	Engineer-Physician	County counsellor	**USL PSD/PNL-PC (PNL)**
28.	Pralã Ştefan	Economist	County counsellor	**PDL**
29.	Rădulescu Constantin	Economist	County counsellor	**USL PSD/PNL-PC (PSD)**
30.	Simion Aurel	Engineer	County counsellor	**PDL**
31.	Stănculescu Victor-George	Jurist	County counsellor	**USL PSD/PNL-PC (PNL)**
32.	Tărăşenie Dumitru	Economist	County counsellor	**USL PSD/PNL-PC (PNL)**
33.	**Trancă Teodor**	**Jurist**	**County counsellor**	**PP-DD**

Source: The Official Gazette from Vâlcea County. Special edition – II, 2012: 5-6

A considerable difference between the first two competitors was also noticeable as regarding the establishing of the local councils, where the situation was: the reporting to the polls was of 65.76%, and of the 923 attributed mandates, on the first three places were USL, which obtained 302 mandates, PDL – 184 and the Electoral Alliance PSD-PNL Vâlcea – 122. As regarding the distribution of the mayor mandates: USL and the Electoral Alliance PSD-PNL won 74 of the 89 town-halls from the county, PDL – 8 mandates, PC – 3, UNPR – 2, independent candidates – 2. In Rm. Vâlcea Municipality, the position of mayor was obtained by Emilian Frâncu (USL), with a percent of 39.6%. On the second place there was Romeo Rădulescu (PDL), with 24.1%, followed by Eusebiu Veţeleanu (UNPR) with 23.5% and Ion Nicolae (PP-DD) with 4,9% (Ghionea, 2014: 206). In the electoral race for the town-hall of Bălceşti town, there were 8 candidates. The nomination files of the main political forces were registered in May 2012, at the County Electoral Office. In the race, for filling the position of mayor in Bălceşti, entered: *Ion Curelaru,* that time mayor, from the Social Liberal Union, *Aleca Constantin* from the Social Democrat Party, *Mircea Chirca* from UNPR, *Radu Aurel* from PP-DD, *Marin Văduva* from PRM, *Maria Petroşanu* from Civic Force, *Aurel Buşoiu* from PNŢCD and *Nicolae Gădoiu* from the Green Party.

The town of Bălceşti is situated at 44 km distance from Craiova Municipality, 86 km from Râmnicu Vâlcea, the capital of the county, and 52 km from Drăgăşani, at the southern border of Vâlcea County. Former agro-industrial centre, the commune of Bălceşti was declared town in 2002, according to Law no. 353 from the 6th of June (Official Gazette, 2002). In its structure entered the localities: Beneşti, Goruneşti, Chirculeşti, Ulicioiu, Irimeşti, Otetelişu, Preoteşti and Poieni, former villages, which are today districts of the new town administration. In Bălceşti, a small town, preponderantly agricultural, is difficult to prove people that you can do something good for them, as much as the funds are not sufficient and the projects are hardly approved. Nevertheless, Ion Curelaru, who has been filling the position of mayor since 2004, managed to implement some important works, meant to lead to the modernisation of the locality, which were urgently necessary for a town that was just starting a journey: the asphalting of streets and county roads, rehabilitation of the cultural centre, the pavement of streets, the building of playgrounds for children, the rehabilitation and modernisation of sidewalks and access streets, rehabilitation of schools and kindergartens, the building of a new sports halls at European standards.

The administrator *Curelaru Ion,* who had been an engineer before being a mayor, worked at the Agency for Payment and Intervention in Agriculture from Bălceşti. In the election campaign, he started as one of the favourites. His recommendations were the two previous mandates, during which he managed to implement most of the electoral promises. In front of his elector, he appeared with the slogan: *the prosperity of the locality and your (citizens') welfare*. He was depicted as "a modest and a person of few words. He likes to work and to demonstrate that he succeeded in doing, rather than talking about it" (Dinţoi, 2012).

During the election campaign, the USL candidate insisted on the achievements of his previous mandates: the asphalting of the County Road between Bălceşti and Preoteşti, on a distance of 12.5 kilometres, with 374 bridges, a work accomplished through the Regional Operation Programme, started in August 2010 and finished in October 2011. For the finalisation of this work, there were assigned total funds of almost 11.7 million lei. Among his other achievement, he also mentioned the asphalting of the communal road Bălceşti-Poeni, on a distance of 3.5 km, made in 2009. The investment value of this work

was of 3.3 million lei. Another necessary and useful investment was the rehabilitation of the sports hall, with a capacity of 150 seats, a work started in the fall of 2010 and finished in the fall of 2011. The total value of the work was of over 3.8 million lei, the funds being mostly given by the National Company of Investment.

Another extremely important work, in the area of the urban service and utilities developing, was represented by the rehabilitation of the town's water supply and sewage system. The project was in 2006, a Phare Programme of Economic and Social Cohesion, and was assigned the sum of 1.1 million euro, from which 1 million came from the granted funds by the European Community, and the difference of 133,205 euro was represented by the financial contribution of Vâlcea County council (Tănase, 2010). Using his own funds, he managed to asphalt the streets of Irimeştii de Jos and Bâlciului, 1,300 linear metres long; to introduce running water in the villages of Irimeşti and Beneşti, an investment on the Decree no. 7, which was began in 2008 and finished in 2011; to rehabilitate the cultural centre, an investment of 2.8 milliard of ROLs; to rehabilitate the sidewalks from the locality on a length of 650 square metres, a work for which were allocated 700 million ROLs. The temporary refuse collecting and depositing station was also finalised.

As regarding the plans for the future, the mayor Ion Curelaru mentioned as a priority the rehabilitation and the modernisation of all streets and sidewalks from the town centre; the introduction of running water and sewage on all the streets and areas, where it was not already present; the building of a system for using the renewable energy, on solar panels with a power of 8 megawatts. "I want to mention that we are registered in development master-plan and we are allocated 8.7 million euro. Therefore, by 2015, the water supply and the sewage system are going to be introduced in the last house of the locality. I intend that, according to Measure 1.2.5, to asphalt some commissioning roads from la Bălceşti to Sticlăreşti, Popeşti, field roads that connect the national road and the county roads. I want to clear the main roads, which should not be crossed by heavy cars or carts" (Dinţoi, 2012).

Among the projects that he proposed to finalise during the 2012-2016 mandate, there were also: the rehabilitation and the modernisation of the agro-alimentary market; the building of a 40 places nursery; the rehabilitation of the after-school kindergarten; the founding of a weekly fair; the applicability of the land laws and the solving of the litigations according to the competences and, the most important, the re-opening of the Town Hospital from Bălceşti. Both during the election campaign and in the previous mandates, the Mayor Ion Curelaru enjoyed all the support of Vâlcea County Council, the engineer Ion Cîlea, PhD, declaring: "I guarantee that his promises will come true".

The PP-DD candidate, *Radu Aurel*, an economist, graduate of "The management of public organisations" master courses, was among the equal chances candidates for filling the position of mayor, the proof being the fact that he was on the second place. Furthermore, he was one of the people who knew the situation in the town-hall, working as an economist at Bălceşti Town-Hall. The motivation for which he decided to run in the race was, according to him, the fact that he was convinced that he could change the city through dynamic acting. His slogan was very suggestive: "I want, I know and I can make a positive change. Give me the chance to prove it".

In the letter addressed to his electors, Aurel Radu announced that "it is the moment to say stop to indifference and to get involved as much as I can, in order to do something good for the community that I belong to and in the locality where we all live. I consider that we need a fresh and healthy beginning, to be able to look confidently and

proudly towards our and our children's future". He was also aware of the fact that "I cannot perform miracles, but I know that I can do a lot of things that are still wished and dreamt by each of us". In front of his electors, the PP-DD candidate presented his main objectives: the asphalting of streets, sidewalks and alleys from the entire city; the closing of the taking into possession of the farming and forest lands; the desilting and the arranging of the channels that carry the rain water; the opening of a permanent centre in the place of the former town hospital, and, in perspective, the re-opening of the hospital; the reorganisation of the locality's districts, so that the taxes paid by the citizens to correspond the utilities they enjoy; the creating of new parking spaces; the extension of the gas supplying network; the extension of the water supply and sewage; the extension of garbage collecting in the entire locality, and, for the blocks of flats, the arranging in their exterior area of some enclosed spaces; the creating of a bus terminal; the opening, under the subordination of the local Council of a local interest commercial society, whose main speciality to be building materials; the support given by the specialists from the town-hall to the citizens interested to have access to external or governmental funds; the rehabilitation of the stadium and the organisation of the football team; the rehabilitation of schools and kindergartens; the arranging of the sports field from the secondary school, with artificial grass and its enclosure; the reviving of the cultural and artistic life by creating a cultural–artistic assembly and the reorganisation of the music and dance traditional festival called „The songs of Olteţ"; the organisation of periodical meetings with the citizens from the villages, to talk the problems specific for that area and to look for solution together.

The candidate of the Democrat Liberal Party, *Aleca Constantin*, started the election campaign with a huge disadvantage for his credibility rate, a disadvantage determined by the unpopular actions of the party for which he was running. Graduate of Political Sciences Faculty and "National and Euro-Atlantic security" master courses, at the University from Craiova, he is a teacher of Civic Culture at "Petrache Poenaru" Technological High-School from Bălceşti. Considering that the position of mayor of Bălceşti was filled by a PSD candidate, his slogan that he entered the battle was "the solution is the change and the evolution". Among the promises that the teacher Aleca was trying to use to defeat his opponents, there are: the improvement of the communication with the citizens through the organisation of periodical popular meetings in every area, the displaying of the public interest information in more places from the town and the improvement of the communication between the town-hall's staff and the citizens for solving their problems; the creation of a multifunctional health centre in the building of the former hospital with permanent ER staff and the attraction of a higher number of specialised doctors; the opening of a consulting room, in the building of the former store from the village of Preoteşti; the identification, the establishing and the solving of conflicts of possession and the providing of consultancy for solving the problems related to property (the inheritance tax, leasing and the issuing of the title of property etc.); the sustaining of the development of micro-companies and micro-farms, the encouraging of new ones and the attractions of investors and programmes to create new jobs; the building of a playground for children, in the yard of Otetelişu Secondary School; the realisation of a platform for the temporary stationing of the buses and coaches from the town; the elaboration of new projects for the extension of the water supply and sewage in the areas that do not have these facilities; the rehabilitation of the civic centre, the solving of the problem with the rain water from the streets and sidewalks, the rearranging of the parks through the plantating of trees and ornamental plants, creation of

entertainment places; the solving of the problem with the rain water that affects Târgul Vechi, Piaţa, Delureni, the desilting of the entire sewage system from the town; the arranging of the sidewalks; the construction of bridges over the rivers Aninoasa and Pesceana; the constant functioning of the street lighting in the entire locality; the acquisition of machines for the prompt intervention in case of heavy snowing; the modernisation of the market, through the introduction of all the facilities (running water, sewage), the increasing in number of the stands for the farmers, the creation of a parking lot behind the market, a public toilet, the extension of public lighting inside the market, the arranging of the space for selling small animals and birds, the authorisation of dairy products from the local people; the modernisation of the football field and the reorganisation of Olteţu Bălceşti team; the reviving of the cultural activities, by organising a folk assembly, the support of the cultural activities of the children from "Petrache Poenaru" School; the rehabilitation of the buildings from "Petrache Poenaru" Technological High-School; the finalisation of the works from Otetelişu Secondary School; the rearrangement of the sports field from "Petrache Poenaru" Technological High-School; the creation of a transportation route for the children from the locality; the finishing of the asphalting for the road between Bălceşti and Poieni; the rehabilitation of Cârlogani-Chirculeşti-Palei road.Mircea Chirca (UNPR), Marin Văduva (PRM), Maria Petroşanu (FC), Aurel Buşoiu (PNŢCD) and Nicolae Gădoiu (PV) had a very small possibility to expose their electoral offers. They led discrete election campaigns, with reduced investments, because of the minor chances they had in front of the main candidates.

Table 2. Local elections-10th of June 2012. Local councils – Bălceşti

No.	Party	Votes			Mandates		
		No	% in aprox.	% in county	No	% in aprox.	**% in county**
		2.542	100.00	1.28	15	0.00	**0.00**
1.	Partidul România Mare	97	3.82	0.05	0	20.00	**0.28**
2.	Partidul Democrat Liberal	521	20.50	0.26	3	0.00	**0.00**
3.	Forţa Civică	25	0.98	0.01	0	0.0	**0.00**
4.	Partidul Naţional Ţărănesc Creştin Democrat	16	0.63	0.01	0	0.00	**0.00**
5.	Partidul Verde	19	0.75	0.01	0	0.00	**0.00**
6.	Partidul Poporului-Dan Diaconescu	536	21.09	0.27	4	26.67	**0.37**
7.	Uniunea Social Liberală	969	38.12	0.49	6	40.00	**0.56**
8.	Uniunea Naţională pentru Progresul României	359	14.12	0.18	2	13.33	0.19

Source: The Official Gazette from Vâlcea County. Special edition – II, 2012: 33-34

It is well-known the fact that, during the election campaign, the candidates enjoys the opportunity to make known their policy intentions through the media, blogs, social networks - Facebook, and under its own brochures, flyers, posters, bags, balloons, pens, shirts, etc. The parties shall exchange such messages shall submit their programs, promote their candidates, and get back the feedback as analysis, editorials, commentaries, reports. They are simultaneously available to the public, whose reaction is measured in surveys. So, the communication and the promotion are ways in which the population is informed about their political program and also to stimulate the interest in the tender policy (Mihalache, 2012: 73; Pripp, 2002: 101-102; Beciu, 1996; Beciu, 2002; Rus, 2002: 24; Rus, 2005; Thoveron: 1996; Ghilezan, 2000, Balaban, 2009a; Balaban, 2009b, Teodor, Nicula, 2012; Stoiciu, 2000; Foux, 2006). In the most cases, during the election campaign, the media have played an important, if not decisive, regarding the influencing election results. "If not always it changes the winner – noticed Vâlsan C. – then it certainly modifies some percentages" (Vâlsan, 1992: 15). The real confrontation, sometimes, became a personal attack. The election campaign did not lack, in this area of the country too, unpleasant events. There were registered assaults, aiming especially the mayor who was holding the position, Ion Curelaru. There were also small altercations between the competitive teams PSD and PP-DD. The result of the elections was not a surprise, the representative of USL, Ion Curelaru, being reconfirmed in the position of town mayor, and obtaining 35.58%, that is 937 of the valid votes. The surprise was represented by the unexpectedly high result obtained by the candidate of Dan Diaconescu Party of People, Aurel Radu, who came on the second place, with 23.88% (629 of the votes). On the third place was the PD-L candidate, Constantin Aleca with 19.59% (516 votes), followed by Mircea Chirca (UNPR) with 16.40% (432 votes), Marin Văduva (PRM) - 3.34% (88 votes), Maria Petroşanu (FC) - 0.53% (14 votes); Aurel Buşoiu (PNŢCD) - 0.41% (11 votes) and Nicolae Gadoiu (PV).

Table 3. The situation of the local election people from Bălceşti 2012-2016 mandates

No. crt.	Surname and Name	Profession	Function	Political affiliation
1.	Curelaru Ion	Engineer	**Mayor**	**USL** (PSD)
2.	Beiu Ion	Engineer	**Deputy mayor**	**USL** (PSD)
3.	Oprea Nicolae	Teacher	Local counsellor	**USL** (PNL)
4.	Marin Victor	Economist	Local counsellor	**USL** (PSD)
5.	Geica Marian Marius	Economist	Local counsellor	**USL** (PSD)
6.	Ioja Marian	Economist	Local counsellor	**USL** (PNL)
7.	Ionilete Robert Cosmin	Economist	Local counsellor	**USL** (PSD)
8.	Radu Aurel	Economist	Local counsellor	**PP-DD**
9.	Negri Iuliu Constantin	Technician	Local counsellor	**PP-DD**
10.	Şerban Maria	Teacher	Local counsellor	**PP-DD**
11.	Otea Cornelia	Teacher	Local counsellor	**PP-DD**
12.	Aleca Constantin	Teacher	Local counsellor	**PD-L**
13.	Filip Florin	Driver	Local counsellor	**PD-L**
14.	Tudor Gheorghe	Veterinary technician	Local counsellor	**PD-L**
15.	Chirca Mircea	Mecanical foreman	Local counsellor	**UNPR**
16.	Dolofan Gheorghe	Commercial worker	Local counsellor	UNPR

Source: The Official Gazette from Vâlcea County. Special edition – II, 2012: 8-9

If analysing the campaign local strategies of the candidates, we notice that their electoral offers were almost similar. Generally, they militated for infrastructure, playgrounds for children, introduction of water supply and sewage, reopening of the town hospital. The Government's decision to close, on the 1st of April 2011, some of the small hospitals, as a request of the International Monetary Fund for reducing the number of beds and financings, led to the closing of the hospital from Bălceşti. The hospital served for the entire south-western area of Vâlcea County, meaning over 50,000 people, Bălceşti being an important junction, a meeting point for the roads to Slatina, Râmnicu Vâlcea, Târgu Jiu and Craiova. This "abusive" measure was harshly contested by the authorities and unleashed a strong protest among the population. In April 2012, the mayor of Bălceşti was visited by the Minister's Counsellor Lazăr Iordache, the special delegate of the Health Minister and doctor, Vasile Cepoi, to check on the spot, the degree of covering of the specialised medical services in the area. The representative of the Health Minister was informed, and then he checked and noticed the justness of the imperative request for the reopening of the hospital. In his conclusions, he said: "indeed, in the south of Vâlcea County, there is no other medical unit to serve the population from the 9 localities that belonged to the former hospital and that the distance between these localities and the closest hospitals from Drăgăşani, Horezu or Rm. Vâlcea is of 50-100 km". He also noticed the poverty and the weak financial resources that the people from this part of the county had and still have reduced financial resources, making impossible the visit to the above mentioned hospitals, reason for which, the general mortality, the infantile mortality and the birth rate decreased considerably.

For the reopening of the hospital, engineer Ion Cîlea, the president of Vâlcea County Council, pleaded many times: *"I considered that it is my duty and that of the Mayor from Bălceşti to detail the problems in a memoire. This touching and entirely justified appeal, was sent by us to the Minister of Health at the end of the last week, addressing the request to initiate as soon as possible a bill as a Governmental Decision regarding the reopening of the hospital from the town of Bălceşti, curing in this way a painful wound that the GD no. 212 from the previous year had caused"* (Tănase, 2012).

The proof of the fact that this was not just an electoral promise is represented by the repeated intervention of the mayor Ion Curelaru, near the parliamentary members from Vâlcea, after his election as a mayor. Following these measures, he managed to obtain from them the commitment that he will be supported in this approach and that they will even accompany him for the Health Minister meeting. The mayor has already had several meetings with the leader of the county, president of Vâlcea County Council and, in the same time, the leader of the PSD members from Vâlcea, Ion Cîlea, with Georgeta Sălişte, the manager of Emergency Hospital from Vâlcea, with the leaders of DSP Vâlcea, and with other decisional factors. There are currently being made efforts, starting with this year, the Town-Hall of Bălceşti filing to the Ministry of Health the documents for the reopening of the hospital from the locality. The intention of the mayor is that, on the 1st of August 2015 the latest, to inaugurate the Multifunctional Centre of ER, opened non-stop, that will function near the Emergency County Hospital from Vâlcea (Nicolae, 2013).

We cannot end our discussions about the electoral year 2012, without mentioning the parliamentary elections organised on the 9th of December 2012. According to the information given by the County Electoral Office from Vâlcea, the victory of USL was a clear one too. For Senate, USL obtained 68.39% of the votes, being followed by PP-DD with 16% and ARD with 12.40%, while in the Chamber of Deputies, USL obtained 65.9% of the valid votes; PP-DD – 15.2% and ARD – 14.2%. In the Electoral Body from

Bălceşti, for the Chamber of deputies, the victory was of Dumitru Mazilu, the UNPR representative obtaining 65% of the votes, followed by Elena Holban, the representative of PP-DD, with 20% and Milorad Cumpănăşoiu from PDL, with 10,6%. For Senate, in South Vâlcea Electoral Body, Laurenţiu Coca (USL) obtained a new mandate of senator, with a percent of 66.3% of the votes, followed by Florinel Butnaru (PP-DD) with 20% of the votes and Ion Oprescu (PDL) with 11,2%. As a conclusion, we can say that on the political map of Romania, there appeared considerable changes after the local and parliamentary elections from 2012, USL being, by far, the great winner. For this time, PDL had to be satisfied with the second position, the democrat-liberals losing an important number of local administrations and county councils.

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Article Info

Received: January 8 2015
Accepted: March 12 2015

RSP • No. 45 • 2015: 173-185

ORIGINAL PAPER

The Impact of the Current Criminal Law upon the Offences Related to the Company's Law No. 31/1990

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Abstract
The new Criminal Code and Criminal Procedure Code have caused changes with a major impact on the entire Romanian legal system, influencing also the commercial sector here and there. In this sense can also be enlisted the adjustments made within some of the Articles from the Company's Law No. 31/1990 through the provisions of the Article 33 from the Law no. 187/2012 implementing the Law no. 286/2009 regarding the Criminal Code. The invoked amendments regard mainly under different aspect the offences regulated by the L aw no. 31/1990 and are substantiated, if applicable, by the introduction of new offences, by the rewording or repealing of the current offences. The offences previously mentioned in the Article 6 (1) from the Law no. 31/1990, which determine for a person not to hold the title of founder or member within a company's management, administration and control bodies were adjusted to the new types of offences from the current Criminal Code.

***Keywords*:** offences, companies with legal personality, Law no. 187/2012, Law no. 31/1190

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Current stage of the criminal legislation

Within the current study, one of the regulations relevant for the interferences of the commercial law with the criminal law is Law no. 187/2012 for the implementation of Law no. 286/2009 regarding the Criminal Code (in force since February 1st 2014). Within the national legal system this legislative act is a component of the major changes occurred in the criminal sector and in the criminal procedure sector. The current legislation bursts with novelty elements which concern numerous specific legal institutions. Among these, we can remind as examples: a new definition of the crime; the introduction of some new crimes, the annulment of some crimes or only the amendment of the integrant content; changes of perspectives in the sector of crimes (main, complementary or applied to legal entities), the causes which preclude the criminal liability and the causes which preclude or modify the execution of the punishment; the set-up of four procedural phases within the criminal trial; the acknowledgement of the justice of peace as legal body; the establishment of new defence rights and obligations; the disappearance of the appeal means against the judgements pronounced by the Court of First Instance (Antoniu, 2011:6-13; Răducanu, 2014: 112-115; Toader et al., 2014; Volonciu et al., 2014; Toader, 2014).

Concretely, certain breaches of some norms regulating social relations in the commercial sector are incriminated as crimes and consequently punished through norms of the criminal law. Such norms are present both in the criminal legislation, and also in the commercial one. Both the general principles of the criminal law, and also the particularity of the breached legal provisions are to be taken into account also for the implementation of the criminal sanctions for the breach of some norms regarding the commercial activity.

Coming back to Law no. 187/2012 we keep in mind that amendments of the provisions from Article 6 and Article 271 – 280 from the Companies Law no. 31/1990 are made through the Article 33. Mainly, the invoked amendments regard under different aspects the crimes regulated by Law no. 31/1990 and are materialized, if applicable, in the introduction of new crimes, in the reformulation or annulment of the existent crimes. The crimes previously nominated at Article 6 of the Law no. 31/1990, which determine that a person should no longer hold the title of founder or member of the management, administration and control bodies of any company, were adjusted to the new types of crimes from the current Criminal Code.

Amendment Article 6 paragraph (2) of Law No. 31/1990

Article 6 paragraph (2) reads: Persons that according to the law are not able or that were convicted for dishonesty offences against the patrimony, for corruption, embezzlement, forgery, tax evasion, crimes provided by the Law no. 656/2002 for the prevention and punishment of money laundry, and also for the set-up of some prevention and controlling measures related to the financing of terrorism acts, republished, or for the crimes provided by the Law no. 31/1990 cannot be founders.

Article 6 paragraph (2) from the Companies Law regulates two of the conditions which any person must observe in order to attain the title of founder at any company which has the regime determined by the this legislative act (Smarandache, 2010: 41). According to the reference provisions of Article 73^1 from Law no. 31/1990 the conditions are maintained also for the administrators, managers, members of the Board of Supervision

and Managing Board, the auditors or financial auditors of any company (Găină and Smarandache, 2010: 71, 74, 76).

One of the conditions is that of having full competence and the second one is identified by the literature as the conditions of honorability (Cărpenaru, 2012: 207; Popa, 2014: 113; Mihăilă, Dumitrescu, 2013: 83) or the special use incapacity regarding the right to become associates or to found companies (Cărpenaru, Piperea and David, 2014: 102), namely to acquire the above mentioned functions. On this occasion we approach only the condition of honorability out of the two mandatory conditions, such condition being thus targeted by the established amendments of the criminal law.

Practically, any natural person, namely the natural person representative of any legal person will be able to acquire the title of founder or any of the above nominated titles only if he/she was not convicted through a final sentence for the crimes restrictedly nominated by Article 6 of Law no. 31/1990. Practically, in the case of the founders, in default of honorability no person will not be able to sign as founder the company's Articles of association. For the other qualities targeted by the legislator, the election or appointment of any person who does not fulfil the condition of honorability is punished by the termination of rights.

The change made to the Article analysed through the provisions of the Article 33, paragraph (1) from Law no. 187/2012 sees the crimes themselves taken into account to determine if a person is honourable to hold the titles of founder, administrator, director, member of the supervision and management board, auditor or financial auditor within a company. The current version reveals that, if applicable, some crimes were dropped, some crimes were maintained as such or by using the group of crimes to whom new crimes belong in the present, namely were introduced.

Perjury can only be included in the category of the crimes which were dropped. Starting with the 1st of February 2014 the conviction of any person for such a crime does not affect her/his possibility to be founder of any company or to acquire and maintain the title of member of the company's management or control bodies.

Being different to the previous case, the absence of the crimes related to fraudulent management, misappropriation and fraud, and also the crimes from the Insolvency Law no. 85/2006 out of the restricted enlisting from the Article 6 paragraph (2) of Law no. 31/1990 is explained by its correlation with the current terminology from the New Criminal Code. More exactly, all these crimes are renamed in the New Criminal Code as "crimes against the patrimony by dishonesty". But this new phrase covers also other crimes, leading practically to the extension of the number of crimes in relation with what the current honorability of any person is analysed. Newly introduced crimes justified by the contemporaneous social-economic realities are the following: breach of trust by committing fraud against creditors, insurance frauds, embezzlement of public tenders and the real estate exploitation of a vulnerable person.

The previously exposed reasoning is valid also for the crimes of giving bribe and taking bribe. The formula established by the New Criminal Law, in order to designate the category of crimes into which the two are included, is that of *corruption crimes.* Also this time Article 6 paragraph (2) of the Law no. 31/191 is provided with the extension of the sphere of crimes motivated by the fact that the traffic of influence and influence peddling are also to be found into the category of corruption crimes.

For the crimes of forgery and use of forgery contained in the previous version of Article 6 paragraph (2) from the Companies Law, the legislator follows the same

mechanism to impose a terminological correspondence. More exactly, the two crimes were replaced with the phrase "crimes of forgery in deeds".

The introduction of new crimes into the content of Article 6 paragraph (2) was achieved both by using phrases which currently define groups of crimes (above described) and also by distinctively nominating a new crime. We consider the crime of tax evasion (for the structure and judicial content of the crime, Tudor, 2014: 1-88), previously absent but more than necessary in the present. The diversity and complexity of the causes for such crime (Cârlescu, 2012: 13-16), the method of committing it (Florescu, Bucur, Mrejeru, Pantea, Martinescu and Manea, 2013: 75-141), its implications and consequences justified its nomination in the sphere of crimes which determine the elimination of honorability for certain persons with statuses targeted by the Law no. 31/1990.

Not at last, there were mentioned certain crimes which within the context of the reform related to the criminal law either were not subject to any redenomination (which is the case of the embezzlement crime), or continued to be governed by special legislative deed not targeted or partially targeted by the amendments in the analysed legislative deed (which is the case of the crimes provided by Law no. 656/2002, namely those from Law no. 31/1990).

Amendments of Article 271 – Article 281 from the Law No. 31/1990

Through the Article 33 paragraph (2) - (15) from the Law no. 187/2012 most of the crimes regulated by Law no. 31/1990 was amended. Practically among the crimes contained in the Title VII of the last legislative deed, amendments intervened only regarding Article 276.

The amendments made by the current criminal law consist in synthesis in the introduction of new crimes, abolition or reformulation of the previously existing crimes, the acknowledgement of the status of active subject qualified for new persons, the reduction of the minimum and maximum punishments. Their analysis will reveal that the crimes from the Companies Law, although they are not the beneficiaries of some radical amendments, cannot be ignored in relation with their implications. The founder, administrator, general manager, manager, member of the supervision or management board or the legal representative of the company that (Article 271): a) present dishonestly untrue data on the set-up of the company or on the economical or judicial conditions of the company or hide dishonestly all or part of such data in the leaflets, reports or communications to the public; b) present dishonestly to the shareholders/associates an inaccurate financial status or with inaccurate data on the economical or judicial conditions of the company in order to hide the real status; c) refuse to put at the disposal of experts, in the cases and under the circumstances provided at Article 26 and 38 the necessary documents or prevent dishonestly to fulfil the assigned tasks are punished with prison between 6 months up to 3 years or with a fine.

The Law no. 187/2012 brought two amendments and an addition to Article 271 from the Companies Law. The amendments target the extension of the constituents from the category of the qualified active subjects of the crimes regulated by Article 271 and the criminal punishment which can be applied for their commission, while the addition targets the text of two of the three crimes established by the analysed Article.

Regarding the first amended aspect, the legislator practically corrected a lacuna existing in the previous text of Article 271 from Law no. 31/1990. Therefore, the possibility of being an active subject of the three crimes incriminated by this Article and

the members of the management bodies from the joint stock companies with a two tier corporate model was recognized. It is about the members of the supervision board and the members of the management board whose exclusion was lacking motivation. Moreover, a difference related to the judicial treatment lacking any grounds in relation with the members of the management body from private companies with a one tier corporate model was set up at the legislative level. In comparison with the previous version of the text, the phrase "general manager" was also replaced with the phrase "managing director". The intervention of the legislator is timely motivated by the fact that the Law no. 31/1990 did not regulate the title of managing director, but the executive title under the name of general manager (Gheorghe, 2013: 392-394; Angheni, 2013: 186-190) characteristic for the one tier corporate model of the private companies.

Regarding the second aspect amended, we keep in mind the reduction of the maximum limits (from 5 years to 1 year) and the minimum limit (from 1 year to 6 months) and also the introduction of the fine as an alternative punishment for the crimes established by the Article 271. The manner in which the criminal punishment is approached, including in the case of committing the analysed crimes, is one of the components from the reforming vision outlined by the current criminal legislation. This is obvious both in the case of some crimes regulated by the Law no. 31/1990 (Article 272, Article 272 , Article 273, Article 277, Article 279, 280 and Article 280), and also in the case of many crimes from the Criminal Code or from other special laws. If in the past the increase of the punishment limits provided by the law was seen as one of the main solutions for the increase of the criminal phenomenon in different areas, with the occasion of the recent amendment in the criminal law the legislator selected an antithetic mechanism of diminishing the punishing regime. As it was presented also in the doctrine, the preventive criminal policy (with the specific strategies and measures which are included in it) can have a stronger impact than the punitive criminal policy regarding the reduction of the crime rate and represents a more efficient solution in relation with the cost of the crime (Mușiu, 2013). The amendment of the legislative policy was based both on the failure of the inhibitor effect of increasing the criminal punishments, and also the significant difference determined to exist between the special maximum limit of the punishments for certain crimes, as they were provided by the law, and the quantity of the penalties applied in fact by courts of law, which was most often well below this maximum limit. Therefore, the new Criminal Code and its implementation law enable a customization mechanism of the more proper punishing treatment by reducing the minimum and maximum punishment limits, but also correlated with other efficient instruments for the customization and sanction of the punishments. Within this context, the judge has acquired more freedom of assessment related to the effective establishment of the punishment.

Regarding the addition made to Article 271 from Law no. 187/2012, this targeted out of the three regulated crimes only those incriminated by the letter a) and b). If applicable, the action or non-action which forms a significant element of the integrant content of those crimes has starting with the 1st of February 2014 a wider, but not necessarily clearer object. We have in mind the phrase "judicial (…) conditions".

Therefore, the qualified active subject provided by the law will be able to be convicted for the crimes from Article 271 letter a) – b) also when he/she presents or hides in bad faith untrue data in the documents and/or to the persons nominated by the legislator, including those which concern both the company's economic conditions and also its judicial conditions. In absence of an official approval on the phrase "judicial conditions" it is clear that the courts of law will be the ones which will assess the existence of such

conditions if they are pointed out. According to Article 272, the founder, administrator, general manager, director, member of the supervision and management board or the company's legal representative that: obtains on the account of the company shares of other companies for a price which obviously knows to be higher than their actual value, or sell on the account of the company shares owned by his/her for prices which he obviously knows to be lower than their actual value, for the purpose of obtaining any benefit to the prejudice of the company on his behalf or for other persons; uses in bad faith assets or the credit which the company benefits of, for a purpose contrary to its interests or for his/her own purpose or in order to favour another company in which he/she holds directly or indirectly interests; borrows under any form directly or through an intermediary from a company managed by him/her, from a company controlled by it or from a company controlling the company managed by him/her, the amount borrowed being higher than the limit provided at Article 444 paragraph (3) letter a), or determines one of these companies to grant him/her any warranty for own debts; breaches the provisions of the Article 183 is punished with prison from 6 months up to 3 years or with fine. No deed provided at the paragraph (1) letter b) will represent any crime if it was committed by the administrator, manager, member of the management board or the company's legal representative within some treasury operations between the company and other companies controlled by it or which control it directly or indirectly and no deed will provided at paragraph (1) letter c) will represent any crime if it is committed by a company which has the title of founder, and the loan is taken from one of the controlled companies or which control it directly or indirectly.

The analysed Article reveal two amendments to Law no. 187/2012. On the one hand, the components of the category related to the active qualified subjects of the crimes regulated in Article 272 paragraph (1) – (2) are extended and on the other hand, the punishment with imprisonment has the limits decreased and is doubled by the option concerning the punishment with penalty.

In the case of the first amendment, the legislator has done nothing else but to continue the undertaking initiated once the Article 271 was changed. We are witnessing therefore an extension of the category related to the persons that can be qualified active subjects of the crimes incriminated by Article 272 paragraph (1). If in the past only the founder, administrator, manager or the company's legal representative were punished, in the current version also the general manager, member of the supervision or management board have become subject to punishment. Due to identity issues, the argumentation exposed at Article 271 for this type of legislative amendment remains valid. The reformulation started at paragraph (1) is continued also in paragraph (2) of Article 272, the member of the management board being added up to the series of persons excluded from punishment when the deed is committed under certain circumstances.

The second amendment reveals a new materialization of the reformatting vision on the current criminal law. Practically, the punishment with imprisonment benefits of a recalibration of the minimum limit (from 1 year to 6 months) and of doubling it with the option for the penalty also for the crimes from the Article 272 paragraph (1). The founder, administrator, general manager, director, member of the supervision or management board or the company's legal representative that: a) spreads false news or uses other fraudulent means which result in the increase or decrease of the value for the company's shares or liabilities or any other titles which he/she hold, for the purpose of obtaining for himself/herself or for other persons any benefits to the prejudice of the company; b) collects or pays dividends under any form out of fictitious profits or which cannot be

distributed, in default of the annual financial statement or contrary to the results therein is punished with prison from one year up to 5 years.

Mostly, as in the case of the previously analysed Articled, the legislator continued both the extension of the components of the category for the active qualified subjects for the crimes incriminated by the Article 272 (by adding up the member of the supervision or management board), and also the reduction of the minimum limit (from 2 years to 1 year) and the maximum limit (from 8 years to 5 years) for the punishment with imprisonment. Therefore, the argumentation for this aspect, exposed in the analysis of the Article 272 preserves its validity also for the Article 272.

A new particularity is highlighted by the text from letter b) in the sense of adding the word "annual" to the phrase "financial statement". The statement proves useful considering the possibility of distributing the profit of a company also during the fiscal year based on the mid-term balance sheet and the monthly trial balance, by keeping a part of the profit which can be distributed, in order to cover the possible losses which might be registered until the completion of the fiscal year (Cărpenaru, 2012: 139, and for a contradictory opinion Mircea, 1999: 109). As a practical consequence, the current wording can be interpreted also in the sense of restricting the distribution of a company's profit based on the possible monthly or mid-term financial statements.

According to Article 273, the administrator, general manager, director, member of the supervision or management board or the company's legal representative that: issues shares with a value lower than their legal value or for a price lower than the nominal value or issues new shares in exchange of cash contributions before the previous shares are fully paid up; uses within the general assemblies the shares which are not subscribed or distributed to the shareholders; grants loans or advance payments based on the company's shares or sets up guarantees under other circumstances than the ones provided by the law; hands over to the holder of the shares before the term or hands over shares issued entirely or partially except for the cases determined by the law or issues shares to the bearer without them being fully paid up; does not observe the legal provisions regarding the cancelation of the shares not paid-up; issues bonds without observing the legal provisions or shares without comprising the mentions required by the law is punished with prison between 3 months up to 2 years or with a penalty.

As a whole, Article 273 regulates more criminal actions regarding the shares and bonds issued by the private companies (Cîrcei, 1992: 16-23; Duțescu, 2012: 23-34; Schiau, Prescure, 2009: 246-295, 494-503; Cucu, Gavriș, Bădoi, Haraga, 2007: 161-207, 398-406). The active qualified subjects for which a criminal liability can be involved are significant in this sense. And in the case of this Article, the Law no. 187/2012 brought a series of amendments which highlight a coherent approach of the legislator within the context of the crimes contained in the Law no. 31/1990 (Cărpenaru, David, Predoiu, Piperea, 2009: 1007-1048).

On the one hand, the members of the management and supervision board were introduced into the category of active subjects for all the crimes provided at the Article 273. As in the case of the crimes analysed above, we are facing another materialization of the policy to reduce the limits of the punishment with imprisonment and to introduce the penalty as an alternative punishment. In this sense, the punishment with the imprisonment from 3 months up to 2 years or with penalty replaced the previous punishment consisting in imprisonment from 6 months up to 5 years.

On the other hand, a new crime was added in letter c) Article 273. Presently the deed of the administrator, general manager, director, member of the supervision or

management board or the company's legal representative that […] sets up guarantees under circumstances other than those provided by the law has this regime and is punished consequently. This addition made to the Article 274 letter c) is justified by the complexity of business transactions which occur in reality between the company and the members of its management bodies. As a matter of fact, Law no. 3/1990 stipulated the regime of the operation for the set-up of warranties with the regulation of certain interdictions through Article 106 and Article 144 (Cărpenaru, Piperea and David, 2014: 339-340). Article 274 specifies that the administrator, general manager, director, member of the supervision or management board or the company's legal representative that: fulfils the decisions of the general assembly regarding the amendment of the company's form, its merger or division or the reduction of the registered capital before the expiry of the terms provided by the law; fulfils the decisions of the general assembly regarding the reduction of the registered capital without the members enforcing to perform the owed payment or without them to be exempt from the payment of the subsequent duties through the decision of the general assembly; fulfils the decisions of the general assembly regarding the amendment of the company's form, merger, division, dissolution, reorganization or reduction of the registered capital, without informing the judicial body or by breaching the interdiction established by the latter, in case a criminal proceeding was initiated against the company is punished with prison from one month up to one year or with a penalty.

Mainly, Article 274 highlights two amendments, namely: extension of the component parts for the category of the active subjects for the crimes which are regulated also by the introduction of a new crime at letter c).

The first amendment is nothing else but a new materialization of acknowledging the members of supervision and management board (management and controlling body at private companies with a two tier corporate model) as active qualified subjects of the crimes regulated by Article 274 from the Companies Law. As in the case of the other crimes already analysed, for which this type of amendments has occurred, the exposed argumentation maintains the identity validity of the reasoning.

The second amendment consists in recognizing and punishing as crime the deed of the administrator, general manager, director, member of the supervision or management board or the company's legal representative to fulfil the decisions of the general assembly regarding the amendment of the company's form, merger, division, dissolution, reorganization or reduction of the registered capital without informing the judicial body or by breaching the interdiction established by the latter, in case the criminal proceeding is initiated against the company. The grounds for the regulation of this new crime, different through its material element from the other two maintained, seem to be to avoid the fraud against persons entitled to capitalize some rights on the company's asset. Therefore, the legislator tries to anticipate the possible options which a company which is already under criminal proceeding, might access through its management and controlling body.

Secondly, we keep in mind also a small reformulation made in the text of the letter b) from Article 274. It is about the replacement of the term "associates" existing in the previous wording with the term "members". The intervention of the legislator is easy to explain considering that the correct title for the persons that can perform payments upon the set up and/or during the operation of the company is "associates" (for partnerships and limited liability companies), namely "shareholders" (for capital companies). The notion of member is rarely used by the Romanian legislator in order to designate the persons described previously within some entities which have the legal regime of the companies

(for example at credit unions). In most case the title of member is specific for the non-profit legal entities, but also for some profit legal entities (for example in unions, economic interest groups) and even for some associations of natural entities (for example family enterprise). The administrator, general manager, director, member of the supervision or management board is punished with prison from one month up to one year or with a penalty if he: a) breaches even through intermediaries or through fake deeds the provisions of Article 144; b) does not summon the general assembly in the cases provided by the law or breaches the provisions of the Article 193 paragraph (2); c) initiates operation on behalf of a limited liability company before the full payment of the registered capital is performed; d) issues negotiable instruments representing shares of a limited liability company; e) acquires shares of the company on its behalf in the cases forbidden by the law (Article 275). Furtheremore, the associate that breaches the provisions of the Article 127 or Article 193 paragraph (2) is also punished according to the paragraph (1).

In this case the criminal legislator limits his/her amending intervention only to the persons that ca be active subjects of the crimes nominated in the provisions of the Article 275 from the Law no. 31/1990. If in the past only the associate and the administrator (management body in partnerships, limited liability companies and capital companies with one tier corporate model) could be active subject of such crimes, presently the title was acknowledged also for the general manager, director, member of the supervision and management board. Therefore, the other components of the controlling and/or management body from the one tier corporate model and two tier corporate model of the capital companies have become subject to criminal punishment determined by Article 275. As in the case of the other crimes above analysed, the current legislative approach eliminated in a justified manner the discriminatory treatment previously existing between these controlling bodies. According to Article 277, the person that accepted or maintained the assignment as auditor contrary to the provisions of Article 161 paragraph 2 or the person that accepted the assignment as expert by breaching the provisions of the Article 39 is punished with prison from 3 months up to one year or with penalty. Furthermore, the decisions made by the general assembly based on a report of an audit or expert assigned by breaching the provisions of Article 161 paragraph (2) and Article 39 cannot be cancelled due to the breach of the provisions contained in these Articles. At the same time, the founder, administrator, director, executive manager or auditor exercising his/her functions or assignments by breaching the provisions of the present law regarding incompatibility is also punished according to paragraph 1. The intervention made upon the text of the Article 277 from Law no. 31/1990 is reduced, targeting only the extension of the criminal punishment. More exactly, if in the past the crimes established by this Article involved the criminal liability under the form of prison from 3 months up to 3 years, in its current form the legislator established the limits of the imprisonment punishment between 3 months and 1 year and introduced the penalty as an alternative punishment. Practically, the crimes determined by Article 277 objectify also the re-setting of the punishing treatment within normal limits as part of the vision of the current criminal legislation (Article 278 paragraph 2: the liquidator that perform payments to the associates by breaching the provisions of Article 256 is punished with prison from one month up to one year or with penalty).

Previous to the amendment introduced by Law no. 187/2012 the legislator used a reference norm for the identification of the criminal punishment which was applied to the liquidator as the company's legal representative during the stage of its liquidation. In its current form, the legislator maintained the same criminal punishment but preferred to

mention it expressly in the wording of the text from Article 278 paragraph (2). According to the provisions of Article 279, the shareholder or the holder of bonds that: transfers his/her shares or bonds on the name of other persons for the purpose of forming a majority at the general assembly to the prejudice of other shareholders or holders of bonds; votes at the general assembly in the case provided at the letter a) as owners of shares or bonds which in reality do not belong to him/her; in the exchange of an inappropriate material benefit undertakes to vote in a certain manner at the general assembly or not to take part in the voting process is punished with prison from 3 months up to 2 years or with penalty. Even more, determining a shareholder or holder of bonds to vote in a certain manner at the general assembly in the exchange of an inappropriate material benefit or not to take part in the voting process is punished with prison from 6 months up to 3 years or with penalty.

In the case of Article 279, the legislator resorts to adjusting the criminal punishment for the incriminated crimes and to reformulating some phrases within the content of the text. Regarding the first novelty element we keep in mind the reduction of the minimum limit (from 6 months to 3 months) and the maximum limit (from 3 years to 2 years) for the imprisonment punishment. The approach is explained by the current legislative trend regarding the reduction of the maximum punishment limits. Regarding the second element, in the current wording version the phrase "inappropriate material benefit" is preferred in exchange of the phrases "material benefit" and "amounts of money or other material benefit". In our opinion, the current form of the text has a wider understanding which makes it to cover more the previous phrases and leaves open the possibility to qualify as such also other cases with criminal potential which might occur within the judicial existence of a company. Article 280 regulates that the fictitious transfer of the shares or bonds held at a company for the purpose of committing a crime or for the purpose of circumventing the criminal prosecution or for the purpose of hindering the criminal prosecution is punished with prison from one year to 5 years.

And in the case of this Article the legislator preferred to diminish the penalty which will be applied to the incriminated criminal deeds, the punishment with prison from 2 up to 8 years being replaced with the one from one year up to 5 years. Additionally, an addition regarding the factual cases which will be able to be qualified as crimes based on this Article was introduced. Similarly to the other crimes which benefited of such amendment, the crime from the Article 280 also reflects the current legislative vision based on the fact that the previous praxis proved that not the excessive increase of the punishment limits is the efficient solution for fighting against crime. Thus, presently crimes is represented by the fictitious transfer of the shares or bonds held in a company including when this is performed for the purpose of committing a crime. At the same time, according to Article 280, the conscious use of a deregistered company for the purpose of becoming legally binding represents a crime and is punished with prison from 3 months up to 3 years or with penalty.

In comparison with the text previously regulated by Law no. 31/1990, the current Article 280 benefits of a simplified wording. One of the component parts from the deleted fragment referred to the method in which a company whose deeds were used in an incriminating manner, namely following the non-fulfilment of the obligations provided by the law, is deregistered. A company thus deregistered ceases to be a legal subject and its conscious use also for the purpose of becoming legally binding is punished according to the criminal law, being deemed a form of fraud against the contracting partners (Cărpenaru, David, Predoiu and Piperea, 2009: 1046). The second component of the

deleted fragment used a reference note to the Article 280, namely the conscious use of a company's deeds elaborated in the manner provided at the Article 280 was deemed a crime. To summarize it, the current version of the Article 280 punishes according to the criminal law the use of a deregistered company's deeds without any delimitation and the abrogation of the Article 280 justifies the deletion of the previous reference to the deeds resulting from the commitment of the deeds incriminated by this Article.

Presently the minimum limit (from 2 years to 3 months) and the maximum limit (from 8 years to 3 years) are reduced for the imprisonment punishment. Additionally, for the crime provided by the Article 280 the optional punishment with the penalty is set up.

The actions provided in the present title, if according to the criminal Code or some special laws they represent aggravating crimes, they are punished as such (Article 281). Regarding Article 281 from Law no. 31/1990 just one re-arrangement of the text can be kept in mind, its meaning remaining unchanged. We practically witness just to an improvement of the legislative technique, the meaning of the Article being that of maintaining the subsidiary character of the indictments from the Companies Law.

In other words, although the criminal provisions from the Companies law present the legal form of some criminal special norms which in collaboration with the provisions of the general law should be mainly applied, the Article 281 provides as clearly as possible that in case the same deeds as those determined as special crimes by the Title VII from the Law no. 31/1990 according to the general law will be punished as aggravating crimes, the provisions of the latter legislative deeds will be applied mainly and exclusively (Voicu, et al., 2008 : 36). Taking into consideration the context generated by the analysed Article, the idea according to which the implementation of the principle regarding the specialty of the criminal law (*lex specialis derogat legi generali*) should be performed more expressively, meaning to take into account first of all the principle of subsidiarity provided by Article 281 from Law no. 31/1990, is also expressed in literature (Manea, 2000: 116-117). Whereas the special law is declared subsidiary in relation with the provisions from the Criminal Code or from the special laws, the principle regarding the specialty of the criminal law is also explicitly removed, acknowledging that a more serious law should belong to the common law (Corlăţeanu, 2008: 48).

As in the past the effective method of implementing the text contained in the Article 281 generated a controversy in literature and led to a non-unitary judicial praxis (Kádár, 2011: 10-20), we agree that the legislator's intervention on this Article is not unfortunately made to lead to the settlement of the indoctrinating discrepancies and to an uniformization of the courts' praxis.

In conclusion, we keep in mind the abrogation of the Article 280 and Article 280 from the Law no. 31/1990 (Cărpenaru, David, Predoiu and Piperea, 2009: 1044-1046). Presently, during the existence of a company the circumstances which previously were incriminated by the two Articles abrogated, can represent at most criminal deeds punished according to other legislative acts.

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Article Info

Received: January 9 2015
Accepted: February 26 2015

RSP • No. 45 • 2015: 186-199

ORIGINAL PAPER

Modernization of Romanian Legislation on Preventing and Combating Cybercrime and Implementation Gap at European level

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Abstract
This study presents an analysis of the Romanian legislation on preventing and combating cybercrime within the context of harmonisation of law at European level. Before analysing the offences committed in cyberspace, it has been highlighted that the Romanian legislation has adapted to the provisions of cybercrime at the level of the European Union firstly under the aspect of the used terminology. Romanian legislation on cybercrime is included in the Criminal Code, as well as in Law no.161/2003 on some measures to ensure transparency to exercise public dignities, public office and business environment, prevention and to sanction corruption, specifically in Title III Preventing and combating cybercrime. The main purpose of this study is to establish whetther the Romanian legislation on cybercrime adapted to the provisions of the most important legal instruments at the level of the European Union, such as the Council of Europe Convention on cybercrime, Directive 2013/40/EU of the European Parliament and of the Council of 12 August 2013 on attacks against information systems and the Council Framework Decision 2001/413/JAI of 28 May 2001 regarding combating fraud and counterfeiting of non-cash means of payment.

***Keywords*:** cybercrime, Criminal Code, information system, computer data, cyberspace.

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Introduction

Romanian legislation on cybercrime is provided in the Criminal Code as well as in Law no. 161/2003 on certain measures to ensure transparency to exercise public dignities, public office and in the business environment, and to prevent and punish corruption, specifically in Title III Preventing and combating cybercrime.

Before analysing the offences committed in cyberspace, it must be highlighted that the Romanian legislation has adapted to the provisions of cybercrime at the level of the European Union firstly under the aspect of the used terminology (Simion, 2010: 1-3). Thus, at Article 181 of the Criminal Code are defined the notions of *information system* and *computer data*. Information system means "any device or set of devices interconnected or in functional relation, of which one or more ensure the automatic processing of data, with the help of an information program". Computer data means „any representation of acts, information or concepts in a form which may be processed through an information system". At the same time, according to Article 35 (1) (d) of Law no. 161/2003, in this category is also included any computer program which can determine the achieving a function by an information system.

Other important definitions are provided by Law no.161/2003 in Title III Preventing and combating cybercrime, Chapter I General provisions, Article 35. Therefore, in Article 35(1) are defined the following terms: *data related to information traffic* means "any computer data related to a communication carried out through an information system and produced by it, which is a part of the communication chain, indicating the origin, the destination, the route, the hour, the date, the size, the volume and the duration of communication, as well as the type of the service used for communication"; *the service provider* means "any natural or legal person providing the users the possibility to communicate through information systems; or any other natural or legal person processing or storing computer data for the persons mentioned above and for the users of the services provided by them".

Moreover, according to the provisions of Article 35 (1) (h) of Law no. 161/2003, by *security measures* it is understood the "use of some specialized procedures, devices or computer programs, with the help of which the access to an information system is restricted or forbidden for some categories of users". For example: access system (LOGIN) based on password and username, infrastructure to encrypt communications, of type PKI-Public Key Infrastructure, with public or private keys, digital signature applications, access equipments through Smart Card, reader/interpreter of fingerprints or retina (Hotca and Dobrinoiu, 2008: 575).

According to Article 35 (1) (i) of Law no.161/2003, by *pornographic material with minors* it is understood "any material depicting a minor having a sexually explicit conduct or an adult who is presented as a minor having a sexually explicit conduct or images which, although do not present a real person, simulate, in a credible manner, a minor having a sexually explicit conduct".

At the same time, for the purpose of this text of Law no.161/2003, pursuant to the provisions of Article 35 (2) it acts, without right, the person who is in one of the following situations: "is not authorized, under the law or a contract; exceeds the limits of authorization; does not have the permission, from the competent natural or legal person, under the law, to give, to use, to administer or to control an information system or to carry out scientific researches or to carry out any other operation in an information system".

Therefore, we noticed that it has been fully transposed the definition of the notion *without right* in Article 2(d) of Directive 2013/40/EU on attacks against information systems (Directive 2013/40/EU/ of the European Parliament and of the Council of 12 august 2013 on attacks against information systems, which was published in the Official Journal of the European Union, 14.08.2013, L218/8) in Article 35 (2) of Law no. 161/2003.

Analysis of the legislation on cybercrime in Romania

Offences committed in cyberspace are stipulated in the Special Part of the Criminal Code as it follows: in Chapter IV of Title II *Offences against the patrimony* were included the *frauds committed through information systems and electronic means of payment* (Articles 249-252) specifying that the "input, alteration or deletion of computer data, restriction of access to such data or any interference with the functioning of a computer system, with the purpose of procuring an economic benefit for oneself or for another person, if loss has been caused to a person, shall be punishable with imprisonment from 2 to 7 years" (Article 249 - Computer-related fraud).

Romanian legislator criminalised in Article 249 of the Criminal Code the offence of computer-related fraud as being the act of causing a patrimonial prejudice to a person by input, alteration or deletion of computer data, by restricting the access to computer data or by any interference with the functioning of a computer system, in order to obtain an economic benefit for oneself or for another person (Schjolberg and Ghernaouti-Helie, 2011: 5). With the development of information and communication technology, also increased the opportunities to commit offences against the patrimony. Therefore, the purpose of this Article is to criminalise any act of manipulation without right in processing data with the intent to operate an illegal transfer of property (Dobrinoiu et al., 2014: 313).

We notice the fact that the text of the offence of computer-related fraud comprised in Article 249 of the Criminal Code was adapted to the provisions of Article 8 (computer-related fraud) of the Convention of the European Council on cybercrime (Convention of the European Council on cybercrime). According to Article 250, *Carrying out of financial operations fraudulently*, carrying out of operations of cash withdrawal, uploading and downloading of an instrument of digital currency or transfer of funds, by use, without the consent of the holder, of an electronic payment instrument or the identification data which allows its use, shall be punishable by imprisonment from 2 to 7 years. paragraph (2) specifies that with the same punishment is sanctioned the carrying out of one of the operations stipulated at paragraph (1), by unauthorized use of any of the identification data or by use of fictional identification data. Moreover, according to paragraph (3), unauthorized transmission to other person of any identification data, with a view to carrying out one of the operations stipulated at paragraph (1), shall be punishable by imprisonment from one to 5 years.

The offence of carrying out financial operations fraudulently is part of the category of offences against patrimony which is based on fraud. This type of offence consists in the use of an electronic payment instrument, including also the identification data which allows its use with a view to carrying out the transfer of funds, other than those ordered and executed by financial institutions, cash withdrawals, as well as uploading and downloading of digital currency instrument (Sauca, 2005: 48). This act creates a state of danger for the trust which has to be given for the possession and use of electronic payment instruments.

In Article 180 of Criminal Code is defined the electronic payment instrument, as "an instrument which allows the holder to carry out cash withdrawals, uploading and

downloading of a digital currency instrument, as well as transfers of funds, other than those ordered and executed by financial institutions". Taking into consideration this definition, we have to notice that the notion of *digital currency instrument* is not defined anymore in the current criminal legislation, and the new definition of the *electronic payment instrument* is more comprehensive, covering also the notions of *payment instrument with access at distance,* as well as *instrument of digital currency* which were comprised in the old criminal legislation, specifically in Law no. 365/2002 on electronic commerce.

The offence of carrying out financial operations fraudulently, referred to in Article 250 of the Criminal Code transposed the provisions of Article 2 letter (d) (offences related to payments instruments) of the Council Framework Decision 2001/413/JAI of 28 May 2001 combating fraud and counterfeiting of non-cash means of payment (Council Framework Decision 2001/413/JHA was published in the Official Journal of the European Communities, 02.06.2011, L149/1).

Under the provisions, of Article 251, *Acceptance of financial operations carried out fraudulently*, *paragraph* (1), the acceptance of an operation of cash withdrawal, uploading and downloading of a digital currency instrument or transfer of funds, knowing that is carried out by using a digital payment instrument or is used without the consent of holder, shall be punishable by imprisonment from one to 5 years. paragraph (2) argues that by the same punishment is sanctioned the acceptance of one of the operations stipulated at paragraph (1), knowing that is carried out by the unauthorized use of any of the identification data or by use of fictional identification data.

Like the offence of carrying out financial operations fraudulently, the offence of acceptance of financial operations carried out fraudulently is meant to protect the integrity and security of electronic payments means (Trancă and Trancă, 2014: 30). This offence is correlative to the offence of carrying out financial operations fraudulently, so that operations carried out under the conditions of Article 250 of the Criminal Code are within the offence stipulated at Article 251 of Criminal Code accepted by the beneficiaries of payments made in this way or by institutions - issuers of electronic payment instruments (Dobrinoiu and Neagu, 2011: 278). Romanian legislator intended, by criminalisation of this act, to discourage traders willing to accept to make fraudulent payments, therefore contributing to the decrease of the phenomenon of counterfeiting of electronic payment instruments.

At the end of Chapter IV *Frauds committed through information systems and electronic payment means*, we noticed the fact that in Article 252 of Criminal Code, the Romanian legislator opted for the criminalisation of the attempt at all the offences in this chapter.

The offence of acceptance of financial operations carried out fraudulently, stipulated at Article 251 of Criminal Code transposed the provisions of Article 2 letter (d) (offences related to payment instruments) of the Council Framework Decision 2001/413/JAI of 28 May 2001 combating fraud and counterfeiting of non-cash means of payment.

In Chapter I of Title VI *Fraud offences* are included the following offences: Article 311 *Forgery of debt securities or payment instruments* stipulating that: forgery of debt securities, titles or instruments to make payments or any other titles or similar values shall be punishable by imprisonment from de 2 to 7 years and the interdiction to exercise some rights (paragraph 1). Moreover, paragraph (2) and (3) consider that should the offence stipulated at paragraph (1) concerns an electronic payment instrument, the

punishment is by imprisonment from 3 to 10 years and the interdiction to exercise some rights and he attempt is punishable.

The provisions of Article 311 (2) of the Criminal Code criminalises an aggravating variant of forgery of debt securities or payment instruments, specifically when forgery targets an electronic payment instrument. In the literature (Trancă and Trancă, 2014: 33) it was considered that the offence of forgery of electronic payment instruments represents a means-offence, intended, finally, to commit the act of carrying out financial operations fraudulently. Considering the minimum and maximum limits of punishment of the offence of forgery of electronic payment instruments as well as of the object-offence, stipulated by Article 250 of Criminal Code, we think that the Romanian legislator considered more serious the offence stipulated at Article 311(2) of the Criminal Code (Truichici, 2008: 8). We also have to notice the fact that the provisions of Article 2 letter (a) (offences related to payment instruments) of the Council Framework Decision 2001/413/JAI of 28 May 2001 combating fraud and counterfeiting of payment means were transposed in the text of Article 311 (2) of Criminal Code. According to *Article 313. Putting into circulation of falsified values, paragraph (1), (2) and (3),* putting into circulation of falsified values stipulated at Article310-312, as well as the receipt, possession or transmission, in order to put them into circulation, is sanctioned with the punishment stipulated by law for the offence of falsification through which they were produced; putting into circulation of falsified values stipulated at Articles 310-312, committed by an author or participant in the offence of falsification, is sanctioned with the punishment stipulated by law for the offence of falsification through which were produced; putting back into circulation of one of the values stipulated at Articles 310-312, by a person who found out, subsequent to the entry into its possession, that is falsified, is sanctioned with the punishment stipulated by law for the offence of falsification through which were produced, of which special limits are reduced to half and the attempt is punishable".

Romanian legislator created for the offence of putting into circulation of falsified values, a distinct incriminatory text and stipulated that also the perpetrator of the offence of falsification may be active subject of this act, but not of the act of possessing in order to put into circulation or of other modalities introduced in the text. The act of putting into circulation of falsified electronic payment instruments represents the correlative criminalisation of the act of falsifying these categories of values. Pursuant to Article 313 (1) of the Criminal Code, it constitutes offence of putting into circulation of falsified electronic payment instruments only in the case when the material object of the offence of putting into circulation is constituted by the falsified electronic payment instruments.

Therefore, the Romanian legislator criminalised all the possible modalities of committing this offence, including the act of putting back into circulation of electronic payment instruments by a person who found out the false character of electronic payment instruments exactly following its entry into possession.

Finally, we noticed that the provisions of Article313 of Criminal Code were adapted to the provisions of Article 2 letters (c) and (d) (offences related to payment instruments) of the Council Framework Decision 2001/413/JAI of 28 May 2001 combating fraud and counterfeiting of non-cash payment means. Article 314, paragraph (1)-(3) entitled *Possession of instruments in order to falsify values appreciated that: m*aking, receiving, possession or transmission of instruments or materials in order to serve for falsifying values or titles stipulated at Article 310, Article 311 (1) and Article 312 shall be punishable by imprisonment from one to 5 years; making, receiving, possession or transmission of equipments, including hardware or software, in order to serve for

falsifying electronic payment instruments shall be punishable by imprisonment from 2 to 7 years. Moreover, according to paragraph (3), it is not punished the person that, after committing one of the acts stipulated at paragraph (1) or paragraph (2), before discovering them and before preceding to the commitment of the act of falsification, gives the instruments or the materials held to judiciary authorities or informs these authorities about their existence".

The offence to possess instruments in order to falsify electronic payment instruments is regulated as a distinct offence in Article 314 of Criminal Code. Moreover, the offence to possess instruments in order to falsify electronic payment instruments represents a means-offence intended, in the end, to commit the act of falsifying electronic payment instruments. Besides the act of possession, in Article 314 (2) of Criminal Code are also criminalised the actions of making, receiving and transmitting equipments, including hardware and software, in order to falsify electronic payment instruments.

However, in Article 314 (3) of Criminal Code is stipulated a non-punishment clause, incident when the perpetrator gives these instruments to authorities or informs the authorities of their existence, before committing the act of falsification.

The provisions of the offence of possession of instruments in order to falsify electronic payment instruments comprised in Article 314 of Criminal Code were adapted to the provisions of Article 4 (offences related to specifically adapted devices) of the Council Framework Decision 2001/413/JAI of 28 May 2001 combating fraud and counterfeiting non-cash means of payment.

In Chapter III of Title VI *Offences of forgery* is stipulated at Article 325 the *computer-related forgery offence* (Article 325 *Computer-related forgery*, the act of inputting, altering or deleting, without right, of computer data or restricting, without right, the access to this data, resulting data not compliant with truth, in order to be used to produce a legal consequence, constitutes offence and shall be punishable by imprisonment from one to 5 years". This regulation intends to protect legal security by criminalising all the actions which may, by alteration of some data on a computer support, draw unwanted legal consequences for the persons who conceived, carried out, implemented or over whom the altered information manifests its effects (Corlățeanu and Căşuneanu, 2004: 216). Thus, the purpose of this criminalisation is to create a legal protection for documents in electronic format similar to documents on material support (i.e. on paper). Taking into consideration the form of computer data and the possibilities more and more advanced to process it in any state of existence, we appreciate that it would have been more appropriate, in the continuation of the dispositions of criminalisation rule in Romanian law, to be added the sentence *regardless whether or not the data is directly readable and intelligible*, which is part of Article 7 of the European Council Convention on cybercrime (Spiridon, 2008: 243) which is the equivalent text for Article 325 of Criminal Code. Therefore, we notice that the provisions of Article 7 (computer-related forgery) of the Council of Europe Convention of cybercrime were transposed in Article 325 of the Criminal Code.

The offence of computer-related forgery is an object-offence from the point of view of modality of commitment, having an illicit purpose of patrimonial nature (Savin, 2013: 238-239). Taking into consideration the new occurred offences, such as spam and identity theft which are not criminalised or are not criminalised expressly in the main legal instruments at the level of the European Union, we consider that these acts may be criminalised in Article 325 of Criminal Code. The acts of spam and identity theft consist in the creation of false Internet pages or addresses de which are transmitted to possible

victims, and once they are accessed, they allow the transmission of personal data (Trancă and Trancă, 2014: 44).

In Chapter VI of Title VII *Offences against public safety* are included *Offences against safety and integrity of information systems and computer data* (Articles 360-366), Article *360. Illegal access to information systems: a*ccess, without right, to an information system, shall be punishable by imprisonment from 3 months to 3 years or by fine; the act referred to in paragraph (1), committed in order to get computer data, shall be punishable by imprisonment from 6 months to 5 years. Moreover, should the act referred to in paragraph (1) was committed in relation to an information system to which, through some procedures, devices or specialised programs, the access is restricted or forbidden for certain categories of users, the punishment is imprisonment from 2 to 7 years".

The offence of illegal access to an information system is stipulated in a simple form, which prohibits the access without right to an information system (paragraph1) and two aggravating variants, consisting in committing the act referred to in paragraph 1 in order to obtain computer data (paragraph 2), as well as in committing the act referred to in paragraph 1 in relation to an information system to which, through some procedures, devices or specialised programs, the access is restricted or forbidden for certain categories of users (paragraph 3).

By "access" it is understood any successful interaction with an information system, computer or mobile phone, entering the whole or just a part of the information system (Spiridon, 2008: 238). Access without right to an information system means, for the purpose of Article 35 (2) of Law no.161/2003, that such person is in one of the following situations: is not authorized, under a law or a contract; exceeds the limits of authorization; does not have the permission, from the competent natural or legal person, pursuant to law, to give, use, administer or control an information system or to carry out scientific researches or to carry out any other operation in an information system.

Access means an "interaction of the perpetrator with concerned computer technology, through the equipments or different components of the concerned system" (Dobrinoiu, 2006: 149). Thus, the modality of illegal access of information system may be carried out closely, directly by the person in front of the information system, but it may also be carried out from distance, through communication public networks (Vasiu and Vasiu, 2011: 145).

Illegal access to an information system is a means-offence which is aimed at affecting the patrimony of natural or legal persons (Reed and Angel, 2007: 565-567). We consider that Romanian legislators should modify both the title and the content of Article 360 of Criminal Code (illegal access to an information system), as from the technical point of view illegal access is carried out within an information system, not to an information system.

We noticed that the provisions of Article 2 (illegal access) of the Council of Europe Convention on cybercrime, as well as the provisions of Article 3 (illegal access to information systems) of Directive 2013/40/EU on attacks against information systems were transposed in Article 360 of the Criminal Code (Gercke, 2012: 179). According to Article 361, *Illegal interception of a transmission of computer data, i*nterception, without right, of a transmission of computer data which is not public and which is intended to an information system, coming from such system or carried out within an information system, shall be punishable by imprisonment from one to 5 years. paragraph (2) stipulates also that by the same punishment is sanctioned the interception, without right, of an electromagnetic

emission coming from an information system, containing computer data which is not public".

By the criminalisation of this type of act it is intended to be protected the confidentiality of computer data which is in progress to be transmitted against their interception, without right. The offence is referred to in two legal variants: the first consists in the interception without right of a transmission of computer data which is not public and which is intended to an information system, comes from such system and is carried out within an information system (paragraph 1), and in interception without right of an electromagnetic emissions which contain non-public computer data, respectively (paragraph 2). This legal regulation protects transmissions of computer data within or between information systems, regardless how these are carried out (Picotti and Salvadori, 2008: 18-19).

The text of the criminal legislator referred to in Article 361 of the Criminal Code is a transposition of Article 3 (illegal interception) of the Council of Europe Convention on cybercrime. Unlike the text in the Council of Europe Convention on cybercrime (Article 3 – Illegal interception), Article 361 of Criminal Code does not expressly stipulate that the interception be made by technical means. In the literature it was considered that in digital environment interceptions can be made only by using such means (Vasiu and Vasiu, 2011: 151).

We also noticed that the provisions of Article 6 (illegal interception) within Directive 2013/40/EU on attacks against information systems were transposed in Article 361 of the Criminal Code. Moreover, the act of altering, deleting or deteriorating computer data or restricting the access to such data, without right, shall be punishable by imprisonment from one to 5 years (*Article 362. Alteration of integrity of computer data*). The legal regulation in Article 362 intends to protect computer data stored within information systems, intending to prevent alteration, deletion or deterioration of computer data or restriction of access to such data.

Taking into consideration what was presented above, we notice that the Romanian criminal law does not specify as alternative modalities the *destruction* or *suppression* of computer data like in the text of the Council of Europe Convention on cybercrime, but introduces a new modality of committing an offence, namely the *restriction of access* to computer data within an information system or within a computer data storage medium. Probably it was considered that *destruction* or *suppression* are operations similar to those of *deletion* and *deterioration* or are comprised in the broad sense of these terms (Spiridon, 2008: 241).

Thus, Romania transposed the provisions of Article 4 (data interference) of the Council of Europe Convention on cybercrime, as well as the provisions of Article 5 (illegal data interference) of Directive 2013/40/EU on attacks against information systems in the text of Article 362 of the Criminal Code. Also, Article *363 Hindering of the functioning of computer systems stipulates that* "the act of seriously hindering, without right, of the functioning of a computer system, by inputting, transmitting, altering, deleting or deteriorating computer data or by restricting the access to information data shall be punishable by imprisonment from 2 to 7 years". The offence of hindering of the functioning of computer systems intends to protect computer data stored within information systems against attacks of computer piracy or other malicious activities which have as objective to bring into non-functioning information systems. Unlike the offence regulated in Article 362 of the Criminal Code, the focus is here on the effect the actions on computer data have for affected information systems (input, transmission, alteration,

deletion, deterioration, restriction of access) (Romanian Information Technology Initiative and Romanian Government, 2004: 61).

The authors of the Council of Europe Convention on cybercrime left to the discretion of each Member State to acquire and interpret the notion of *serious hindering* (Vasiu and Vasiu, 2011: 159). However, the Romanian legislator does not provide any criterion to be able to appreciate if hindering was serious or not. Thus, in these circumstances, we consider that the task of appreciating if the hindering is serious or not will be left for the law courts.

Serious hindering must be committed *without right*, so that it will not exist when the interference into an information system is allowed or authorised (e.g. testing of the security of information system). The provisions of Article 363 of Criminal Code are inspired from the provisions of Article 5 of the Council of Europe Convention on cybercrime. Thus, unlike the text of the Council of Europe Convention on cybercrime, we notice that the Romanian law does not retain as alternative modalities the *endangering*, *alteration* or *suppression* of computer data and introduces a new modality, that of *restriction* of access to this computer data. We consider that the action of *suppression* of computer data, which is the equivalent of a destruction of computer data, should have been retained as alternative modality to commit the offence along with the *endangering*.

Besides the provisions of Article 5 (system interference) of the Council of Europe Convention on cybercrime, which were transposed in Article 363 of the Criminal Code, the Romanian legislator also transposed in Article 363 the provisions of Article 4 (illegal system interference) of Directive 2013/40/EU on attacks against information systems. Article *364. Unauthorised transfer of computer data stipulates that u*nauthorised transfer from an information system or from a computer data storage medium shall be punishable by imprisonment from one to 5 years.

The offence of unauthorised transfer of computer data is regulated in a variant-type with two assumptions, consisting in the unauthorised transfer of computer data from an information system or from a computer data storage medium. In the literature (Trancă and Trancă, 2014: 55) it was considered that the unauthorised transfer of computer data is a criminalisation which complements those of access without right from an information system and interception without right of a transmission of computer data.

The provisions of Article 364 of Criminal Code were adapted to the provisions of Article 3 (computer-related offences) of the Council Framework Decision 2001/413/JAI of 28 May 2001 combating fraud and counterfeiting of non-cash means of payment. Article *365. Illegal operations with computer devices or programmes* provides that the act of the person that, without right, makes, imports, distribute or makes available, under any form: computer devices or programmes conceived or adapted in order to commit one of the offences referred to in Articles 360-364; passwords, access codes or other similar computer data allowing total or partial access to an information system, in order to commit one of the offences referred to in Articles 360-364, shall be punishable by imprisonment from 6 months to 3 years or by fine.

By Article 365 of the Criminal Code, the Romanian legislator intends to limit the access to the tools (computer devices, programmes, passwords, access codes) allowing to commit the offences regulated by Articles 360-364 of the Criminal Code.

The offence of illegal operations with computer devices or programmes criminalises acts similar to those referred to in Article 314 (2) of the Criminal Code. Due to the overlap of activities in the field of new technologies developed with a view to falsifying electronic payment instruments, in judicial practice was identified a

concurrence of several offences in one action between the offence stipulated at Article 314 (2) of the Criminal Code in the modality of transmission of hardware and software equipments and the offence stipulated at Article 365 (1) letters (a) and (b) of the Criminal Code (Trancă and Trancă, 2014: 59).

The text of Article 4 (offences related to specifically adapted devices) of the Council Framework Decision 2001/413/JAI of 28 May 2001 combating fraud and counterfeiting of non-cash means of payment, as well as the texts of Article6 (misuse of devices) of the Council of Europe Convention on cybercrime and Article 7 (tools used for committing offences) of Directive 2013/40/EU on attacks against information systems were transposed in Article 365 of the Criminal Code. Pursuant to the provisions of Article 366 of the Criminal Code, the attempt to the offences comprised in Articles 360-365 is punishable.

In Chapter I of Title VIII *Offences affecting some relations regarding social cohabitation* was also included the *offence of child pornography* (Article 374) arguing that producing, possessing in order to expose or distribute, procuring, storing, exposing, promoting, distributing, as well as making available, in any way, pornographic materials with minors, shall be punishable by imprisonment from one to 5 years. According to the same author, should the acts referred to in paragraph (1) were committed through a computer system or a computer-data storage medium, the punishment is from 2 to 7 years and accessing, without right, of pornographic material with minors, through computer systems or other means of electronic communications, shall be punishable by imprisonment from 3 months to 3 years or by fine.

Increased danger of acts of child pornography, as well as the necessity to ensure a maximum protection of social relations concerning principles of morality determined the Romanian legislator to establish a special regime of criminalisation and sanctioning of these infringements (Dobrinoiu and Neagu, 2011: 748). The offence is referred to in Article 374 of the Criminal Code in a variant-type, an aggravating variant and an attenuated variant.

It is considered variant-type, pursuant to paragraph 1 of Article 374 "Producing, possessing in order to expose or distribute, procuring, storing, exposing, promoting, distributing, as well as making available, in any way, of pornographic materials with minors". It constitutes aggravating variant, pursuant to Article 374 (2) "should the acts referred to in paragraph (1) were committed through a computer system or a computer-data storage medium". It constitutes attenuated variant, pursuant to Article 374 (4) "accessing, without right, pornographic materials with minors, through computer systems or other means of electronic communications".

I noticed that the provisions of Article 374 of Criminal Code appear in the text of Article 9 (offences related to child pornography) of the Council of Europe Convention on cybercrime. The offence referred to in Article 374 of Criminal Code is at the limit between the offences committed with the help of information systems and those committed through information systems (Féral-Schuhl, 2010: 980-981).

The text of Article 374 of Criminal Code was also adapted to the provisions of Article 5 (offences concerning child pornography, in paragraph 3 being stipulated the offence to obtain, intentionally, through information and communication technology, the access to child pornography) of Directive 2011/92/EU on combating the sexual abuse and sexual exploitation of children and child pornography (Directive 2011/92/EU was published in the Official Journal of the European Union, 17.12.2011, L335/1), as well as to the provisions of Article 20 (offences concerning child pornography, at paragraph (1)

letter (f) being stipulated the offence of knowingly obtaining access, through information and communication technologies, to child pornography) of the Council of Europe Convention on protection of children against sexual exploitation and sexual abuse (Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse) of the year 2007.

In Chapter VIII of Title I *Offences against the person* was also included the *offence of corruption of children for sexual purposes* (Article 222): the proposal, by an adult, to meet a minor who has not reached the age of 13, for the purpose of committing one of the offences established in accordance with Article 220 or Article 221, including when the proposal was made by means of transmission at distance, shall be punishable by imprisonment from one month to one year or by fine.

The offence provided for in Article 222 of the Criminal Code in one variant-type consists in the act of an adult to propose to a minor who has not reached the age of 13 to meet, for the purpose of committing one of the offences referred to in Article 220 (sexual act with a minor) or Article 221 (sexual corruption of minors), including when the proposal was made through means of transmission at distance (Sheldon and Howitt, 2007: 142-143). This criminalisation also occurred in Romanian legislation because of the increase of the phenomenon of sexual abuse on minors, following their meeting with adults in the offline environment whom they knew in the cyberspace. Thus, this new criminalisation in the Romanian legislation refers to the preparation of minor to have sexual acts of any nature for the purpose of obtaining sexual satisfactions. The perpetrator, for the purpose of reaching his aim, first tries to befriend with the minor, by drawing the minor into discussing intimate matters, and gradually exposing the child to sexually explicit materials in order to reduce inhibition about sex (Dobrinoiu et al., 2014: 185). Moreover, the text of Article 222 of the Criminal Code stipulates that the proposal of perpetrator with a view to corrupting minors for sexual purposes be also achieved through information and communication technology.

The offence of corruption of minors for sexual purposes or solicitation of minors for sexual purposes (grooming), as it is used in Directive 2011/92/EU on combating the sexual abuse and sexual exploitation of children and child pornography, as well as in the Council of Europe Convention on protection of children against sexual exploitation and sexual abuse of 2007 is a very often committed offence in cyberspace (Clough, 2010: 248-250).

Following the carried out analysis, we noticed that the provisions of Article 6 of Directive 2011/92/UE on combating the sexual abuse and sexual exploitation of children and child pornography, as well as the provisions of Article 23 of the Council of Europe Convention on the protection of children against sexual exploitation and sexual abuse, which regulates the *solicitation of children for sexual purposes through information and communication technology*, were almost entirely transposed in Article 222 of the Criminal Code.

In Chapter VI of Title I *Offence against the person* was also included the *offence of harassment* (Article 208) arguing that: the act of an individual who, repeatedly, stalks, without right or a legitimate interest, a person or mnitors his/her house, workplace or other places where he/she goes, thus causing a state of fear, shall be punishable by imprisonment from 3 to 6 months or with fine; making of phone calls or communications by means of distance communication, who, by frequency or content, causes fear to a person, shall be punishable by imprisonment from one month to 3 months of by fine, if the act does not

constitute a more serious offence; criminal action is initiated upon the prior charge of the injured party".

The offence of harassment is stipulated in a variant-type and an attenuated variant. Thus, the variant-type, pursuant to paragraph 1 of Article 208 of the Criminal Code refers to the act of that individual who, repeatedly, stalks, without right or a legitimate interest, a person, or monitors his/her house, workplace or other places where he/she goes, thus causing a state of fear. At paragraph 2 of Article 208 of the Criminal Code is stipulated the attenuated variant, which refers to making phone calls or communication by means of transmission at distance, which, by frequency and content, cause fear to a person.

Once with the development of Internet and especially with the use of social networking, new forms of harassment occurred: cyberstalking and cyberbulling. Cyberstalking is a form of harassment by information systems of adults through electronic mail, groups of discussions, instant messages, which involve a physical threat which induces to the victim a feeling of fear (Moise, 2011: 26-27). Cyberbulling is a form of harassment through information systems of minors (Vasiu and Vasiu, 2011: 234).

As cyberstalking and cyberbulling are not expressly stipulated within the legal instruments in the field of cyberspace at the level of the European Union, the Member States of the European Union began to elaborate specific regulations to criminalise the two forms of harassment or to elaborate provisions that comprise certain forms of harassment by electronic communications along with the traditional forms of harassment. The last variant is also the choice of Romanian legislators to regulate the offence of harassment in Article 208 of the Criminal Code.

The text of Article 208 of the Criminal Code adapted to the provisions of Article 3 (offences related to sexual abuse) of Directive 2011/92/UE on combating sexual abuse and sexual exploitation of children and child pornography, as well as to the provisions of Article18 (sexual abuses) of the Council of Europe Convention on the protection of children against sexual exploitation and sexual abuse.

Offences related to infringements of copyright related rights (Article 10 of the Council of Europe Convention on cybercrime and Articles 2, 3, 4 and 6 of Directive 2001/29/EC on the harmonisation of certain aspects of copyright and related rights in the information society) are referred to in Article 139 index number 6-Article 143 of Law no. 8/1996 (Law no. 8/1996 regarding copyrights and related rights which was published in the Official Gazette of Romania no. 60 from the 26th of March 1996) on the copyright and related rights.

Conclusions

Taking into consideration the carried out analysis, we notice that the Romanian legislation on cybercrime adapted to the provisions of the most important legal instruments on preventing and combating cybercrime at the European Union, such as the Council of Europe Convention on cybercrime, Directive 2013/40/UE of the European Parliament and of the Council of 12 August 2013 on attacks against information systems and Council Framework Decision 2001/413/JAI of 28 May 2001 combating fraud and counterfeiting of non-cash means of payment.

As for the new offences which are committed in cyberspace and which are not regulated expressly in the Romanian criminal law legislation, we consider them liable to be criminalised by the following existent provisions: spam could be criminalised by the provisions of Article 325 and Article 363 of the Criminal Code; phishing could be criminalised by the provisions of Article 249 of the Criminal Code; data theft could be

criminalised by the provisions of Article 325 and Article 364 of the Criminal Code; cyberstalking could be criminalised by the provisions of Article 208 of the Criminal Code; cyberbulling could be criminalised by the provisions of Article 208 of the Criminal Code; denial of Service -DOS- could be criminalised by the provisions of Article 362 of the Criminal Code.

Romania signed the Council of Europe Convention on cybercrime on 23/11/2001 and ratified it on 12/05/2004 by Law no. 64/2004 (Law no. 64/2004 regarding the ratification of the Convention of the European Council on cybercrime which was published in the Official Gazette of Romania no. 343 of 20th of April 2004) on the ratification of the Council of Europe Convention on cybercrime.

Acknowledgement

This work was supported by the strategic grant POSDRU/159/1.5/S/141699, Project ID 141699, co-financed by the European Social Fund within the Sectorial Operational Program Human Resources Development 2007-2013".

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Article Info

Received: February 25 2015
Accepted: March 20 2015

RSP • No. 45 • 2015: 200-210

ORIGINAL PAPER

Taxation Policies: Evidence from Flat Tax vs. Progressive Tax Pathways

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Abstract
The challenging economic times are not yet over. Therefore, after a brief history of the evolution of tax, in this Article we tried to point out the current challenges related to the tax system. The study performed made us conclude that the actual problem of taxation today is not necessarily related to the method of taxation, progressive or proportional, but to the dimension of the resources that can be drawn to the budget so that the degree of population's satisfaction would be as high as possible. The decision to progressively or proportionally tax is a matter primarily of ethics and, complementarily, of efficiency.

Keywords: taxation, tax equality, tax equity, flat tax, progressive tax.

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Introduction

The tax and taxation have been and are subjects that capture citizens' interest to the greatest extent. Because of this, along the various historical stages of the evolution of human society, many schools of currents of thoughts regarding their role and functions (Tulai and Șerbu, 2005; Jessua, Labrousse and Vitry, 2006; Drăcea, Mitu and Drăcea, 2009; Buziernescu, 2009).

The contemporary tax systems are a result of the development of human civilisation. Their evolution was reflected in the development of the ideological and political currents, social and economic structures and scientific researches in the last few centuries, influencing each other.

Evolution of tax systems

The early stage of the evolution of tax systems ends at the beginning of the 16th Century. This long period when the tax relations have evolved very slowly was characterised by tax structures specific to the agricultural civilisation.

Characteristic to the starting period it was the fact that, amid the huge social inequalities, tax liabilities were established and distributed arbitrarily, being different according to the size and level of each administrative-territorial unit. The lack of regularity of the tax collection was also a defining feature (Mitu, 2008: 116-117)

The liberal stage in the evolution of tax systems begins with the late 16th Century and ends in the second half of the 19th Century. In this time interval, significant social mutations and economic transformations occur. Tax structures begin to reflect the occurrence of property and capitalist-type production, which determine the emergence of new social classes: agricultural and industrial labourers, bourgeoisie. Representatives of the forming social classes emerge increasingly more often, who formulate critiques on the tax privileges the nobles enjoyed (the ruling class did not owe or paid very small taxes), noted in a number of writings on tax issues that studied the taxes in terms of legality, legitimacy and social influence (Francois Quesnay, Montesquieu, Jean Jacques Rousseau, Adam Smith, Jean Baptiste Say, David Ricardo etc.). The main principles promoted in this period supported the minimisation of public expenses (they had to be directed to financing the services that could not be provided by the private entrepreneurs) and the neutrality of tax. In view of the liberal period, the tax had one function, that of acquiring for the state the means for funding its expenses.

In the 19th Century, the political concept of the bourgeoisie in power caused rapid changes in the tax structures. The policy of the liberal states began to emphasise the predominance of direct taxes, and in particular on the introduction of the income tax, considered the main source of the budget construction.

The modern stage begins after 1870, when the foundations of the process of concentrating the microeconomic structures are established. Thus, in the 20th Century, significant mutations in the tax policy promoted by the world states were noted, as a result of the two world wars; of the outbreaks of strong economic crises and drainage of their effects; of the unprecedented development of infrastructure; of the consolidation and modernisation of the administrative apparatus; of the industrial development; of the environmentalist movements, etc. Therefore, even since the beginning of the century, instead of the actual taxes, dominant in the Middle Ages, as well as in the early stages of the modern era, personal taxes have been established. Established on the income or profit, on the property or patrimony, personal taxes made it possible to differentiate the tax

burden, depending not only on the nature and dimension of the taxable matter, but also on the civil status of the taxpayer: natural person or legal entity.

The increasingly greater need for public financial resources made it necessary to establish new direct and indirect taxes and to transform certain exceptional taxes into permanent tax revenues. Repeated and many changes occurred in the structure and level of taxes, as well as in the manner of establishing and paying them. Thus, in the first decades of the last century, in some countries there was only one income tax that applies both to natural persons and legal entities, while in others there were distinct regulations adapted to the specificity of the two categories of taxpayers. Direct taxation was preferred, normally proportional, because it was considered that it responds better to the principle of equality before the laws. Frequently, taxation was done either at different rates depending on the nature (source) of the taxable object: financial properties, agricultural exploitations, securities, commerce, industry, banks, free professional services, salaries and pensions, etc.

During the period between the two world wars, unions and left wing political powers campaigned for the participation of the population to financing the permanently growing public expenses, in relation to the contributing ability of each social category. Therefore, the following were enacted: non-taxable minimum wage, taxation of the incomes in progressive rates by instalments, tax reductions for certain social duties (people who are taxpayer's dependents and so on) and aids or pensions for sickness, disability, etc. The redistribution of income in favour of the disadvantaged social groups (unemployed, pensioners, families with many children, disabled individuals, etc.) through tax and budgetary instruments enjoyed for a while the support of the Keynesian doctrine followers (Minea and Costaş, 2006: 17), the interventionist views becoming a state policy in many countries.

After the economic crisis of the '70s, a long line of economists (Milton Friedman, Friedrich Hayek, David D. Friedman, Gary Becker, Murray Rothbard, James M. Buchanan, Vernon L. Smith, etc.), creators of the modern liberal doctrine (libertarianism) have pleaded for the withdrawal of the state from the economic activity, the renunciation of using the taxes as an instrument of intervention in the economy, the replacement of the progressive income taxation of natural persons with proportional taxation, the reduction of the taxation rates, etc. (Mitu and Mitu, 2012: 22)

Currently, one of the important topics of discussion and analysis is given by the dispute regarding two tax systems namely that using the *proportional share* and that based on the *progressive rates* (Epstein, 1985: 297-303).

Tax equality and equity

The taxation in proportional rates (uniform taxation or with a "flat rate") expresses a manifestation of the principle of equality to taxes (Mitchell, 2005), maintaining a constant ratio between income and tax, but at the same time, it breaches the principles of tax equity because it does not take into account the fact that the contributory power increases along with the increase of incomes achieved by various social groups.

As a concept, tax equity means social justice in terms of taxes (Văcărel, Bistriceanu, Anghelache, Bodnar, Bercea, Moşteanu and Georgescu, 2003: 361). When one resorts to the spirit of justice for distributing the tax burden between the members of the society, one should distinguish between the concept of equality to the tax and the concept of equality through the tax.

The equality to tax implies that taxation is done in the same way, for all natural persons and legal entities, regardless of the place where they reside or have their registered offices. Basically, there should be no differences of tax treatment from one area to another in a tax jurisdiction. Taxation must also be done in the same way for all economic activities, regardless of how they are organisation or operate.

Equality through tax requires the differentiation between tax burden from one individual to another, depending on a number of economic and social criteria, including: the absolute size of the taxable matter, the personal situation of the taxable subject, the nature and origin of incomes (Matei, Drăcea, Drăcea and Mitu, 2013: 190).

Practically ensuring the tax equity involves the cumulative fulfilment of the following conditions (Văcărel et al, 2003: 361): a) establishing a minimum non-taxable income (enactment of tax exemption of a minimum income that would allow the satisfaction of the strictly necessary living needs). This condition can be applied only to direct taxes; b) differentiating the tax deed related to each taxpayer by taking into account the contributory power it has, meaning the dimension of the income and property subject to taxation along with its personal situation (civil status, age, degree of handicap, with or without dependants, etc.) must be taken into account; c) ensuring the comparability of tax burden between the individuals of the same social group who have equal contributory power and between social groups taken as whole, with the same contributory power; d) taxation should be general, meaning it should encompass all social groups achieving incomes from a certain source or which have a certain type of property, except for those that are below the non-taxable minimum; Whether tax fairness is met or not also depends on the type of tax rates used. *Taxation in fixes amounts* is a system that ignores the income or the taxpayer's property and their personal condition.

Today, in Romania as in many other countries, this system is practiced especially in the case of the property tax (owning movable or immovable properties) (for example, the tax on buildings with reinforced concrete frames or brick external walls, with facilities is of 935 RON/sqm; the tax on the land located within the town in the zone A, rank zero is of 10,353 RON/ha; the tax on mopeds, scooters, motorcycles and cars with the engine capacity of up to 1,600 cc is of 8 RON/tranche of 200 cc or fraction thereof, etc.).

Taxation in percentage rates has three forms: taxation *in proportional rates, in progressive rates* and *in regressive rates.*

1. Taxation in proportional rates (uniform taxation or with "flat rate") is a form of direct manifestation of the principle of equality to taxes. It is characteristic that the same tax rate applies irrespective of the size of the taxable object, permanently keeping the same proportion between the tax and the volume of the taxable matter.

Currently, in some countries, taxation in proportionate rates is used both for direct taxes and in the case of indirect taxes if (for example, when determining the income tax, profit tax, the value added tax, etc.).

2. Taxation in the progressive rates involves that along with increasing the incomes (the property), the size of the tax rate shall also increase, so that the tax shall grow faster than the taxable object. The progression rates may increase either steadily, or variably.

In the financial practice, progressive taxation has two variants: taxation in simple (global) progressive rates and taxation in compound progressive rates (by instalments).

Taxation in simple progressive rates (rarely used in practice) has the characteristic of applying to the state tax rate on the entire taxable matter incumbent or belonging to a taxpayer. In this situation, the tax rate shall be greater within the limits of the

progressiveness established by law as the income or the property shall be higher. The due tax is determined by the product of the size of the taxable object (income, property) and the tax rate related to its level (i.e. as of December 13th, 2015, in Romania, the rate related to the tax on the incomes from gambling is of 1% applied on the net income not exceeding the equivalent of 15,000 EUR; the gambling incomes exceeding the equivalent of 15,000 EUR is taxed by 16% and incomes higher than 100,000 EUR are taxed by 25%).

Although it contributes in meeting the equity in the field of taxes, the taxation in simple progressive rates however has some shortcomings. (Văcărel et. al., 2003: 363) underlines that this way of taxation disadvantages the taxpayers who achieve incomes the level of which is above the limit immediately higher than that where a certain rate operates.

Taxation in compound progressive rates (by instalments) has the peculiarity that it proposes the division of the taxable matter into several instalments (parts), a certain taxation rate being related to each income (property) instalment. By summing up the partial taxes obtained for each individual instalment of income (property), we determine the total tax payable, which is the responsibility of a taxpayer (for example, in Romania, for the transfer of buildings of any kind with their related lands from the personal patrimony, as well as for the transfer of lands of any kind without any buildings, acquired in a period of up to 3 years, the value of the taxation rate is 3% up to and including the amount of 200,000 RON and for what exceeds to 200,000 RON, 6,000 RON + 2% calculated at the value exceeding 200,000 RON).

3. Quite rarely, in the tax practice of some states, the taxation in progressive rates is also encountered. Its characteristic is that the tax weight is inversely proportional to the dimension of the income, property or expenses incurred. In other words, as the amount of the taxable matter increases, the level of the taxation rate decreases.

Flat tax versus progressive tax

Progressive taxation or uniform taxation? This is one of the dilemmas that occupies increasingly more the imagination of economic specialists. From the interaction of the efficiency criterion (as it is better) with the ethical one (as it is right), answers may arise, likely to tip the scale in favour of one of these systems. Romania has the advantage of applying the two taxation systems, both having weaknesses or strengths, which we shall try to put into discussion below.

Flat tax, as it is known in the Anglo-Saxon literature, is a representative form of dealing with the taxation system in proportional percentage rates. Flat tax is not a novelty in the tax field, but it only seems so, after a century of progressive income taxation. The embryo of this system existed even since the Middle Ages. In feudal Europe, taxation consisted in the land owners taking over a certain proportion of the agricultural production of those who worked it, in kind. "Tithing" seems to be the ancestor of tax, of today's flat tax. Theoretically, the tax system based on the flat tax has its roots in the writings of the "father of capitalism", Adam Smith.

Later, the idea of a proportional taxation opposite to the progressive one was re-launched in the '60s when Milton Friedman (1962) suggested a federal tax of 23.5% for the USA. Friedrich A. Hayek (1960) also brought arguments against the idea that progressive taxation would be essential to ensure the redistribution of incomes in favour of the poor ones. However, those who deepened and developed this topic were the American Professors Robert Hall and Alvin Rabushka from the Hoover Institute.

The tax reform proposed by Hall and Rabushka (1985: 465-480) is based on a single taxation rate for all types of income. The characteristics of the tax system imagined

by the two authors are given by the fact that: a certain type of income is taxed only once (double taxation is not permitted); taxation is done evenly at the level of incomes, meaning without any differentiation between the various types of income; the system also sets a consumption taxation (so that new investments are exempted from the taxation base).

In our country, the model proposed by Hall and Rabushka is not applied as it does not fully meet the characteristics of the flat tax model. The taxation system practiced allows double taxation (Tulai and Schiau, 2013: 327-332), and the uniqueness of the rate manifests only within certain types of taxes, yet there being plenty of exceptions to the rule.

The supporters of the flat taxation system emphasise as first advantage the possibility of adopting a lower level of taxation, likely to stimulate saving, capital formation and entrepreneurship activity, which can create the potential to enhance the economic performance. In today's economy, which is strongly globalised, the capital and the jobs migrate to the areas where the tax pressure is as low as possible. However, this is not a disadvantage that can be counted in favour of the flat rate, unless to the extent where the level of the rate is lower compared to that of other states of the same political, economical and geographical perimeter. As such, it is not the flat tax in itself as tax system, but a correct, optimal taxation rate (whatever that may be) is the element generating advantages. Let us imagine the situation of Romania, under the conditions where the flat tax would no longer be 16%, but 40%. Certainly, the extremely high level would turn into a big disadvantage.

There may also be other elements of discussion when it comes to the issue of the optimum of the flat taxation rate. The followers of this tax system say that such taxation contributes to encouraging production and providing greater tax collections for the government. But increasing the state budget levies should be carefully managed so as not to attract the artificial extension of the state's role in the economy, which would ultimately lead to leaving the liberal doctrine whose area the promoters of the "flat tax" system originate.

A high level of financial resources available to governments does not always have positive effects also on the taxpayers. From this point of view, the reasoning of Hume known in the socioeconomic theory as the "tragedy of commons" (Edwards, 2001: 253-257) applies to public money. In most cases, public money is dealt with as resources without an owner, which become subject of the rent-seeking type pillage. In this sense, Milton Friedman said that "very few people spend other people's money as carefully as they spend their own."

If the flat rate taxation responds perfectly to the principle of equality to tax, the same cannot be said when the it comes to equality through tax. Man is an empathetic being (Calvet and Alm, 2013: 1-40). We like to brag about it. Yet, when it comes to taxes, the empathy of some disappears and equality to tax is preferred, instead of equality through tax. But inequality is a constant in economic life, just as it is also in the everyday life. The access to resources and information is different and many times inequitable (Olimid, 2014: 77).

We are born with different IQ's, the health degree varies from one person to another, etc. Certain individuals or social groups have greater needs, objectives than others. In this case, the question that we should ask is: Are we, as individuals, prepared to bear an accordingly (increased) greater tax rate when we get higher incomes, which would compensate a lower tax paid by an individual objectively unable to obtain incomes that are similar to those obtained by us? From this point of view, the answers shall probably

be different (Schwartz and Orleans, 1967; Baldry, 1986; Alm, McClelland and Schulze, 1992; Feld and Frey, 2007; Coricelli et al., 2010).

The followers of the flat tax system shall answer negatively. Surely, behind the negation there are also objective reasons. The argument used most commonly is that the system of progressive rates can encourage laziness. However, this phenomenon can be countered by practicing some less permissive social protection systems.

Another argument used often in favour of the flat tax is that this system reduces the tax burden (tax pressure) of those who achieve low incomes. But this favourable argument is not a mandatory feature of this system and is only partially true.

We can take the example of a hypothetical and simplified situation where there are two individuals X and Y who achieve taxed incomes at a flat rate of 50%. The individual X achieves a taxable income of 1,000 monetary units, while the individual Y achieves taxable incomes of 10,000 monetary units.

After paying the income tax, the individual X has 500 monetary units available, and the individual Y has 5,000 monetary units available. Even if mathematically the tax pressure is equal (50%), the affordability degree is obviously another. Certainly, the individual Y shall bear more easily the tax burden compared to the individual X. In Romania, according to the data of the National Institute of Statistics (INS: 05 June 2014), in 2013 the salaries and the other incomes related thereto were the most important source of incomes, with the largest share in the total incomes of households (51.2%).

Thus, in a study conducted in 2013 by the National Institute of Statistics (the last of this kind to the date of writing this Article) and called "*Distribution of Employees by Groups of Salaries*" (http://media.hotnews.ro/media_server1/document-2013-05-2014840367-0-repartizarea-salariatilor-grupe-salarii-realizate-luna-octombrie-20121.pdf) it results that in 2012, 5.0% of the number of employees who worked at least 23 days full-time have achieved under and at the level of the minimum wage; 46.7% of the employees have achieved gross salaries ranging between 701 and 1,500 RON; 32.1% between 1,501 and 3000 RON; 11.0% achieved gross salaries between 3,001 and 5,000 RON, and 5.2 % achieved gross salaries of over 5,000 RON. Therefore, 16.2% of the population obtained salary incomes lower than 3,000 RON, while the 83.3% obtained incomes under 3,000 RON.

In the given situation, a system of compound progressive taxation having for example 1,500 RON as upper limit of the first income instalment and a tax rate of 14%, the second instalment ranging between 1,501 RON and 3,000 RON and a rate of 16%, and the third instalment being the incomes that exceed 3,001 RON taxed by 30%, would positively affect 83.8% (5.0%+46.7%+32.1%) of those who obtain salary incomes and negatively only 16.2%, under the conditions where the incomes collected to the budget remain at the same level. To exemplify, based on the aforementioned figures, we shall do the following simplified hypothetical calculation of a sample of 1,000 employees:

Table 1. Comparative approach: flat rate vs. progressive rates

		Flat rate		Compound progressive rates	
Income instalment (RON)	**Number of employees**	**Average income/salary x taxation rate = tax to be paid (RON)**	**Total tax (RON)**	**Average income/salary x taxation rate = tax to be paid (RON)**	**Total tax (RON)**
0	**1**	**2**	**3=1x2**	**2^1**	**$3^1=1x2^1$**
0 – 1.500	**517**	**1.200 x 16% = 192**	**99.264**	**1.200 x 14% = 168**	**86.856**
1.501-3.000	**321**	**2200 x 16% = 352**	**112.992**	**1.500 x 14% = 210** **700 x 16% = 112** **Total tax to be paid for an average income of 2200 = 210+112= 322 lei**	**103.362**
peste 3.001	**162**	**4.200 x 16% = 640**	**108.864**	**1.500 x 14% = 210** **1.500 x 16% = 240** **1.200 x 30% = 360** **Total tax to be paid for an average income of 4200 = 210+240+360= 810 lei**	**131.220**
TOTAL			**321.120**		**321.438**

If we also add to this example some of the conclusions of Voinea and Mihăescu (2009: 19-41) which, in summary, they refer to the fact that: the higher the gross wage, the higher the flat tax gains; the distribution of gains is very unequal: (10% of the total employees received 40% of the total flat tax gains (in relative terms, the average flat tax gain of an employee was 3.73% of their net wage, while only 2% of the total employees gained more than 10% of their net wage); the richest 20% of those who achieved incomes had true gains as a result of the flat rate; we may easily observe that it is not the "flat tax" taxation system in itself likely to ease the tax burden, but the level of the taxation rates regardless of the tax system adopted.

As such, the flat tax taxation system may cause the reduction of the tax burden on taxpayers, but it is equally true that reducing the tax burden may also take place within the progressive taxation system (Marinescu, 2008).

Clearly, if we refer to Romania, 16% is even less than 18% as the minimum wage tax rate was in 2004, and even than 40% the peak which it reaches. Instead of the

instalments of 18%, 23%, 28%, 34% and 40%, the taxation of salaries is done as of the beginning of 2005 by 16%.

On the other hand, a progressive tax regime (with instalments ranging for example between 5% and 16%) may be less burdening than the proportional one. Everything consists in wisely choosing the income instalments and related rates.

The empirical results indicate that the higher the income level is, the lower the income elasticity of consumption is (Voinea and Mihăescu, 2009: 39). In other words, the higher the level of incomes we have, the more we have the possibility and tendency to consume. Increasing the consumption is one of the factors that positively influences the national economies, with one condition: the results of the consumption growth to be internalised (to remain within the borders of the economic system that generated it). Unfortunately, in the context of social polarisation that currently occurs in Romania in a pretty obvious way, those who benefited the most from the introduction of the flat rate taxation system of 16% (taxpayers achieving high incomes) have consumption habits that cannot enable an internalisation of the additional income. Most often, they go for important shopping abroad, they spend their holidays in other geographical areas, even the offices of their businesses begin to migrate outside the borders and the examples may continue. However, the purpose of the tax system adopted must be to create a strong middle social class (feature of all countries with developed economy and high social protection) and not to divide the society to extremes: Too rich and too poor.

In order to complete the picture of the progressive rate taxation analysis versus flat rate taxation, we should note that the area of applicability of the "flat tax" system is much lower than that of the system of proportional rate, the latter generally applying in those countries with an emerging economy and a population polarised in terms of the resources they have.

Ranked according to the year when they adopted the system, the jurisdictions and countries where the "flat tax" operates are: Jersey (1940); Hong Kong (1947); Guernsey (1960); Estonia (1994); Latvia (1995); Lithuania (1996); Russia (2001); Serbia (2003); Ukraine (2004); Iraq (2004); Romania (2005); Georgia (2005); Turkmenistan (2005); Kyrgyzstan (2006); Macedonia (2006); Iceland (2007); Mongolia (2007); Kazakhstan (2007); Montenegro (2007); Albania (2008); Bulgaria (2008); Mauritius (2009); Belarus (2009); Hungary (2011) (Drăcea, Mitu and Drăcea, 2011, 99-155). Among the European Union countries that have a flat tax for taxation, Latvia has the biggest rate, 25%, while Bulgaria is on the opposite side, the taxation rate here being 10%. It should also be noted that Slovakia, which adopted in 2003 the flat tax system, faces a strong degradation of public finances, it has not reintroduced, after ten years, the progressive taxation system (Schiau & Moga, 2009: 346).

Conclusions

After the analyses we have done, we consider that the actual problem of taxation today is not necessarily related to the method of taxation, progressive or proportional, but to the dimension of the resources that can be drawn to the budget to that the degree of population's satisfaction would be as high as possible. In other words, we must be more interested in the overall level of taxation, than in the nature of taxation.

In conclusion, the decision to progressively or proportionally tax is a matter primarily of ethics and, complementarily, of efficiency.

Unfortunately, the rules of the democratic game stimulate the governors to maximise most often the level of public expenditure (Gîrleșteanu, 2009), even at the

expense of economic development, as the political factor requires that, in a relatively short cycle as the election one, it meets the needs related rather to favouring the main financers of the election campaigns (those who of high incomes) than to the macroeconomic development.

Therefore, the tax regime is inevitably subordinated to the discretionary budgetary needs and political interests. Thus, the degree of taxation and the tax pressure are not a result of the profitability calculations (a purely economic result), but rather a result of calculations, interests and political programs (an electoral result). It is not the economic calculation that decides the protection level and the tax rate, but the political interests and potential electoral success of various arrangements. Consequently, taxation is not an intrinsic problem of the market economy, but one of the statist political system (Marinescu, 2008).

The centre of gravity of the discussions on taxation must be moved from the problems related to how taxation is done to the problems related to its dimension related to the affordability degree of each taxpayer and to the correct and efficient investment (spending) of what is collected to the budget. The taxes collected by the state must be in relation to the quantity, but particularly the quality of the services provided to citizens. If the degree of transparency of how the collected resources are used shall be higher, then taxpayers shall also accept with greater understanding the need for a taxation differentiated depending on the level of incomes and property.

However, as Milton Friedman said, "if we want to do good with other people's money first we have to take it from them", because there is not a miraculous solution for the financial problems of a government. If it needs money, a government must procure it by taking the taxes from the citizens, but the tax mechanism should be well adjusted so as it does not generate centrifugal forces that aim to remove increasingly more the social classes, inevitably leading to social polarisation, but centripetal forces that tend to approach the centre and can consolidate the middle class: the foundation of progress.

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Article Info

Received: February 10 2015
Accepted: March 18 2015

RSP • No. 45 • 2015: 211-220

ORIGINAL PAPER

Reversible Vending: Features and World Practice

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Abstract
The present article gives an overview of some important and specific features of reverse vending. We give examples of world practice in the management of packaging waste in different countries. In detail is discussed the concept of automatic processing of packaging waste, depositing of those packaging customers receive certain economic incentives. Thus the system which takes back products packaging allows sales agents actively to participate in the process of recovery, which functions as a mechanism for economic motivation of end users. The key role of reverse vending is in terms of the beneficial impact on the environment and targeted waste management of flows generated and recycled packaging waste. The purpose of this work is to examine the nature of the reverse vending technology and its application as a concept for sustainable management of waste from product packaging in the world, the role of the representative agent of exchange in this process and opportunities for future development and implementation in Bulgaria.

Keywords: vending, reversible vending, packaging waste.

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Introduction

In the second decade of the 21st century traders are facing not only the traditional challenges of a competitive environment, but also even more sharply pronounced market insecurity. After more than two decades of market transformations and multiplied number of active market players, the concentration in consumer market under the conditions of stagnation in consumer demand shows that the successful expansion of a certain market player is mostly possible with the development of innovative trade concepts, considering also the development of its corporate social involvement.

Consumers' confidence was seriously undermined by the economic crisis which caused systemic insecurity for employees and decreased motivation of consumers to look out for better terms of exchange. In this process the search for profit is a continuous task which manifests itself in the search for information and the planning of purchases, at the point of sale and in the after-sale phase, in the use of the product and the utilization of unused, partly or incompletely used products. In this context the responsible consumer thinks every decision through concerning the allocation of resources by means of complex judgement of all possible benefits and downsides of acquiring it. The latter is in view of the commitment, sometimes also regulated legally, in respect of the consumer product after its complete use and the arising contingent obligation for it to be separated correctly from the total household waste and for its management as waste. Furthermore, "consumers play a key role in processing packaging and packaging waste and should therefore be adequately informed in order to adapt their behavior and attitude" (European Parliament and Council Directive 94/62/EC, 1994: 240). Reverse vending is a concept by which a technological solution is created which offers the possibility to restore resources in the context of sustainable development.

The aim of this paper is to examine the nature of the technology of reverse vending and its application as a concept for sustainable management of waste from product packaging around the world, the role of the representative agent of exchange in this process and the possibilities for further improvement and implementation in Bulgaria.

The reversible vending concept

The resource limitations presuppose the growing significance of utilization and recycling technologies. And not only in respect of treating waste products, but mainly in the so-called multiple resource recovery. The most efficient way of recovering and reusing is found in respect of the management and utilization and reverse flows of product packaging. In this process a key role is played by the representative agent of exchange who contributes to the relationships and the connection between production and consumption to the greatest extent. Traders fulfill a key function in the realization of most consumer products and as part of their activity they also perform a number of functions in favour of producers. One of the tasks which traders fulfill is related to the redemption of reusable packaging. This process may be extremely labour-intensive, and at that with a little or almost no economic benefit for the exchange agent or the specialized utilization agent. The latter has been defined in Bulgarian legislation as "an organization which is a legal entity registered under the Commercial Act or in accordance with their respective national legislation, which does not distribute profit and which manages and/or independently performs the activities of separate collection, recycling and utilization of mass waste"(Waste Management Law, 2014). As a result, in homogeneous and subject to standardization working processes the use of automated technologies is gaining ground. The use of vending machines today is widely accepted and implemented in respect of a

very wide range of products and services. Automation stands out with a multitude of advantages, but the major ones are related to the economy of resources, mostly in respect of labour expenditure.

A key point in the implementation of reverse vending technology is the process automation which reduces the need for human involvement. Furthermore, it allows for a greater portion of operations from optical recognition or barcode scanning of the returned product to its preparation for further recycling to be performed at the very redemption centre – sorting, reducing the volume of certain types of packaging (paper, plastic and metal), mode of controlled safety of operators and hygiene at the place of exchange. Therefore modern vending machines are a suitable technological solution, because it allows for the automatic servicing and utilization of product packaging to be united in a single highly efficient technological solution. One descriptive definition of reverse vending machine is "a device designed properly to identify and process empty beverage containers and provide a means for a deposit refund on returnable containers" (Reverse vending machine antifraud act, 2008: 2). The concept is patented by Tomra Systems ASA under the brief description of machine constructed to "receives, handles, sorts, and stores returnable items or objects" (Saether, 2010: 1). The invention of reverse vending machine is dedicated to the search of cost efficient, simple and space saving technology which effectively performs environmental and economical tasks. So in developed countries the concept of reverse vending is spreading widely, since consumers themselves perform the operations related to the service of returning the used product packaging. By means of their deposition for reuse, consumers to a great extent contribute to the closing of the lifecycle of the respective product and at that with a clearly defined economic benefit for themselves. It is an expression of the refunded deposit which the consumer gets with the return of the product packaging. Since the system has been developed on the principle of "the right of the redeemer," which means that regardless of who bought the product, its packaging may deliver economic benefit for the same person or another. This indicates that the technology of reverse vending stimulates responsible behavior of our consumer society in respect of the environment.

The economic benefit, of course, is not only for the end consumer, but it can also be created for the rest of the players and mostly for the producer who has invested their own resource in the creation of durable product packaging. Compared to disposable packaging, reusable packaging has a higher value, but also durability, which allows for the initial higher investment distributed in the repeated cycle of their use to be divided equally and even if at some point or after a certain cycle of reuse to become more profitable economically. The monetary compensation doesn't have to be materialized in the form of money or commodity credit, it may also be presented as a voucher for goods, voucher for using popular services, tickets, coupons, etc. In this manner the prize for recycling is wide-ranging personal motivation. The printed vouchers from reverse vending machine introduce original incentive and promotional schemes part of retailer marketing program. They can be exchanged for other products and allow retention of resources within a turnover of retailer. Thereby the agent of exchange can derives an economic benefit both from deposited packaging and from the additional sales of products purchased with vouchers provided to customers. In Scotland the *Recycle and Reward* Initiative focuses not only on the possibility to receive a stimulus for the returned product packaging, but also on the useful effect of this action in respect of recycling and its ecological effects. The programme was piloted in the beginning of 2013 by means of eight different compensation schemes and is aimed not only at changing attitude to waste

product packaging, but also at discovering the most appropriate mechanism for stimuli such as vouchers, charity donations, deposit recovery, etc. (Cash for trash could tackle litter, 2013).

In business practice there are two the most common models for reverse vending machine operation: The first is conventional sale model, where the reverse automated machine is purchased by the retailer and as owner of it he collects the disposed recycled products compensates the depositors and later he gets monetary compensation or reimbursement of deposit from the fillers, bottlers, importers or recyclers. The second is lease model which is very flexible, allowing central recycling organization to maintain ownership on reverse vending machines. That provides many opportunities for placement and installation the machines in convenient public places. This approach increases the capacity to collect product packaging for its future recycling or reusing in many locations. This means that the convenience of operation "round-the-clock and seven days a week could lead to automatic vending machines being used not only as a standby when traditional locations are closed, but also during normal working time" (Molinari, 1964: 8).

Along with the enumerated advantages of automated reverse vending technology, there are also advantages in respect of the mode of operation which can be around-the-clock (0-24 hours) on all days of the week and in this manner it can comply fully and be in line with the consumer and their time management. In case of reaching a certain degree of fullness, the remote monitoring of the reverse vending machines can execute a command and submit early information or real-time information about the need for replacing, no available capacity, repairs or the need for the respective technical maintenance, etc. So the reverse vending technology can be implemented in practice for "collecting for reuse", but also for "collecting for recycling." The first type of operations is related to the automation of the process responsible for collecting certain types of product packaging which have been "conceived and designed to accomplish within its life cycle a minimum number of trips or rotations, is refilled or used for the same purpose for which it was conceived, with or without the support of auxiliary products present on the market enabling the packaging to be refilled" (European Parliament and Council Directive 94/62/EC, 1994: 241).

The second type of automated activities is related to the collection of product packaging for recycling which through "the reprocessing in a production process of the waste materials for the original purpose or for other purposes" (European Parliament and Council Directive 94/62/EC, 1994: 241). Regardless of the subsequent possibility to directly reuse or the need for reprocessing, the major role of reverse vending is the automation of the process of redeeming and the implementation of economic instruments for stimulating the interest of the participants in this process. Thus the system of returning deposits is "a specific type of extended responsibility of the producer, where part of the responsibility is transferred over to the end consumer…, who is offered economic benefits for collecting used packaging" (Kjær et al., 2012: 17). Moreover, "the major limitations usually associated with automatic vending can be classified as mechanical (or technological) and consumer acceptance" (Morris, 1968: 31). However, in the current conditions of continuous technological innovations, most of the physical or mechanical limitations of the automated service can be easily overcome in the foreseeable future. While the restrictions relating to the adoption of consumers can be overcome by the essential concept of reverse vending, which is aimed to help the environmental improving and resource renewable.

Viewing the world practice

At international level, such a mechanism for packaging waste management has been functioning in Sweden since 1984 for metal product packaging (cans) which was expanded in 1984, and for plastic packages (bottles), where to the end price of the product a minimal value deposit is added and it could not influence the consumption preferences but is enough to motivate the consumer to return the product packaging and to receive back the deposit paid when acquiring it. In this manner the waste management scheme for this product packaging reaches up to 85% of recycling and ensures that companies have a suitable resource for utilizing packaging waste. The success of the Returpack model has been predetermined by the two operator companies which utilize product packaging made of metal and plastic. They are owned by the Swedish Trade Associations of Brewers, soft drink, cider and bottled water producers (50% of ownership), the Swedish association of retailers (25% of ownership) and the Swedish trade association which covers the segment of FMCG (25% of ownership) (Returpack AB). This formulates the orientation and possibility to combine the public and the private business interests in favour of the social-economic development and in fulfillment of the mission of the Swedish Environmental Protection Agency, according to which the main goal is 90% of all metal and plastic product packaging to be recycled.

A similar scheme has also been developed in Denmark (Dansk Retursystem A/S is a private non-profit organization which holds the exclusive right to operate through the Danish deposit and utilization system) (further see: Dansk Retursystem A/S), where in 2013 consumers deposited 950 million packages or about 3 million a day returned in more than 16 700 points, of which 3 000 is the number of reverse vending machines located in 2 400 points of sale spread across the entire country, which generate 85% of the total utilized volume of waste from product packaging, for which trade operators have received 26.7 million euro as consideration for separating and preparing packaging for utilization (Facts and figures, 2014).

In Norway, before 2014 *Norsk Resirk*, now *Infinitum*, collected 445 billion metal and 410 billion plastic packages in 2013 marked by a deposit sticker, which are returned through the 3,700 deposit machines capable of recognizing almost 2,600 foreign product packages, which makes it possible for the level of utilization to reach 96% with a volume of newly created resources amounting to 6,639 tonnes aluminum and 12,946 tonnes of plastic (Deposit-facts of 2013).

Similar more developed or simplified systems have also been imposed through legislation in other countries – Australia, Canada, Croatia, Estonia, Finland, Germany, Hungary, the Netherlands, New Zealand, Switzerland, and in some parts of the USA. This concept of utilizing waste from product packaging not only closes the resource cycle, but also contributes to economic growth by creating more industrial production, jobs, etc., for example – in 1970 a similar scheme functioned in Adelaide (Australia). The objective of market-based instruments for environmental management is based "on the premise that these instruments offer the potential to achieve efficiency gains over more traditional regulatory instruments" (Whitten, 2004: 1), by "providing incentives for the greatest reductions in pollution by those firms that can achieve these reductions most cheaply" (Stavins, 2001: 2).

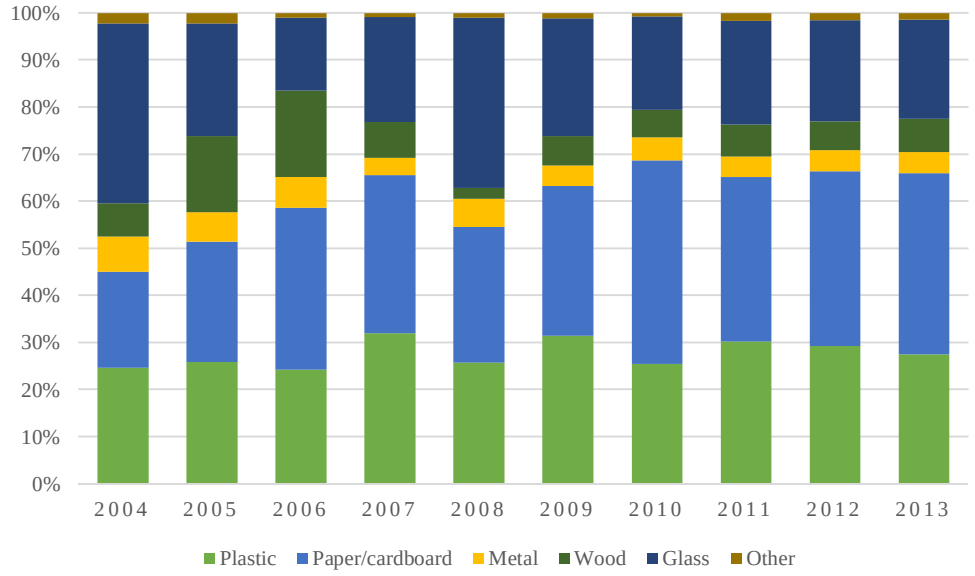
International experience clearly shows the commitment not only of producers in the applied model of extended responsibility of the producer since "the polluter pays", but also of the state to sustainable and longlasting solution of the problems with the utilization of waste and mainly of plastic and metal packaging. According the Global Reverse

Vending Market: Trends and Opportunities (2014-2019) report the market of RVM is highly concentrated, the top largest players are *Tomra*, *Wincor* and *Envipco* (Global Reverse Vending Machine (RVM) Market: Trends and Opportunities (2014-2019), 2015). The *Tomra* company dominates with 65% market share (Tomra: Investor presentation, 2014: 13).

Study of waste management in Bulgaria

The findings of the extensive study of NSI covering all major packaging and packaged goods producers revealed that in the years between 2004 and 2013 we had a general increase in generated packaging waste from 296,756 tonnes in 2004 to 362,043 tonnes in 2014 or a relative change of 122% at an average annual growth rate of 2.2% (see Fig. 1). In the structure of created packaging waste based on the criterion of distinguishing by basic materials at the beginning of the period in 2004 glass waste dominated (38%), and by the end of the period in 2013 paper/cardboard waste prevailed (37%) which increased its volume from 221.6% (from 60,584 t in 2004 to 134,270 t in 2013). We could search for the reasons for such a change in the mass use of paper/cardboard packaging for consumer goods for primary, group or secondary, and transport or tertiary packaging. At that the use of paper secondary and tertiary packaging at the end of the realization channel of the product increases the chances for its complete utilization by creating clean fractions from this waste at the agent of the end exchange (National Statistics Institute, Sofia, 2015, http://www.nsi.bg/sites/default/files/files/data/timeseries/Ecology_11.1.xls).

Figure 1. Generated packaging waste in Bulgaria annual data for period 2004-2013 (tonnes)

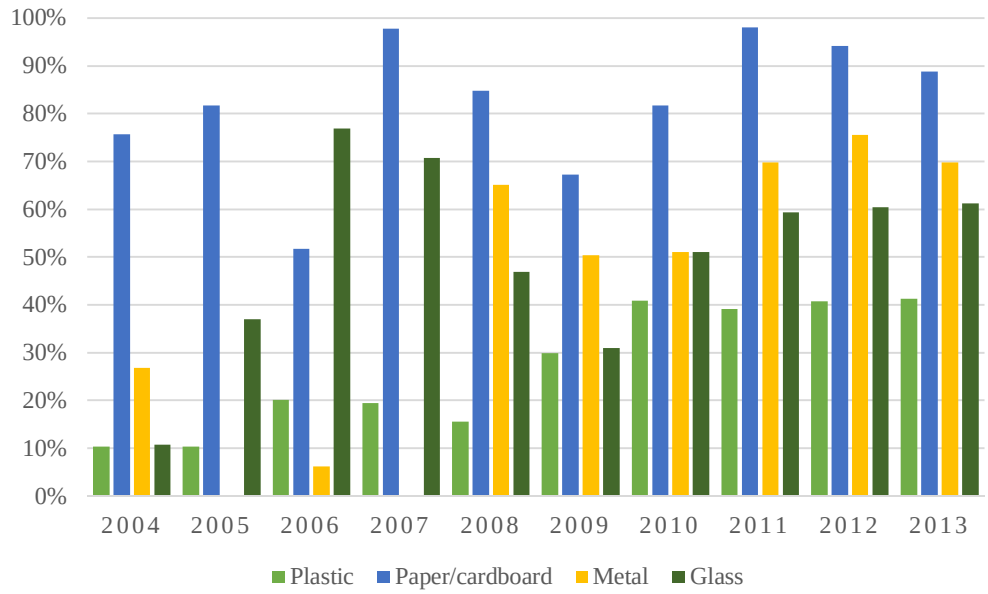


Source: National Statistical Institute, Sofia, 2015.

As to the degree of achieved level of waste recycling in Bulgaria, the average for the 2004-2013 period oscillates around being half of the total amount of waste generated. Over the years this level kept rising, since in 2004 it was 24.1%, and in 2013 it reached the significant 63.5%, although its highest value of 66.5% total amount of recycled packaging

waste was reached in 2012. Nevertheless, in respect of packaging waste the relative share of recycling reaches higher values – for example, for paper/cardboard we have 82.2% average recyclability with the record significant 98.1% achieved in 2011 (see Fig. 2). In comparative terms, high values in various periods were also reached by glass – 76.9% in 2006, metal packaging waste – 75.6% in 2012, and plastic – 41.3% in 2013 (National Statistics Institute, Sofia, 2015, http://www.nsi.bg/sites/default/files/files/data/timeseries/Ecology_11.2.xls).

Figure 2. Relative share of recycled packaging waste in generated packaging waste in Bulgaria annual data for the period 2004-2013



Source: National Statistical Institute, Sofia, 2015.

The sensible use of resources allows for the creation of products which in the post-use phase provide options for extracting additional economic benefit by utilizing their waste and mostly in the reuse of product packaging. This contributes both to the general decrease of waste discharged in nature and to the more efficient utilization of resources by all participants. The beneficial effects are felt by the business too which can economize production operational costs. These effects in respect of ecology are spreading over the entire society and the environment.

We have witnessed a notable change in consumer behavior over the last decennia, strongly influenced by mass culture and the availability of more information. Owing to them, today the consumer understands their significant position in respect of the consumption of products which have the proper effects on their life, the life of others and mostly in respect of future generations. The intelligent buyer takes not only the right decisions at the point of sale, where they look out for the optimal economic benefit from their resource, but they also dispose of the information capacity required to plan the future consequences of their decisions.

Application

Reverse vending is also the answer to the trade business commitment in respect of the sustainable development concept. Furthermore, considering that the economic benefit for all participants has been proven, the pronounced support for its wide use is also growing. The technology of reverse vending can be implemented for an overwhelmingly large range of product packaging types (glass, paper, plastic, etc.), provided that they can be standardized and mainly for packaging received as products of mass production. In addition, as objects of utilization it is also possible to include other mass products with extremely high need for proper storage and utilization. Such are for instance electrical batteries, electrical lamps, and in view of the progressive reduction of the useful life of modern information and communication technologies (mobile phones, chargers), other components and products with high risk for the environment or possibility to utilize. In this manner the producer's or importer's responsibility may be regulated legally with the requirement to include a deposit for each product packaging released on the market. This will allow for the simultaneous stimulation of the interest of all market players in the complex care, and the economic motivation in respect of the commitment in product packaging waste management. Another key point is that retailer should take back the types of returned packaging that they sell, regardless of whether they have been previously sold as part of their stock assortment in their commercial network. This means the in-store collecting point takes back and store packaging waste sold in the retail chains of their competitors, that aspect is mainly driven by the interest provided by their suppliers. Innovative development of vending technology allows operators of the modern reverse vending machines "with the opportunity to further encourage consumers to choose the convenience of a vending machine over a high street shop" (Reverse vending machines help Europeans recycle, 2007: 18). They are further competitive tool because they can be more efficient than manual sorting and moreover machines attract new consumers. The latter is caused by the fact that "the recycling machine can help give retailers an image of being environmentally conscious and dedicated to customer service" (Reverse vending machines' turn recycling into profit for retailers, 1983: 4). Companies that have taken a strategic decision to use the deposit product packaging clearly demonstrate its commitment to environmental protection and business commitment to efficient use of natural resources. In same context the reverse machines located in public usually apply a universal approach for collection of packaging waste of all types (shape, volume, outer diameter and height) and serves the interest of various fillers, bottlers or importers which place different products on the market. And finally the waste collector organizations can use the reverse vending technology to gather all type of product packages who can be later recycled.

There exists the hybrid option of one and the same vending machine servicing both the process of selling ready products and tracing the waste or packaging returned for utilization. In this manner by means of a single machine a complex solution is created which ensures the collection of used product packaging by paying direct stimuli to consumers.

With the advantages of reverse vending thus described, there are also some disadvantages worth mentioning. Some of the most significant ones are related to the inability to cover a wide variety of types of product packaging of one and the same material, which necessitates reverse vending machines to be limited to the collection of a precisely defined set or more exactly to be specialized (for instance, for beer or soft drink bottles, etc.) Furthermore, we must point out that the placement of reverse vending machines may be further from the place where this packaging is located, which

provisionally complicates the consumer's commitment to return it for utilization, since this may be related to extra transport costs and not to mention the time required to perform this activity.

Conclusions

The economic crisis and the growing awareness of ecological issues point towards the alarming degree in which national economies are interdependent in the context of globalization. The processes of transformation in the beginning of the 20s of the XX century intensified by the wave of globalization move the focus onto the changing consumer and the awareness of their responsibility for the future of the planet. Today reverse vending is the adequate response of the client-oriented and responsible behavior of business agents, which equally stimulates the interest of participants in the technology for utilizing product packaging.

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Article Info

Received: February 20 2015
Accepted: March 27 2015

RSP • No. 45 • 2015: 221-232

ORIGINAL PAPER

The Romanian Housing Policy Bounds for Legal Patterns: Compulsory Insurance, Social Housing and the "First House" Program

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Abstract
In Romanian law there is an extensive network of legal acts that refer to dwelling, which creates a series of obligations and tasks required for the State on the basis of which the Government assumes the responsibility of creating certain minimum requirements in the field of housing, as well as the correlative right of citizens to seek the fulfilment of those minimum obligations by the State. However, in the absence of the inclusion of the right to a decent dwelling in the Constitution, Romania remains the European State with the fewest steps taken in the field of housing policy. After a brief description of how the right to housing is stipulated in the Constitutions of other European States, this article examines the pros and cons of Romanian legislation with special regard to compulsory insurance of houses, rehabilitation of dwellings, social housing, housing for situations of necessity, the "First House" Program, concluding with a "de lege ferenda" proposal in the sense of inclusion of the right to a decent dwelling in Article 47 of the Constitution.

Keywords: dwelling, right to housing, Housing Law, Government, State

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Legislation in the field of housing

Housing is a key factor in the health and comfort of the population, therefore housing policy must occupy an important place in social policy, together with other public programs designed to provide citizens with a decent standard of living (Radu, 2009: 8). Quality of living conditions contributes to biological, psychological and social fulfilment of citizen's needs, to carrying out physiological and psychosocial functions of individuals and family as a "basic cell" of society (Stanciu and Puiu, 2008: 87; European Centre for Environment and Health, 2006: 7), being essential to the existence of a "community life and family cohesion" (Gavrilescu, 2011: 37).

Romania is facing great problems in terms of housing, especially with a big housing deficit, an increase in homelessness, insufficient houses offer, high costs of purchase and maintenance, poor state of real estate, high prices of energy, inadequate heating systems and insulation, etc.

Although in Article 1 paragraph 3 of the Constitution it is stated that Romania is a democratic and social, ruled by law state, based on supreme values as human dignity and free development of human personality (Dănişor, 2009: 46-76), the right to housing being not included among the fundamental rights and freedoms listed in Chapter 2, Article 22-52. In many of the fundamental laws of European countries is provided for the "right to housing" (Article 2 paragraph 3 of The Constitution of the Federation of Bosnia and Herzegovina; Section 19 of the Constitution of Finland), "the right to decent housing" (Article 23 of the Belgian Constitution) or "a proper dwelling conditions bearable" (Article 41 paragraph 1 of the Federal Constitution of the Swiss Confederation).

Although in international law of human rights, we do not find any concrete definition of the notion of "adequate housing", the Committee for Economic, Social and Cultural Rights of the United Nations Organization, in General Comment No. 4, established seven minimum criteria for a dwelling may be regarded as appropriate (Protecţia dreptului la locuinţă al romilor din România. Manual de educare privind legislaţia internaţională şi dreptul la locuinţă adecvată, 2004: 17-22): the security of possession (provides protection against forced evictions, harassment and other threats); the availability of services, materials, facilities and infrastructure (a dwelling suitable to ensure its inhabitants access to drinking water, gas, electricity, heating, sanitary facilities, health services, transport, etc.); accessibility in terms of financial costs (purchasing, maintenance costs or rent must not be liable to meet other basic needs of the population); housing character (housing must be adequate space to provide protection against weather conditions and natural disasters); accessibility in legal terms (facilitating access to housing on the basis of normative acts to support the disadvantaged); location (which must allow access to the labour market, health care, education, childcare centres, centres for social work and other social facilities); cultural suitability (the way housing is constructed and fitted to allow the expression of the cultural identity of those who dwell therein).

Romanian legislation in force in the field of housing is extremely vast, often incomplete and subject to diverse interpretations, causing problems and complaints: Housing Law No. 114/1996, as amended and supplemented; Law No. 152/1998 on the establishment of the National Housing Agency (ANL); Law No. 260/2008 concerning compulsory insurance of housing against earthquakes, landslides or floods, as amended and supplemented; Government Emergency Order No. 18/2009 on increasing energy performance of housing blocks; Law No. 230/2007 on the establishment, organization and functioning of associations of owners, which contains the rules governing the operation

and management of the building-blocks of flats, as well as exercising control of financial accounting and management of the activities of associations of owners etc. Complementary provisions of primary legislation relating to housing can be also meet elsewhere. For example, Article 24 of Law No. 339/2004 on decentralisation provides that the local public administration authorities of the municipalities and cities shall exercise powers shared with the central public administration authorities regarding, inter alia, the construction of social housing and for youth. National legal framework establishes a number of obligations and tasks required for the State on the basis of which the Government assumes the responsibility of creating certain minimum requirements in the field of housing, as well as the correlative right of citizens to seek fulfilment of those minimum obligations by the state. It does not create a general obligation on the State to provide free adequate housing of all applicants, but the obligation to seek, through the most appropriate means, to ensure the appropriate conditions of access to housing, in particular to disadvantaged groups, homeless persons, those who live in inadequate conditions and those who do not have the financial resources required to obtain benefits corresponding to the right to housing (this obligation of the State is, however, an obligation of diligence, not of product).

Article 2 of the Housing Law no. 114/1996, as amended and supplemented, defines housing as a "functional unit, stand-alone construction or component of an integrated construction, consisting of one or more living rooms on the same level of the building or at different levels, with dependencies, facilities and utilities necessary, with direct access or servitude of passage and separate entrance, and that has been built or converted in order to be used, as a rule, by a single household, in order to meet the requirements of housing", while the convenient house is defined as "dwelling which, by its characteristics, meet the requirements of the user at a time, covering the essential necessities of housing, food, recreation, education and hygiene, ensuring minimal requirements set out in the annex to this law". Apart from the minimum requirements to be satisfied by a dwelling-free access to the living space without disturbing the possession and exclusive use of space owned by another person or family; room for rest; space for food preparation; toilet; access to electricity and drinking water, disposal of wastewater control and household waste, the annex to the Housing Law also stipulates minimal surfaces of living rooms, the number of sanitary rooms, minimum equipment of the kitchen, minimum equipment with electrical installations, as well as spaces and common-use facilities for multiple housing buildings.

Regarding accessibility in financial and legal terms, the Government should put in the centre of its policy in the field of housing, as its principal objective, increasing access to land for people who do not have land and for those with low incomes having regard that the biggest obstacle to the construction of housing, especially in urban areas, is the price of the land. A solution in this regard, which has targeted mainly the creation of jobs in rural areas, in order to attract young people, was introduced by Law No. 646/2002 concerning State support for rural youth, governing the legal framework to support the integration of young people in rural areas. Thus, in order to develop agriculture, non-agricultural activities and services, to preserve local crafts and craft practices, young families and young people aged up to 40 who are domiciled or wish to establish their residence in the rural area, as well as specialists who work in agriculture, civil servants, teachers, healthcare staff, staff of legally recognized religious denominations, which are domiciled or wish to establish their residence in the rural area, aged up to 40 years, has the following facilities (Avram, Radu and Bărbieru, 2013: 197):

a) the assignment of ownership, for free, of a land of up to 1,000 sq. meters for the construction of housing and household fixtures; b) the assignment of agricultural land use up to 10 ha; c) exemption from payment of the fee fixed percentage according to the provisions of Article 92 paragraph (4) and (5) of the Law of the Land Fund no. 18/1991, republished, with subsequent amendments and additions, to the final removal of set-aside farmland referred to let. (a).

If in the situation of young people who are domiciled or wish to establish their residence in the rural area, the issue of possession of land necessary for the construction of housing was thus settled, instead, for those in urban areas, obtaining a grant from the State shall be subject to the existence of a right in rem over land on which to carry out the construction. Thus, Article 51 of Housing Law no. 114/1996, as amended and supplemented, provides that individuals who build a home for the first time through the mortgage loan may qualify for a grant of 20% of the value of a home up to 100,000 euros, if they meet the following conditions: (a) have a right in rem over land on which to carry out the construction; (b) may not have benefited from another form of subsidy or support from the State budget to build or purchase a dwelling; (c) does not hold ownership of a dwelling with a built-up area of more than 100 sq. meters; (d) construction to fit into the new housing complexes and observe just approved planning documentation; (e) construction to be enforced by an approved construction company, ensuring the quality of implementation of the legislation in force; (f) construction company to submit all eligibility conditions imposed by law.

The amount of the subsidy is be transferred to the building society after reception and handing over to the beneficiary of the principal works of construction in normal use, once it makes the proof of payment of the duties and taxes owed. The financial resources necessary for the granting of the subsidy of 20% shall be achieved through the National Housing Agency, within the limits of the sums allocated annually with this destination in the budget the Ministry of Transportation, Constructions and Tourism.

Law No. 116/2002 on preventing and combating social exclusion, which has targeted mainly harmonizing policies for knowledge and prevention the situations which determines social marginalization (Avram and Radu, 2009: 62), devotes Section 2 of Chapter II to the access to housing. According to the Article 13 of this normative act, in order to facilitate access to housing for people aged up to 35 years, in the impossibility of buying a dwelling only with their own forces, the county councils and the General Council of Bucharest can dispose of sums from the following sources: (a) the sums or shares broken down of the revenue that is appropriate to the State budget, which is set annually by the State budget law; (b) a share of the annual budget established of the County Council or of the General Council of Bucharest; (c) a fee determined annually, by law, for individuals originating from non-rented dwellings, other than those of the home; (d) donations, sponsorships or other such sources, accepted in accordance with the legal provisions. These amounts are administered by the County Council and the General Council of Bucharest. Of these amounts, the County Council or the General Council of Bucharest will cover the entire estimated amount of the advance to be paid for acquisition of a dwelling or rent for a period of up to three years for a rented dwelling. The amount of the advance shall be fixed at the beginning of each year by the County Council, or by the General Council of Bucharest, according to the provisions of normative acts that regulate the construction of dwellings, and may be adjusted periodically in relation to trends in consumer prices or, where appropriate, in the cost of a dwelling. For the purposes of the law, through the acquisition of a dwelling shall be understood both the construction

of a new dwelling, as well as the purchase of a dwelling on the free market, in which case the amount provided as advance must represent at least one third of the value of the contract for sale and purchase. People who have benefited from the advance covered by the County Council, or the General Council of Bucharest, may benefit of other provisions of the law relating to the interest subsidy in the case of purchase of a dwelling. Article 15 of Law No. 116/2002 provides that the establishment of criteria for the granting of amounts under the tile of advance payment or rent is the attribution of the County Council, or of the General Council of Bucharest, taking into account the following priorities in order of importance: young people from orphanages and child reception centres within the specialized public services and private bodies authorized for protection of children; married couples aged up to 35 years with dependent children; married couples aged up to 35 years old with no dependent children; other people aged up to 35 years.

The Romanian Government, through the Ministry of Regional Development and Tourism, runs and coordinates a series of programmes in the field of housing: social housing construction program, programs in the field of increasing the energy performance of buildings, the Program on the strengthening of multi-storey residential buildings, classified in Ist class of seismic risk and endangering the public, the Program on the first emergency intervention in vulnerable buildings and endangering public, the Program on the construction of dwellings with mortgage, the Program on housing construction for young people, aimed at hiring.

Compulsory insurance of housing

Under Article 3 paragraph 1 of Law No. 260/2008 concerning compulsory insurance of housing against earthquakes, landslides or floods, natural and legal persons are obliged to insure against natural disasters, according to the law, all buildings intended for housing, urban or rural, owned and registered in the records of tax bodies. Sum insured which may be granted under the law (sum compulsory insured) is the equivalent in lei, at the exchange rate communicated by the National Bank of Romania at the time of conclusion of the contract of obligatory insurance of the dwelling, of: (a) 20,000 euros for each type A housing; (b) 10,000 euros for each type B dwelling (Article 5 paragraph 1 of Law no. 260/2008 concerning compulsory home insurance against earthquakes, landslides or floods). The subventions due for the amounts secured are the equivalent in lei, at the exchange rate communicated by the National Bank of Romania valid at the date of payment, of: 20 euros for the amount referred to in letter (a); 10 euro for the amount referred to in letter (b).

Natural or legal persons who cannot provide the insurance of the housing owned, according to the law, shall not benefit, in the event of natural disasters as defined under the law, of any compensation from the State budget or local budget for the damage of the dwelling. Individuals compensated, according to the law, for any damage resulting from a natural disaster do not benefit from the provisions of Law No. 114/1996, republished, with subsequent amendments and additions relating to the granting of social housing.

Rehabilitation of housing

Housing rehabilitation is aimed at reducing energy consumption for the heating of blocks of flats, in terms of ensuring and maintaining indoor thermal environment in flats. Government Emergency Ordinance No. 18/2009 on increasing the energy performance of blocks of flats determines intervention works necessary for the thermal insulation of the housing blocks built after projects developed in the period 1950-1990,

the stages necessary for carrying out the works, their funding method, as well as the obligations and responsibilities of public authorities and associations of owners. The intervention works at the block of flats envelope, set out in Government Emergency Ordinance no. 18/2009, are: thermal insulation of exterior walls; replacing windows and external doors, including carpentry associated to the access in the housing block, with high energetic joinery; thermo and waterproofing insulation of terrace/thermo-insulation of the roof over the last level where framing; thermal insulation of the floor over the basement, where the design of the block provided flats on the ground floor; works of dismantling of the installations and equipment apparently mounted on the facades/terrace housing block and replacing them after thermal insulation works; works of restoration the envelope. With the completion of these intervention works can be also executed the following works, justified from the technical point of view by the technical expertise and/or energy audit: a) repair works to the building elements that pose potential danger of loosening and/or affect the functionality of the block of flats, including restorative works in the areas of intervention; b) intervention works at the distribution of heat installation for heating purposes in respect of the common parts of the block of flats.

The City Council shall approve, on the proposal of the local coordinators, technical-economic indicators corresponding to the objectives of investment on the growth of energy performance of blocks of flats, as well as perennial local programs on the growth of energy performance of housing blocks.

Social housing

Social housing is housing that is granted with subsidized rent to persons or families whose economic situation does not allow them access to a dwelling owned or rented out on the housing market conditions (Article 2 letter c of the Housing Law no. 114/1996, as amended and supplemented).

The governmental programme of social housing construction "aims to build social housing intended for certain categories of persons to whom the resource levels of existence does not allow them access to a dwelling owned or rented out on the housing market conditions" (Romanian Government, Ministry of Regional Development and Tourism, 2011). This program is designed for those whose incomes do not allow them access to a lending scheme, which do not possess the constant surplus necessary to save money and who cannot afford to rent a home on the open market. Recognizing the gravity of the lack of an adequate housing, the Government program adopted in 1996 is a specific measure aiming at solving the problem of housing shortages for the population affected by poverty. Social housing, attributed from the State found, with rent subsidized, is intended to ensure, for at least a limited period of time, up to overcoming a threshold income, a decent housing for those who are unable to secure one. In 2007, another government measure provide that persons who live with the ANL rent more than five years to be able to buy those homes, and, at the end of 2008, the minimum rental term of 5 years was reduced to 3 years.

Social housing can be achieved through new construction or rehabilitation of existing buildings, they belonging to the public domain of administrative-territorial units, without the possibility of being sold. Housing allocation is done by local councils, following proposals from the social committees which examine applications for social housing at the local level. Only those persons who satisfy the conditions laid down by law have the possibility to qualify for social housing. Nominal rent is subsidized from sources of local budgets. According to the legislation in force, a person in a situation of

precariousness of incomes (below the guaranteed minimum income) may apply to the local Council renting a dwelling in an ANL building, at a subsidized price. According to the available social housing stock at a specified time at local level, the applicant may receive such a dwelling for a limited period, to the extent that local councils have in administering such housing may subsidize the rent of beneficiaries form their own funds. Social housing can be eligible for individuals or families who have "... an average monthly net income achieved during the preceding 12 months under the monthly net income per family, to which the social aid is granted according to the law, plus 10%" (Article 42 of the Housing Law no. 114/1996, as amended and supplemented) and which do not hold ownership of a dwelling; not have alienated a home after January 1, 1990; have not received State support in loans and bonds to a dwelling; do not hold, as a tenant, another dwelling.

Social housing shall be distributed by the local councils on the basis of criteria defined by them, according to the law, and they may be allocated, in the order of priority set by local councils, to the following categories of persons: newlyweds who either aged up to 35 years of age, young people from institutions of social protection and who have reached the age of 18, invalids of Ist and IInd degree, disabled persons, pensioners, veterans and war widows, the beneficiaries of the provisions of Law no. 42/1990, republished, and of Decree-Law no. 118/1990, republished, other people or families in particular (Article 43 of the Housing Law no. 114/1996, as amended and supplemented). Within each criterion, in determining the order of priority it will be taken into account the following elements: the living conditions of applicants, number of children and other persons that live together with the applicants, health condition of applicants or of members of their families, length of time elapsed from the submission of applications. Local Council shall control and be responsible for social housing fund in the territory of the respective territorial administrative units, having the status of owner of social housing, and its relationship with the beneficiaries of the measure is defined in terms of the landlord-tenant relation.

Social housing is assigned for rent by the local councils, for a period of five years, to persons who meet the eligibility criteria, with a rate subsidized of the rent, which varies according to the income of the beneficiary (the rent charged shall not exceed 10% of net monthly income per family, calculated for the last twelve months, regardless of the actual amount of the rent). If the tenant does not comply with the conditions of the rental contract (stipulated in Article 24 of the Housing Law) or "the net average monthly income per family, in two consecutive fiscal years, exceeds by more than 20% the minimum level referred to in Article 42 of this law, and the lease holder has not paid the nominal value of the rent within 90 days of the communication" (Article 46), the contract shall terminate. A social housing tenant is obliged to notify the Mayor any modification of the net income of the family, within 30 days, which entails recalculating the rent charged. He may not sublet the dwelling, may not convey the right acquired to another person/family and cannot change the destination of the space he occupies (deviations shall be sanctioned with the termination of the contract and the recovery of any damage).

In terms of housing for young people, the framework law is the Law no. 152/1998 on the establishment of the National Housing Agency (ANL). ANL is a public institution with legal personality and financial autonomy, with the role of coordinating the funding sources in the construction of housing. Romanian citizens residing in Romania and Romanian legal entities can benefit from credits granted by ANL. The beneficiary of a credit granted by ANL shall be entitled to an interest rate lower than the average interest

rate charged on the financial market, calculated and accepted by ANL; access to land for housing construction, through sale and purchase, lease or putting into service throughout the duration of construction, under preferential conditions, established by ANL along with local or central public administration authorities, where appropriate; exemption from payment of fees for land and from tax on the building on the duration of loan repayment; a grant in the amount of 30% of the value of the home, only for the first housing built with the mortgage, for persons who have not received support from the State budget in the form of grants to another dwelling.

The allocation of dwellings for rental housing for young, built and put into operation through programs conducted by ANL, is made under the following criteria established and adopted by local and/or central public administration authorities acquiring housing administration, with the opinion of the Ministry of regional development and housing, on the basis of framework criteria for access to housing and for priority to the housing allocation approved by decision of the Government. On the basis of substantiated proposals only framework criteria for access to housing can be adapted to the specific circumstances prevailing on local level, and only in terms of territorial area. Rental contracts are concluded for a period of 5 years from the date of allocation of housing. After expiry of this period the rental contract extension shall be for a period of one year, under the following conditions: (a) by recalculation of the rent under the provisions of Article 31 of Law no. 114/1996, republished, with subsequent amendments and additions, to the contract holders who have reached the age of 35 years; (b) by keeping the original contractual terms relating to the amount of the rent, for contract holders who have not reached the age of 35 years (Article 8 paragraph 4 of Law no. 152/1998 on the establishment of the National Housing Agency).

Housing for situations of necessity

Law no. 114/1996 includes provisions for housing for situations of necessity, namely that "housing for rental or temporary accommodation for individuals, families or households whose housing either have become unusable as a result of natural disasters or accidents, or are subject to demolition in public utility purposes, or are subject to rehabilitation or consolidation works which cannot perform in the operating conditions of the building" (Article 2). Housing for situations of necessity is public property of the State or of the administrative territorial units and can be carried out on the locations referred to in the documentation of urbanism and under the provisions of the housing law. The fund of housing for situations of necessity is composed, on the one hand, of existing housing which, according to the legal provisions, were built for the purpose of necessity housing, and, on the other hand, of new housing or from processing buildings in various stages of construction, including housing which are acquired in the market and receive the necessary housing destination. With the same destination of necessity housing can be also used the vacant dwellings in the building fund, owned by administrative-territorial units.

In cases of extreme emergency, according to the law, temporary accommodation for individuals, families or households whose dwellings have become unusable as a result of natural or anthropic disasters can be achieved in other living spaces. The use of these living spaces by people, families or households affected is transient and free of charge, until the providing of necessity housing or until the ensuring of normal use condition of their homes.

House of necessity shall be hired on a temporary basis to individuals and/or families whose housing had become unusable due to natural disasters or accidents. The

rental contract is concluded by the mayor or by the Mayor of Bucharest, or by a person empowered by him, on the basis of the decision of the local Council, or of the General Council of Bucharest, being valid until removal of the effects which have made the housing unusable. The homes declared temporary as necessity housing must be recovered to their initial destination and to the originally operation circuit after removing the effects which have made the housing unusable, but not more than 5 years after the date of distribution.

The "First House" Program

The "First House" Program was approved in the summer of 2009, through the Government Emergency Ordinance no. 60/2009. Considering the effects of the crisis on economic sectors, the "First House" Program was released as a Government programme which aims to facilitate the access of individuals to the acquisition or construction of a dwelling through the contracting of loans guaranteed by the State (Zilişteanu, 2011: 129). According to this Ordinance, the housing can be constructed by beneficiaries who have owned the land on which to build their home or through associations having no legal personality, consisting of at least seven beneficiaries, of which at least one is the owner of land on which the homes will be built (Article 1 of the Government Emergency Ordinance no. 60/2009).

The beneficiary of the "First House" Program is the natural person who meets the following cumulative conditions: (a) up to the date of application for the loan has not held in sole proprietorship or together with husband or wife of any dwelling, irrespective of the manner and time in which it was acquired; (b) purchases or builds a single dwelling, through a loan granted and guaranteed under the program; (c) has the quality of the borrower in relation to the funder.

Ministry of Public Finance is authorized to delegate the National Fund of Credit Guarantee for Small and Medium-Sized Enterprises to issue warranties in the name and on behalf of the State, in favour of banks granting loans to individuals for the acquisition or construction of a dwelling within the program. The Ministry of Public Finances and the National Fund of Credit Guarantee for Small and Medium-Sized Enterprises conclude a convention setting out the rights and obligations of the parties in carrying out the programme "First House".

On the basis of the contract of guarantee, real estate purchased under the program "First House" set up in favour of the Romanian State, represented by the Ministry of Public Finance, a Ist rank legal mortgage over the life of the contract, with the ban on disposal of housing for a period of 5 years and the prohibition of encumbering the property over the duration of the loan.

At the beginning of 2010, "First House" Program was converted into "First House 2" and later, in early 2011, appeared "First House 3" Program. In comparison with previous programs, "First House 3" brought as changes the fact that the Bank may put the pledge on the borrower's accounts (if the court allows the bank the attachment of the rates in question of those accounts), the Bank is given priority over other creditors in the event that it would proceed to enforcement of the person concerned. Also, there is no need for at least seven customers for the construction of a building. "First House 3" has brought the possibility of changing currency credit and of loan restructuring or rescheduling (Radu and Avram, 2011: 315).

On 26 May 2011, rules for the application of the "First House 4" were published in the Official Gazette, the program kicking off on June 6, 2011. Under the new program,

the maximum amount guaranteed by the state remains unchanged, and loans have the same limits: 60,000 Euro – in case of the acquisition of an old house; 70,000 euro - if a new home is acquired; 75,000 euros - if a house is built from scratch. Compared to previous years, the state will not guarantee full credits and participating banks will assume the 50% risk of default. Another change is that owners who own a home with a floor area of 50 square meters can access a "First House" credit to buy a house with a larger area. Also, applicants who hold shares part of a dwelling will be eligible for loans guaranteed by the state to acquire interest in difference of the shared parts. Besides the opportunity to build their own home, "First House 4" gives beneficiaries the opportunity to purchase the following types of housing: housing completed, for purchase, including the built and put into operation by ANL programs; unfinished housing, in various stages of construction, for purchase after completion, including those built by ANL programs; new homes for purchase after completion, including those built by ANL programs. Under the program, the applicant may purchase only one dwelling completed, located in Romania, registered in the land registry according to the law or build a home, alone or with others, respecting the regulations concerning the "first house". The beneficiary must meet specific conditions laid down by internal lending norms; constitute a collateral deposit to guarantee interest in an amount equal to three interest rates, valid for the duration of the grant; not to alienate the acquired dwelling within five years from the date of acquisition. After this period, if the credit agreement is takeover by a third party, it must meet the eligibility criteria for program beneficiaries. Another requirement is to ensure the dwelling purchased against all risks and to appoint the Romanian state, represented by the Ministry of Finance, as the beneficiary of the insurance policy for the duration of funding. Also, the house purchased under the scheme must fall into one of the classes A, B or C of energy efficiency, requirement applicable from the date of entry into force of Article 23 of Law no. 372/2005 on energy performance of the buildings, as amended.

Conclusions

Looking at all these acts can be concluded, however, that Romanian legislation, although extremely bushy, can affect a large part of the population, especially persons in a state of extreme poverty. For these people at risk of social exclusion, the legislature, although he found some flexibility, particularly in terms of the "First House" Program, failed to build a "safety net" to guarantee their right to housing and minimum living conditions, lack of access to adequate housing affecting equally their health and life expectancy.

Another conclusion is the need to modify the Article 47 of the Romanian Constitution, for the purposes of inclusion, along with the obligation of the State to provide citizens with a decent standard of living and their entitlement to welfare measures, of their right to a decent dwelling.

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Article Info

Received: December 15 2014
Accepted: February 27 2015

RSP • No. 45 • 2015: 233-244

ORIGINAL PAPER

In Search of the Housing Supply: Determinants of the Construction Policy Empowerment in Europe

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Abstract
The main objective of this Article is to show that there is an urgent need for using modern methods in the construction sector for more sustainable buildings. These modern methods include a high percentage of automation and robotisation in construction. To achieve this objective, it has been considered the necessity to build adaptive structures in order to respond efficiently to consumption of energy through all aspects included and an increased seismic safety. There is presented a comparative analyse of the current solutions in construction process and the ones which include automation and robotisation. The main accent was based upon using innovative technology with automatic removable formworks. This technology can be used to construct more easily high-rise buildings and in the same time provides the leads for green and sustainable buildings. A high percentage of automation and robotisation for the building processes will generate more sustainable buildings, green and durable technology, superior seismic performance, thermal efficiency, low emissions, waste reduction and, as whole, durable buildings.

***Keywords*:** on-site manufacturing technology, affordable buildings, robotisation and automation building process

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Challenges of the Construction Sector

In these days, more than two thirds of the European population lives in urban areas and this share continues to grow. In addition of this, the young population and a lot of disadvantage classes face the serious threat of economic stagnation or decline. Also, the green and healthy city is needed in these circumstances. It is estimated that around 70 % of the EU population – approximately 350 million people – live in urban agglomerations of more than 5 000 inhabitants. Although the speed of transformation has slowed down, the share of the urban population continues to grow (World Urbanisation Prospects: The 2009 Revision, United Nations, Department of Economic and Social Affairs, Population Division, 2010). So this demand for automation and robotisation in the construction sector appears as a result of: (1) The world faces a great tendency of urbanisation; (2) Future buildings have to be sustainable, eco - friendly, based on an efficient energy principles; (3) The construction sector has to improve its competitiveness and to reduce the initial cost and manage efficient the possible cost of maintenance during the life cycle structural monitoring of construction system.

The construction sector is of strategic importance to the EU as it delivers the buildings and infrastructure needed by the rest of the economy and society. It represents more than 10% of EU GDP and more than 50% of fixed capital formation. It is the largest single economic activity and it is the biggest industrial employer in Europe. The sector employs directly almost 20 million people (Lassale, 2013; Mayo, 2006: 1-5). In addition, construction is a key element for the implementation of the Single Market and other construction relevant EU Policies, e.g.: Environment and Energy. The total market size of the global construction segment was of 8,194 billion USD in 2013 (6,828 billion EUR), out of which: residential: 2,997 billion USD; infrastructure: 2,700 billion USD; non-residential structures: 2,497 billion USD. The European market size (according to FIEC annual statistical report, 2014), in terms of volumes of sales (total construction output) was in 2013 of 1,162 billion EUR (Communication from the commission – Europe 2020; European Commission, 2014a; European Commission, 2014b; European Commission, 2014c; European Union Regional Policy, 2011).

Construction by Robotization and Automatization as a New Scientific Domain and the Market Places within It

Construction automation and robotics involves three areas: mechanization, automation and robotics, encompassing a spectrum of technology application. At the low end of this spectrum is mechanization, which consists in equipping a pess with machinery. The mechanization process will evolve into an automation process, when the process is not only supported by machines, but the machines work in accordance with a program that regulates their behavior. At the high end of the technology application spectrum is robotics where task-specific or intelligent robots are used to execute parts (Mahbub, 2008: 23-27). The domain of this topic group refers to automation and robot technology based on-site manufacturing technology in the construction industry. It involves installing automatic/robotic machining or assembly centers on the construction site and transforming the construction site into a factory-like, structured, manufacturing environment (Linner, 2013: 1-2).

The functional landscape starts with the search for best value in homebuilding, which is not simply a question of finding the lowest cost. It is vital to maintain and enhance quality, including those aspects of quality that affect durability, lifetime running costs and overall performance in areas such as environmental sustainability, health and safety. In addition, the

demand to increase housing supply requires more homes to be built in a shorter time, so value in homebuilding means building more quickly as well as more efficiently. The Construction Robots meet the three key quality requirements durability, performance and whole life costs. Major barriers, both technical and commercial, in the implementation of the construction robotics are: (1) Costs for R&D and innovation. Construction robots also imply an increase in capital intensity and higher workplace costs; (2) Costs for initial updating of a company and maintaining costs; (3) Difficulties in using and developing technologies; (4) Incompatibility with existing practices or current construction operations; (5) Low technology literacy among industry participants; (5) The necessary technologies are unavailable or difficult to acquire; (6) The technologies are not easily accepted. An interesting perspective of the expected future opportunities in the construction market is presented in Table 1 (Ranking from 1-most significant to 10-least significant).

Table 1. Future trends and opportunities

Ranking	Future trends and opportunities
1	Greater awareness of the technologies within the construction industry community
2	The number of construction companies using automation and robotics technology will increase significantly
3	Automation and robotics technology will be affordable for construction companies and easy to implement
4	There will be a larger range of automation and robotics technologies available for use in construction
5	There will be a greater standardization of the design and construction process
6	The use of automation and robotics technologies will enable companies to operate more efficiently and competitively
7	The technologies will be easily available across the world
8	The technologies will be accepted by the workers and they will be trained to use them
9	Automation and robotics will be easier to install and operate
10	The technologies will be easily available across the world

Source: Author's compilation after Mahbub, 2008: 238

Comparative Analysis of Current Solutions for Automatization and Robotization in Construction

The analyses of Automated/Robotic On-site Factories deployed so far reveal an interesting discrepancy between the technical state achieved and the improvements in productivity, economic performance and efficiency achieved. Whereas from a technical viewpoint the developed and deployed technologies (e.g. in terms of modularity, flexibility, variability, ROD) have reached an outstanding level, efficiency, productivity and economic performance stayed still behind the achievements in other comparable industries.

Like advanced manufacturing environments in the general manufacturing industry, Automated/Robotic On-site Factories were developed as sets of re-combinable subsystems with in-built (robotic) flexibility or with modular flexibility (e.g. end effector change) that can be fully synchronized with the buildings modular structure through ROD. Likewise, the analysis of the variability and of applied ROD methods shows that onsite

factories can be adapted within a certain extent to various building projects and thus used to automate the subsequent construction of differently designed and shaped buildings. Although organizationally this capability was not yet fully used, technically speaking the analysis showed that the capability is embedded in the modular approach most systems followed (Linner, 2013). ROD is a strategy that aims at co-adaptation of both the construction products and automated/robotic manufacturing/assembly operations in order to enhance the efficiency of the total construction process.

Performing the analysis of identified and analyzed of all approaches to Automated/Robotic On-site Factories that have been conducted so far were identified 13 categories. Considering the analyzed systems and the fact that some of the systems were used several times (for example ABCS and SMART each up to ten times), that subsystem applications are frequently used (e.g. Obayashi) and that currently the application of the on-site factory approach for deconstruction is taking off in Japan, it can be said that the Automated/Robotic On-site Factory approach to date has been applied more than 60 times worldwide. On the basis of the technical analysis conducted, categorization into 13 categories shows that Automated/Robotic On-site Factories can be installed at various locations on the construction site (on the ground, on top of buildings) and can progress in various directions (for example vertically or horizontally) thus allowing solutions for almost any building typology (for example various high-rise building typologies, condominiums, point-block buildings, steel buildings, concrete buildings (see summaries in the Analysis and Categorization Matrix). Besides construction purposes, the on-site factory approach can also be used to deconstruct buildings of different typologies. This means that from a technical point of view, that Automated/Robotic On-site Factories based on the applied and analyzed technologies (subsystems, end-effectors, factory layouts) hold the potential to be developed for manufacturing any vertically or horizontally oriented building typology.

The systemic analysis of subsystems and end-effector technology showed that Automated/Robotic On-site Factories were in most cases developed as modular kits which allowed, through a combination of in-built flexibility and modular flexibility, high variability. Each system could be broken down into multiple subsystems. The factors for comparative study of the Automated/Robotic On-site Factories are represented by: Factory Layout (Evolution Scheme, Elevation, Ground plan, Subsystems involved, Ed-Effectors, Robot Oriented design (ROD), Erection Speed, Configuration, Productivity, Resource Efficiency, Usability, Quality, Health and Safety. The invention belongs to category no. 8 “SkyFactory (moving up wards) for simple tower manufacturing” like Taisei and Shimizu technologies. These technologies use steel as building material of main structure. UMF uses concrete as building material of main structure (Linner, 2013: 1-2; Shimizu, 2012).

The following technologies represent the current solutions in robotization in construction on-site. There are presented the main working steps for every technology and the disadvantages which occur. Finally are presented the main working steps for UMF and the advantages of this technology.

Method of buildings execution in volumetric permutable formwork

Working steps: (a) Continuous consecutive concreting of transversal load-bearing walls and floor slabs in spatial sections of U-shaped formwork, which can be moved from one floor to another. The building concreting is carried out on floors; the floor is divided into sections whose dimensions are determined by the cycle of works within 24 hours; (b)

Formwork sections are installed in design position using a crane, taking separate blocks, which make possible to carry out the continuous concreting of walls and floor slab across the entire sector; (c) the walls and floor reinforcement is installed and concreting is carried out. So, it is achieved a fragment of the built-in-situ building with its vertical components (walls) and horizontal components (floor slab); (d) After the concrete achieve the durability of stripping, the formwork sections are taken to the scaffold in the console, installed in the floors throughout the building façade or removed through the gaps left in the floor slab, subsequently concreted.

Disadvantages: (a) the scaffold in the console must be installed in order to move the formwork, and that increases the workload and the amount of building materials; (b) If for the formwork moving there were left gaps in the floor and subsequently concreted, the integrity and the monolithism of the whole building floor slab disc are violated; stiffness decreases both for the floor slab and for the entire building, which has negative impact on building durability properties, especially for buildings in seismically active regions; (c) the limited character of technological possibilities – additional mounting should be performed as, for example, suspended panels mounting or brick up exterior self-supporting protective constructions, which leads to workforce consumption; (d) work undertaken on upper level is possible only after the formed floor slab has reached the designed durability because the equipment moving and the carrying out of reinforcement installation work are performed on the seated floor slab; (e) Period of time during which it is possible to transmit loads on built-in-situ formed buildings, in particular on the floor slab, exceeds the analogical period of time for loads transmitting on vertical buildings.

Method of execution of multi-storey monolithic buildings using mobile formwork

Working steps: (a) The foundation slab is installed, on which the jacking frames are placed along the vertical building elements axis and the formwork is mounted, then the vertical buildings reinforcement and concreting is carried out. Simultaneously, on the foundation slab it is concreted the floor slab, which is suspended on jacking frames columns with the help of special equipment; (b) After the concrete achieved the durability, the formwork panels are removed from formed vertical constructions, the jacks supporting on seated vertical constructions is performed again; jacking frames are lifted with the vertical formwork panels to the next floor with simultaneous lifting of the floor slab, suspended on jacking frames columns; (c) The floor slabs is installed in design position, the reinforcement mustache-bars of the vertical construction and of floor slabs are joined together and the joints built-in-situ is performed; (d) When hardening of the concrete ends it is performed again the supporting of jacking frames columns by the floor slab, the vertical formwork panels are installed in the design position, the vertical construction and the next floor slabs are reinforced, the vertical construction of the next floor is concreted concomitant with the next level floor slab concreting and their strengthening on the jacking frames columns; (e) further the construction execution cycle is repeated

Method of execution of multi-storey built-in-situ buildings using mobile formwork

Working steps: a) concomitant manufacturing of floor slab on the foundation slab in one package with their subsequent lifting; b) installation in design position and joints monolithisation; in this case the vertical formwork panels rests on closing plates built-in-situ in vertical constructions and jacking frames rests again on the panels through the

latches strengthened on the frames longerons; c) there are mounted bars in the foundation of jacking frames columns, through which the floor slabs, are risen from foundation slab to the design landmarks.

Disadvantages: a) because the floor slab is concreted apart of vertical constructions and their joint and joints monolithisation are subsequently performed, it cannot be ensured the formation of the floor monolithic rigid disk of the whole construction connected with the vertical constructions, which has negative impact on the building durability properties, in particular for buildings from seismic active regions; b) in addition, according to the basic version of the method, for the concreting of vertical construction the jacking frames and the entire formwork rest on floor slab close to the horizontal junction node of the vertical construction with the building floor slab. The next level/floor slab is concreted on the same floor slab. In order to execute this concreting work it is necessary that the concrete of the joining node achieves the designed durability, which requires time-consuming, exceeding, for example, the time when vertical construction concrete reaches durability values, approved for supporting the formwork panels and, also, jacking frames by seated vertical construction. The time limits of the building are increasing; c) Since the latches for supporting the jacking frames panels are stationary strengthened on the frames lingering, it is impossible to modify their width in the execution process of the vertical constructions, otherwise latches and panels will sit in different planes and other support will be impossible to get. Thickness of vertical construction of the building with many floors virtually always decreases in the direction from the foundation slab to coverage; d) Using known solutions lead to excessive consumption of building materials (RU 2078884 C1 1997.05.10).

New technology relates to construction and can be used in the erection of multi-storey cast- in-situ buildings

Working steps: a) erection of the floor slab of the stage/floor of the building; b) concrete-filling of vertical structures of the next stage/floor of the entire building after setting of concrete floor slab of this stage/floor; c) erection of another floor slab after time curing of the poured concrete up to the attainment of the working strength.

Advantages: a) The result is to increase the strength properties of the erected buildings; b) Reduce the period of construction; c) Building materials saving; d) The possibility of mechanization and automation of technological processes (MD 4161 C1 2012.10.31).

Seismic performance. The new technology based upon automation and robotization can be used in the erection of multi-storey cast-in-situ buildings.

The process for erection of cast-in-situ building includes the erection of cast-in-situ piece of the building: floor slab of the entire building - vertical structures of the overlying stage/floor of the entire building. The basic principle of the process: erection of the floor slab of the stage/floor of the building and, after setting of concrete floor slab of this stage/floor, concrete-filling of vertical structures of the next stage/floor of the entire building – time curing of the poured concrete up to the attainment of the working strength – erection of another floor slab, etc. In the execution of works the formwork is based on the stacked vertical structures of the building.

Technological operations can be carried out in parallel or can be exchanged places respecting the basic principle: performance floor level/floor the entire construction and where the concrete slab that level/floor concrete filling is performed vertical construction

of the next level/floor of the entire building, while maintaining the durability of concrete poured until it reaches calculated, the execution of the next floor etc.

As a bridge to maneuver the floor can be used some air mattresses or hydraulic flexible elastic material, while after removing the formwork slab mattresses are collected in rolls and moves to the next level/floor by vertical gaps. Besides walls, intended for lifting beams formwork telescopic floor.

After removing formwork floor next level/floor in rooms formats and places determined according to the calculations can be installed pillars, supports individual who rests on the floor level/lower floor until you reach the floor sat resistance calculated/projected.

1. Setting the pillars mobile trolley jacks frames in the transverse direction vertical construction executed, which are suspended formwork panels, gives the possibility to adjust the thickness of the wall, including wall thickness to decrease the upper floors, which helps to reduce consumption building materials and reducing the mass of the building and inertia forces associated masses at the upper storeys with important effects above the dynamic characteristics of the entire structure which is subjected at wind and seismic loads. Installing the cassette jacks frames with longitudinal reinforcement and longitudinal reinforcement device for binding carcass reinforcement concrete construction makes it possible to automate the process, as opposed to linking the armature with hand tools. The automation of the process improves significantly the accuracy of the binding reinforcement so the strength, stiffness and ductility will have good values in order to perform raised seismic behavior.

2. Using telescopic stabilizers pillars-of formwork panels enables correct spatial position of the panels. The panels are arranged so strictly in vertical position and perform leveling and installing panels (the lower end of the panels) on horizontal landmark design. This affects the quality of joints between vertical and horizontal elements of construction in order to raising the stiffness of the hinges.

3. Install panels in strict vertical position preclude the occurrence eccentricity annexation vertical load on the foundation construction, which improves the durability properties of the construction.

4. The telescopic construction of the (tightening) chuck gives the possibility to perform gathering panels where the wall thickness changes that are running. The floor beam formwork construction gives the possibility of carrying out concreting where, in the solutions according to the architectural concrete and planning changing a spacing between the walls of the building. It provides compactness not only for mounted the beam, but the entire main building.

5. Just ensure the installation of all items under massive bearing formwork (deck) in a plan, which increases the quality of construction. It prevents, for example, excessive leveling concrete floors with effects above the mass of the structure. Making process of the basic variant claimed using technological equipment gives the possibility to perform disk monolithic floors of the entire construction, which improves the durability properties of the construction. As technological equipment rests vertical constructions executed, it reduces the time to build compared to nearest solution.

a) Floors play a key role in taking seismic forces by: overtake the inertia forces and their transmission to the vertical elements of the structure; horizontal rigid diaphragm. To ensure the effect of diaphragm floors of structures must possess adequate strength and stiffness.

b) Connecting floor side structure elements. Connecting floor side structure elements will be done so as to be able to transmit shear forces resulting from horizontal diaphragm action. This connection is achieved by adequate anchoring for the perpendicular reinforcement to the interface slab – wall (or beam) in reinforced concrete floors.

6. Composition walled design of reinforced concrete structures will be reconciled with execution processes considered in design. In addition to the above, for dissipative zones can form stable plastic hinges, should ensure good adhesion and anchorage of longitudinal reinforcement on supports. This leads in most cases to anchor lengths greater than gravity when the requested beam, particularly at the lower reinforcement.

7. Running constructive technological equipment provides the possibility of its use in the construction of buildings with different thickness of vertical construction (walls) and the change (decrease) wall thickness as it approaches the slab of the top. Inventions consisting in this technology offer the possibility to reduce the time of construction, to mechanize and automate work. Based on execution of building monolithic fragment, the slab floor the whole building – the vertical elements of vertical level/top floor, the technology increases the stiffness and durability properties of buildings, which determines the effective use of inventions in building in seismic active regions (Penelis, 2014: 118-124).

Thermal efficiency

The components of the new technology involved in thermal energy efficiency by thermal resistance of the building envelope are represented through the possibility of installing masonry with many layers. The component is: 1) the possibility to adjust the thickness of the wall, including wall thickness decreasing for the upper floors, which helps to reduce building materials consumption; 2) In addition, there is the possibility of installing masonry with many layers, which increases significantly the thermal resistance of the envelope and offers the opportunity of using a wide variety of insulation materials. The second aspect involved in thermal efficiency is about thermal bridging. Thermal bridging in buildings can contribute to a multitude of problems, including, but not limited to, added energy use during heating and cooling seasons and interior surface condensation problems. A thermal bridge is an area localized on the building envelope where the heat flows is different (usually increased) in comparison with adjacent areas (if there is a difference in temperature between the inside and the outside). The effects of thermal bridges are: altered, usually decreased, interior surface temperatures, in the worst case this can lead to moisture penetration in building components and mould growth and altered, usually increased, heat losses (Dieter, 2013: 1-6).

Both effects of thermal bridges can be avoided: the interior surface temperatures are then so high everywhere that critical levels of moisture cannot occur any longer – and the additional heat losses become insignificant. If the thermal bridge losses are smaller than a limit value (set at 0.01 W/(mK)), the detail meets the criteria for “thermal bridge free design”. Thermal bridge free design leads to substantially improved details; the durability of the construction is increased and heating energy is saved. A building envelope is considered to be thermal bridge free if the transmission losses under consideration of all thermal bridges are not greater than the result calculated using the external surfaces and regular U-values of the standard building elements alone. It's a good idea to include the 'regularly occurring structures' in standard building elements within the regular U-values (Totten, 2014: 1-3).

There have been positive experiences with numerous construction systems in which the principle of "thermal bridge free design" has already been applied. There are complete catalogues of thermal bridge free details now available for constructions using formwork elements. Using new technology the materials involved for building main elements (walls, slabs) can be chosen as efficient materials in thermic way and can be very easily changeable. Similar building materials use for the main elements can reduce the percent of thermal bridges which improve significantly the thermal efficiency of the building.

Energy Efficiency

The construction industry is a large contributor to CO_2 emissions, with buildings responsible for 40% of the total European energy consumption and a third of CO_2 emissions. To help address climate change the European Commission has set specific targets to be achieved by 2020, known as the 20/20 targets. These targets are to reduce energy consumption by 20%, reduce CO_2 emissions by 20% and provide 20% of the total energy share with renewable energy. All components are involved in automation, mechanization, low consumption building materials, reducing the time for building, reducing amount of work, reducing the consumption of manpower and time of operations execution, reducing unproductive expenditure of time, including technological breaks leads to rising energy efficiency.

Results

Following these purposes we determined couple of solutions that can be solved using our invention, such as: reducing the efforts made by workers; decreasing the amount of waste materials; increasing the speed of construction process; lower price for dwellings. The comparative analyses and the results say that the same workload, using the same numbers of workers, can be done 23 times faster using modern technology with automation of the formworks. Also, using classical methods in construction we need to multiply the number of workers by 20 to achieve it in the same amount of time as modern automation and robotization technology.

Figure 1. The comparison of the total construction time between MTC - modern technology in construction and the traditional one

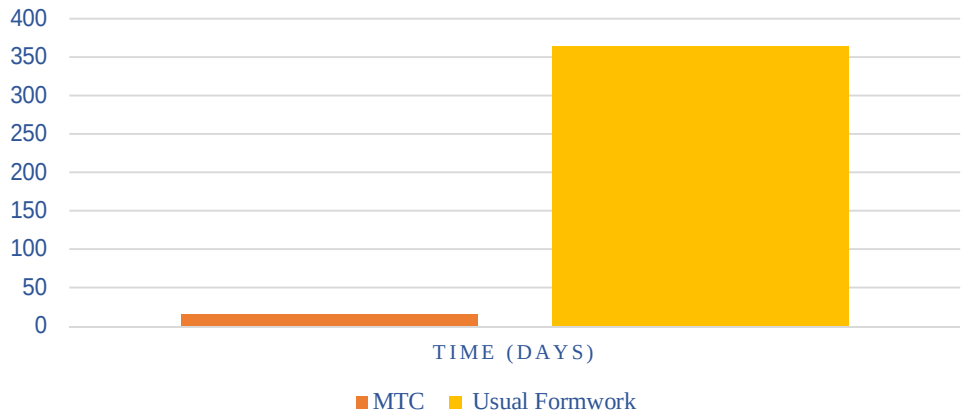
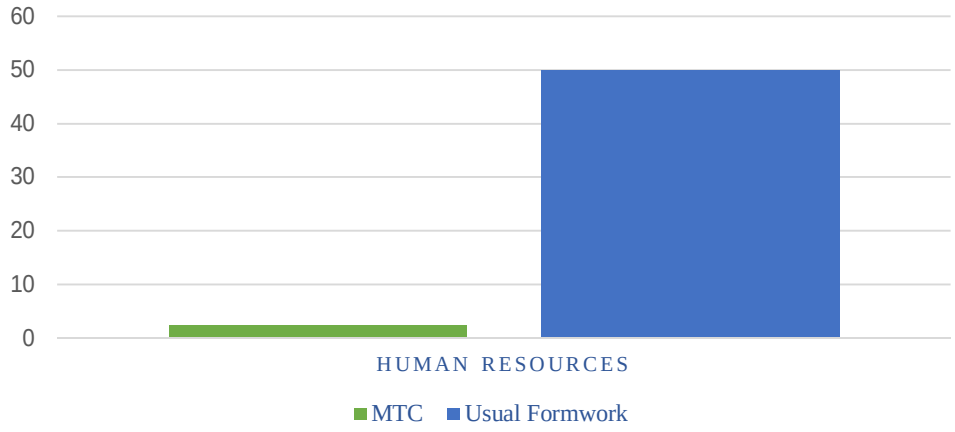


Table 2. The comparison of the number of workers between MTC - modern technology in construction and the traditional one



Although the total costs for realising the new technology based upon automation and robotization in construction can be high the construction cost per level results after a certain number of cycles much cheaper. This technology is saving total time of construction with at least 7 times than traditional ones. In the same time can be saved material to 30% and the environmental protecting can be raised up to 35%. Using reduced human resources the economy resulted from resources payroll can be minimized by 85%. Overall the capital cost for the same building can be reduced with 40%. The entire technology can be used for applying multiple layers for the envelope of the building so the energy efficiency can be raised with at least 40%. In order to build in a traditional way there are necessary a lot of sub-contractors which can introduce a lot of errors in the technological flux. The robotization and automation in construction technology remove a significant number of these sub-contractors and as a result it is obtained a reduced number of errors in the technological flux.

Conclusions

Using new modern technology of robotization and automation in construction major challenges in this sector can be developed. The other important issue in all these technology is that the buildings can be adaptive ones to the certain conditions of thermal zonation, seismic zonation and of course the architectural.

One of the most important results of the new modern methods based upon automation and robotization is to increase the strength properties of the erected buildings, reduce the time for construction, building materials saving, the possibility of mechanization and automation of technological processes. The buildings made in this way have the advantage of increase bearing capacity, stiffness and seismic stability. The modern technology offer the possibility to reduce the time of construction, to mechanize and automate work which determines good energetic efficiency for buildings and a diminution of CO_2 emissions. Based on the possibility of installing masonry with many layers, the technology increases the thermal efficiency of buildings which determines the effective use of the new technology in the future.

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Book review Info

Received: January 15 2015
Accepted: March 2 2015

RSP • No. 45 • 2015: 245-246

BOOK REVIEW

Irina Olivia Călinescu, *Posesia și efectele sale juridice* (*Possession and its legal effects*), Bucharest: Universul Juridic Publishing House, ISBN 978-606-673-035-8, 360 pages.

Anca Parmena Olimid*

"Posesia și efectele sale juridice" ("Possession and its legal effects") is a legal analysis of a fundamental institution of the civil law representing a collection of judicial commented practice, structured in four chapters. The study is important because it both allows the reader to examine the possession and its legal effects and, more importantly, the work theoretically explores studies and Articles relevant in the field, decisions of the Constitutional Court, related legislation and the jurisprudence of the European Court of Human Rights.

In this study of theory and practice before and since the new Civil Code implementation, Irina Olivia Călinescu shows how the conceptions of possession, possesion actions, the legal effects of possession and the usucapio are interlinked. "Posesia și efectele sale juridice" ("Possession and its legal effects") uncovers a conceptual dialogue of possession, providing an articulated study in the light of the new legal provisions in the field.

To answer these challenges, the author largely presents the institution of "possession" due to this importance in the light of the Law no 287/ 2009 and the legislation corresponding to the new Civil Code. The blending of theoretical and practical approaches is a strength of the study and offers the author the possibility to highlight the newest and various information provided by the doctrine and the jurisprudence. Călinescu separates

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her analysis in four parts. She starts with the historical evolution of the concept of "possession" in Chapter I entitled "Teoria general a posesiei" ("General theory of possession") exploring the problems of proof of possession and the delimitation of possession from the precautionary detention. The second chapter is entitled "Efectele juridice ale posesiei" ("The legal effects of possession") discusses the complex legal context of the doctrine, jurisprudence and commentaries. The third chapter is entitled "Efectele juridice ale posesiei. Acțiunile posesorii" ("The legal effects of possession. Possession actions") focuses on the conditions of exercise considering the complez legal provisions in the field that makes up the legal effects of possession and tries to explain the questions around the law and structure of possession. Călinescu also takes special care to explain how possession actions have evolved. The fourth chapter is entitled "Uzucapiunea" ("The usucapio") and it seeks to explain hiw and why these actions are deisgned. The last chapter finds the field of application, the conditions of exercise by showing the role of doctrine and jurisprudence and providing a key role to the effective understanding of this legal instrument.

Each of the four chapters explores the possession as a frequent and indispensable topic of the civil code among Romanian judges, lawyers, professionals, experts and law scholars. One also argues from this study that we have to examine the various contexts and approaches for possession. These foster three different levels of legal engagement: doctrine, jurisprudence and commentaries. Thanks to this study, the law scholars are informed about the law and practice in the field of possession.

Book review Info

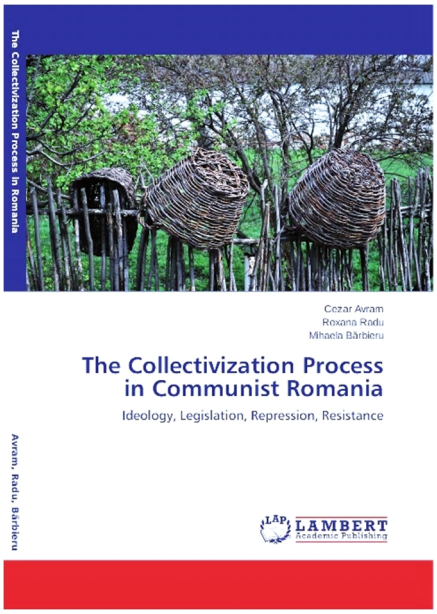
Received: January 15 2015
Accepted: March 2 2015

RSP • No. 45 • 2015: 247-250

BOOK REVIEW

Cezar Avram, Roxana Radu, Mihaela Bărbieru, *The Collectivization Process in Communist Romania. Ideology, Legislation, Repression, Resistance*, Saarbrücken: LAP Lambert Academic Publishing, 2014, 125 pages.

Daniela Osiac*



The book "*The Collectivization Process in Communist Romania. Ideology, Legislation, Repression, Resistance*" is of real concern for all those passionate about history and elucidation of events that will forever mark the destiny of the Romanian people and his thirst for humanity.

On the basis of a vast documentation – published and unpublished documents – the authors present the process of collectivization in the context of the era, revealing the levers, legal means and repressive instruments used by Communist authorities in the preparation and conduct of this sad episode in the history of contemporary Romanian. This is the challenge that faced the three researchers and whose solution is of great complexity in the face of the multitude of sources analysed, combined with a reflection of the internal mechanisms of operation of the Communist regime.

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The volume includes five distinct texts, each analysing a hypostasis of the collectivization of agriculture in the period 1949-1962. He can, however, be viewed as a unified whole, which tries to compose a global picture based on an overview of the historical, social and political context, to which different dimensions are gradually added, as the events are running, and the Communist Party's program of collectivization of agriculture is spiked with new tactics and tools. Each chapter of this work has in view a distinct aspect of this program: ideology and communist propaganda, agrarian law, criminal law, the means of repression and defeating the resistance of the population.

The first chapter of this paper depicts an overview of agrarian policy in the wider context of communist policies aimed at reforming society through the abolition of individual property, the introduction of super-centralized and planned economy, the construction of an ideal type of new man, which must correspond in all points of view with the new ideology – the living conditions, diet, social and family relationships, beliefs, even the manner in which man was born and died had to align to the rules dictated by the new system. The authors show how the collectivization of agriculture was a major concern for the Romanian political class since the early days of the Communist regime, aimed on long term at the liquidation of social inequalities and injustice that were doomed to disappearance in a society in which private property was gone.

The second chapter completes the first one, addressing the process of collectivization in terms of ideology and propaganda it was founded on, by deciphering and interpreting philosophical construction of Marxism as a whole (the works of Marx and Engels, Lenin and Stalin), as well as by analysing, in the general context in which they were launched by Communist leaders, of a vast set of documents including the writings and speeches of Gheorghe Gheorghiu-Dej, Vasile Luca, Ana Pauker, Teohari Georgescu, the plenary reports, conferences and congresses of the party, the programmes concerning the agrarian policy of the Romanian Workers Party, archival information, studies and Articles published in periodicals of the era. By placing propaganda elements of the campaign of collectivization released yet from the plenary session of the Central Committee of the Romanian Workers Party from 3-5 March 1949 facing the realities of the Romanian society, the authors demonstrate how the agricultural policy has been used as a tool in the ascent towards the conquest of political power by the Communists and how, gradually, the regime has built not only an ideal type of new man, as well as an ideal type of enemy – the kulak, the criteria for inclusion in this social category depending on the political imperatives of the moment or on the particular interests of the local authorities responsible for the implementation of the rules and directives coming from the policy makers. This chapter is a suggestive illustration of how ideology has been transposed in the writings, programmes and propaganda declarations of the Communist leaders, whereby

they have transposed the Stalinist model of "kolhoz", have implemented the concept of "the property without owners or the property of everybody", have masked the conflict between the owner and the Communist regime through false statements meant to reassure the peasants, and have justified the means by the necessity and usefulness of the aims pursued.

The third text deals with land law and the extent to which it has been instrumentalized to serve the interests of political actors of the moment. From the avalanche of legal acts which have put into practice Stalinist policy of collectivization of agriculture are analysed separately the laws on the establishment, organization and functioning of the collectivist structures – Collective Agricultural Farms (GAC), State Agricultural Farms (GAS), State Agricultural Enterprises (IAS), Machines and Tractors Stations (SMT), Associations for the cultivation of lands in common (TOZ), Agricultural cooperatives of production with income (CAP), governmental and ministerial acts which aimed at ensuring the technical-material basis of these structures, laws and decrees on labour organization and work remuneration, decrees and decisions of the Council of Ministers on land consolidation, regulation of land donations to the State, the law on agricultural taxes, legal regime of collection of cereals and other agricultural products and livestock, as well as other related laws which supported collectivization process during 1954-1962. The authors present not only the evolution of agrarian legislation, but also the methods of monitoring and control of the manner in which it was implemented.

Another aspect of legislative policy is presented in Chapter IV entitled «The Role of Criminal Law in the Realization of the "Socialist Transformation of Agriculture"». The text presents, on the one hand, legal regulations and official justification used for their introduction and, on the other hand, the actual effects that the criminal laws has produced in the population and the shocking testimonies of eyewitnesses to the confiscation of goods and agricultural products from the so-called "kulaks", exposing them to the danger of starvation. Another episode shown in this chapter is that of judging and condemnation of "saboteurs and enemies of the people", the whole section devoted to "show processes" being based on the reports of those convicted and sent to prison or forced labour camps, on the stories told by children, nephews or other members of their families. The report adds more colour and seems all the more real since many of the short stories included in this chapter are collected even by two of the authors of this book, Cezar Avram and Roxana Radu.

The last part of this volume is devoted to manifestations of resistance against collectivisation. The authors describe how simple peasants or people with little education, treated as mere tools or accessories in the grand project of building a Communist society, have turned into opponents of the regime, the fiercest since the means and instruments of repression evolved. Multiple

incidents between peasants and party activists, "Militia" and "Securitate" workers, their conduct and their suppression by police are reflected both on the basis of archive documents, information notes prepared by the "Securitate" offices or by the presidents of the popular councils, and on direct reports of participants in uprisings and rebellions through which rural population has expressed opposition to radical, unjust and inhuman measures taken by the communists for the collectivization of agriculture.

Without ignoring other historians' studies focused on the same period analysed (Robert Conquest, Jean François Soulet, Katherine Verdery, Reuben H. Markham, Stephane Courtois, Nicolas Werth, Serge Bernstein, Pierre Milza, Mikhail Geller, Robert Levy, Dumitru Şandru, Vladimir Tismăneanu, Ruxandra Ivan, Octavian Roske, Florin Abraham, Dan Cătănuş, Nicoleta Ionescu-Gură etc.) that the authors have correlated to describe as realistic as possible the national and international context, the book "The Collectivization Process in Communist Romania. Ideology, Legislation, Repression, Resistance" has the merit of having brought to light a number of unpublished documents and touching stories of eyewitnesses of the events of that period on which time and the natural course of life would have gathered dust and oblivion.

Book review Info

Received: January 15 2015
Accepted: March 9 2015

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