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Ethical Values Specific to the Public Office in the Field of Structural Funds. Theoretical and Practical Aspects

Marian-Lucian BACIU-ANDREI,*
*Roxana-Daniela PĂUN***

Abstract
Civil servants operating in the European Union are obliged to respect the moral and deontological values of the profession, which are highlighted by a behavior appropriate to the purpose of this profession, namely: satisfying the needs of the citizen and by the efficiency with which the administrative act is completed. The activity in the departments / directions for attracting and implementing structural funds represents a special activity in the central and local public administration, since the efficiency of work is observed through the financial resources attracted through various operational programs and projects implemented on time. To achieve maximum efficiency, the official, in addition to the ability to effectively organize the administrative activity, must have a high degree of conscientiousness towards the service he provides, doubled by professionalism, and the employer must ensure him appropriate working conditions, with all legal and salary rights related to rank and position. These will have the direct result of ensuring an optimal standard of living and will allow specific activities to be carried out in good conditions, and his desire will be to achieve results. Attracting European funds by local public authorities is a challenge because the excessive bureaucracy required to complete the process of approving funding requests is arduous and cumbersome, and nevertheless, in my view, the departments implementing the funds, by involving and the desire to achieve results, complete this procedure brilliantly, which will create suitable living conditions for the citizens, direct beneficiaries of the projects.

Key words: *Structural founds / civil servants / moral and deontological values*

Research motivation and methodology

"*Sustainable development is development that seeks to meet the needs of the present without compromising the ability of future generations to meet their own needs*[1]*".*

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[1] Lester Brown – State of the World, Plan B 4.0, Washington, 2000

The structural funds represent an important opportunity for economic development of all the member states of the European Union, and at the same time we have the obligation that, through the investments we will implement at the level of central and local public authorities, although they will have as their main purpose the economic development of communities, they will not have to affect the future of our children.

In the context of the concern for a real openness and transparency of the local public authorities, from the continuous desire for the development of the communities they lead, the leaders of the local authorities propose to capitalize on their potential, financing opportunities and all availability for economic – social development and creating a competitive and stimulating business environment, designed to attract private investments, which will create new jobs and implicitly increase the standard of living of citizens.

In order to achieve these prerogatives, local public authorities must create a mechanism of their own to identify, apply, request, implement and complete the procedures for accessing European funds and structural funds applicable at the national level. The ability to attract funding sources of each applicant differs from case to case, as a public authority has management departments – implementation of European funds with many specialized civil servants, and other authorities do not have any employees specialized in this branch in their organizational charts . Thus we can speak here of different capacities for attracting and implementing European and structural funds.

Their professional conduct and deontological values must be irreproachable, as through the way of fulfilling their duties, the results of their work can be seen in local communities by increasing the quality of life as a result of the completion of projects in different fields (infrastructure, economy, health, culture, education, etc.). Thus, general local budgets will have a substantial increase. At the same time, the professionalism and way of working must be at a high level, as they attract financial resources to the communities they represent, bureaucratic procedures are difficult, and non-compliance with procedures and deadlines can lead to the loss of funding, and in the worst case, the amounts used will have to be returned to the project management units.

The general objective of this research paper is to contribute to the clarification of the importance of the ethical values of civil servants in the process of attracting European, structural and other funds for local public authorities based on funding standards and procedures.

The specific objective of this research paper is:

- The ethical values of civil servants responsible for the implementation of projects at the level of local authorities. Case study – Vâlcele town hall, Covasna county

Any scientific work is based on specific research of the chosen topic to ensure the achievement of the proposed objectives. The entire research process is based on bibliographic documentation from various sources (specialist books, scientific works, publications, etc.) on the basis of which the author can prepare a complex work, which will concretely and coherently transpose the proposed general and specific objectives.

The work proposed for the research ”*Ethical values specific to the public function in the field of structural funds. Theoretical and practical aspects*” will be structured on several levels, namely the conceptual – theoretical part, the conceptual – practical part and practical aspects analyzed through an applied case study.

The importance of the chosen theme

The science that studies the obligations and behavior of those who practice a certain profession is called Deontology, which is a branch of Ethics. The difference between Deontology and Ethics is applicability, while ethics studies the philosophy of moral duties, deontology is the applicable science.

The term deontology comes from the Greek words deon, deontos and logos meaning what is right and logos meaning science.

In the analyzed situation, respectively, the deontology of the public official is characterized by satisfying the needs of the citizen in whose interest the public office is exercised and achieving the effectiveness of the public service by gradually increasing the results in the general public interest. The effectiveness of the civil servant varies according to his procedural capacity, memory, personality and thinking.

Deontological values are represented by achieving the efficiency of the public service and satisfying the needs of the citizen, and the civil servant in order to exercise the public function must serve the society and the interests of the citizens

An organization becomes efficient if it consists of efficient and effective staff. The value of the public sector is not only given by the material or financial means at its disposal, but especially by the value found in its human potentia[2]l. We observe here the fact that a mayor must know the capacity of each subordinate employee in terms of the efficiency of the performance of their duties and stimulate the capacity of self-improvement of each individual, in order to become more efficient and at the same time, the institution will become more efficient in meeting the needs of citizens.

The obligation of every civil servant, regardless of the institution where he works, is to serve the general interest of the citizen, as it emerges from the Latin

[2] Sorina Dana Veiss – *“ Efficiency and effectiveness of the public service”,* Publishing house. Recent, Vol. 13 no. 3(36), page.375

administer, which means servant. So, the moral obligations of the civil servant are to serve the society and the citizens without going beyond the legal framework provided by the normative acts.

Current data of the proposed objective

The quality of public administration and governance of a country is an essential factor for its economic performance, but also for the well-being of the citizens of that country. Effective public administrations are at the service of citizens and businesses. It is essential that public authorities can adapt to changing circumstances[3].

The local public administration represents a distinct part of the public administration which, on December 31, 2021, totals 454,756 employees, civil servants, contractual staff and other categories of staff, representing 36.02% of the total number of employees in the public system. We observe here, the fact that more than a third of the employees paid from public funds are in direct contact with the citizen serving his general interests as a priority.

In the content of this paper, we will focus on the Vâlcele Administrative-Territorial Unit from Covasna County. On December 31, 2021, it had 5739 inhabitants in its 4 villages (Araci, Vâlcele, Ariușd and Hetea), being the largest rural locality in Covasna County. In order to solve administrative and local interest problems, the specialized apparatus of the Mayor of the commune has a total of 28 employees, civil servants, contractual staff and other types of public personnel. This number represents 0.00061 of the total number of employees in the local public administration. I wanted to mention here the fact that, although it is the largest commune of a county, it is simply insignificant at the national level.

Out of the total of 28 employees, only 4 people have duties in this sense, namely the mayor, the deputy mayor, the mayor's advisor and an advisor from the office of public procurement and project implementation, and in percentage terms it is about 14.28%.

Talking about these 4 people, we will research applied these people with attributions in the application and implementation of European funds at the local level. Although the bureaucracy in this area is very large, the local public authority is doing remarkably well in terms of how it manages structural funds. Following this research, it was found that there is a close, open and success-oriented collaboration between these people, having primarily the desire to carry out projects in the local public interest of the citizens and to strengthen the purpose for which they exercise their public authority.

[3] https://reform-support.ec.europa.eu/what-we-do/public-administration-and-governance_ro

The main question of scientific research

Considering the fact that the purpose of this scientific research is the deontological values and the place of research, we ask ourselves the question, Are the deontological values of the personnel dealing with the implementation of European funds respected within the Vâlcele town hall?

This query creates the premises of new questions such as, For whom is this research important?, What will be the positive implications of doing this research?

The scientific and practical consequences of the research

Following this research carried out on this segment of civil servants, in the near future the research may be extended to other similar localities, respectively municipalities, or it may expand vertically to the level of cities, municipalities, counties and even to the capital.

New perspectives can be addressed, such as the identification of common problems faced by civil servants in this sector, proposals to improve the legal spectrum that applies in this field and, implicitly, the modification of work procedures.

Another very important thing is the feedback that the citizens of the town will give to these people.

The scientific research used in this project is APPLIED RESEARCH – EMPIRICAL, original, having as its main purpose the accumulation of new information that is oriented towards the specific practical objective.

To carry out this research, I decided to use the Interview as a research technique. With this method, I wanted to make direct contact with the citizen, to be able to see the reaction, the way of response, etc.

I wanted the target group to be a complex group, which could provide an overview of the scientific research carried out and result in conclusive information on the civil servants in the town hall of Vâlcele municipality responsible for the implementation of European funds. Thus, I interviewed the 4 (four) persons targeted by the scientific research, I randomly chose 6 (six) colleagues from the other departments within the institution (financial, civil status, social, agricultural), and later I chose 10 (ten) citizens living in Vâlcele commune who were kind enough to answer my questions.

The random interview took place at the institution's headquarters in Araci Village, Vâlcele commune, no. 464, Covasna County during the period 10.11.2022 – 15.11.2022.

The questions used

1. **How satisfied are you with the activity of Vâlcele Town Hall?**

2. How do you assess the relationship between citizens and Vâlcele Town Hall?

3. How do you assess the way in which projects are submitted to obtain funding from different sources?

4. Do you appreciate the way in which the City Hall supports access to funds by individuals or legal entities?

5. Do you consider Vâlcele Town Hall responsible for all citizens' complaints?

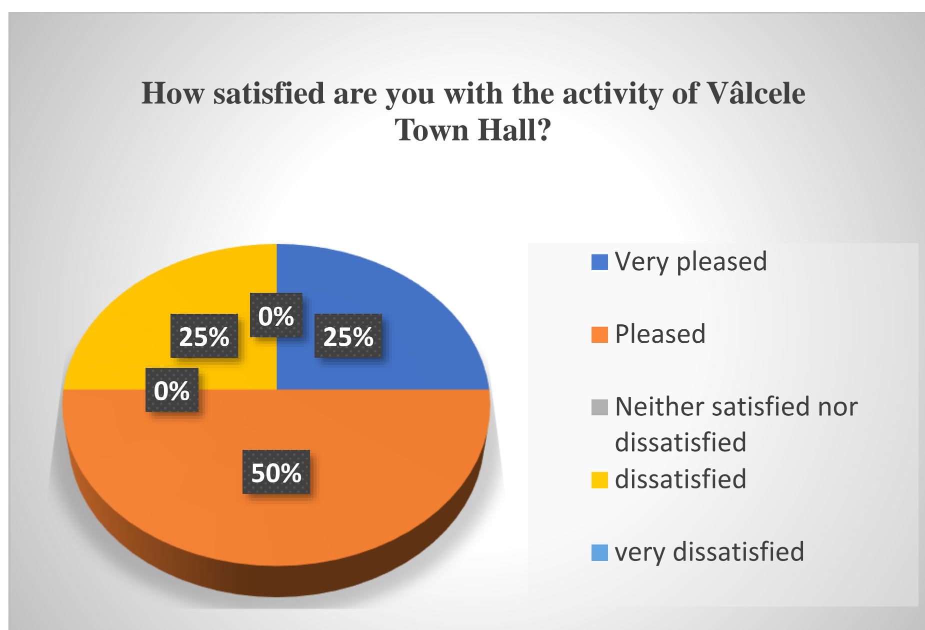
6. Does the municipality of Vâlcele effectively monitor and implement the ongoing projects?

7. Are civil servants responsible for structural funds professionals?

8. What is your opinion about the Local Development Strategy 2021-2027 of Vâlcele Municipality?

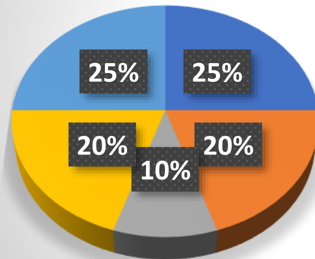
9. How satisfied are you with the attitude of civil servants specialized in European funds?

10. Are the civil servants working in the department of European funds credible?



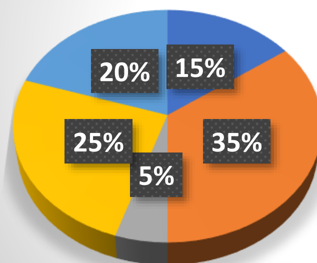
To this question, half of the people interviewed declared themselves satisfied with the institution's activity, a quarter even very satisfied, and a quarter declared themselves dissatisfied.

How do you assess the relationship between citizens and Vâlcele Town Hall?



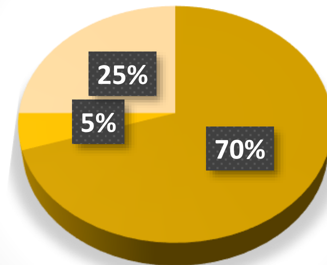
Question number 2 aimed to ascertain the relationship between citizens and the institution, the answers were not conclusive, people's opinions were divided, but overall the relationship between citizens and the town hall is a good one.

Do you appreciate the way in which the City Hall supports access to funds by individuals or legal entities?



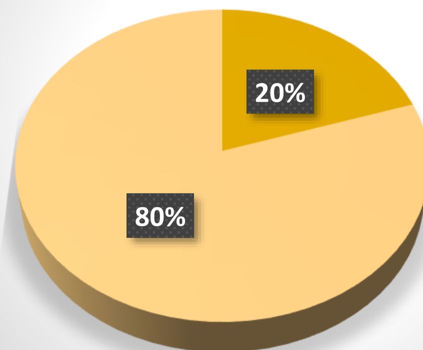
To this question, the method of submitting the projects is very satisfactory or satisfactory from the point of view of half of the people interviewed, while the other half declares neither satisfied nor dissatisfied, dissatisfied and very dissatisfied.

Do you appreciate the way in which the City Hall supports access to funds by individuals or legal entities?

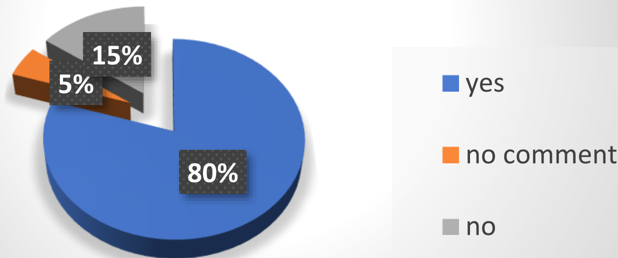


We conclude from this question that the Institution provides support to both individuals and legal entities in the consulting procedure regarding accessing European funds or other funding sources.

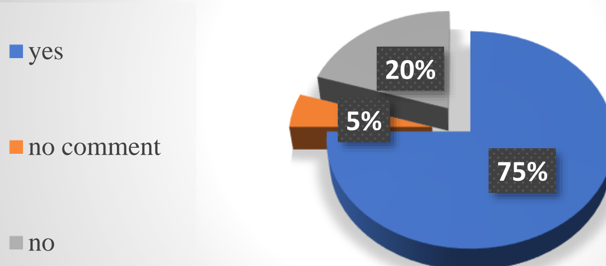
Do you consider Vâlcele Town Hall responsible for all citizens' grievances?



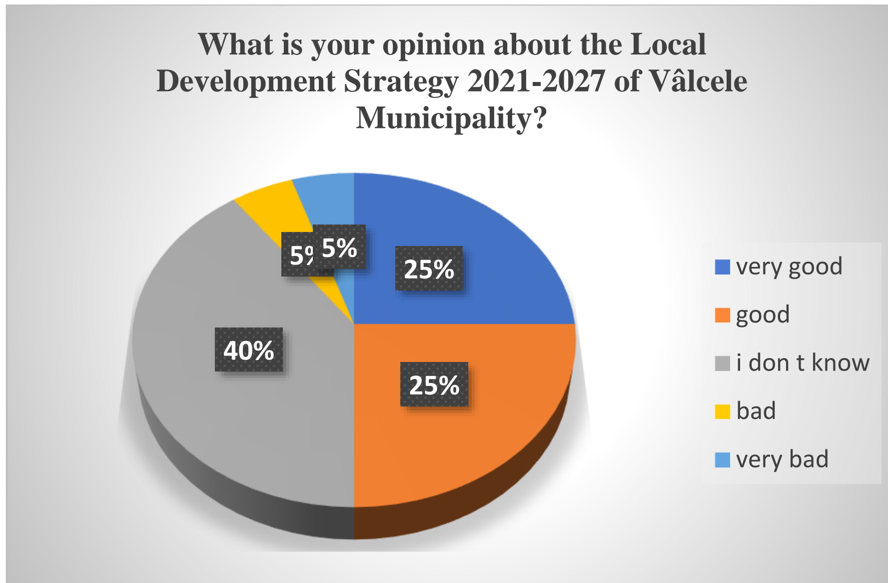
From these answers it is obvious that the institution is not responsible for all citizens' complaints, regardless of their nature.



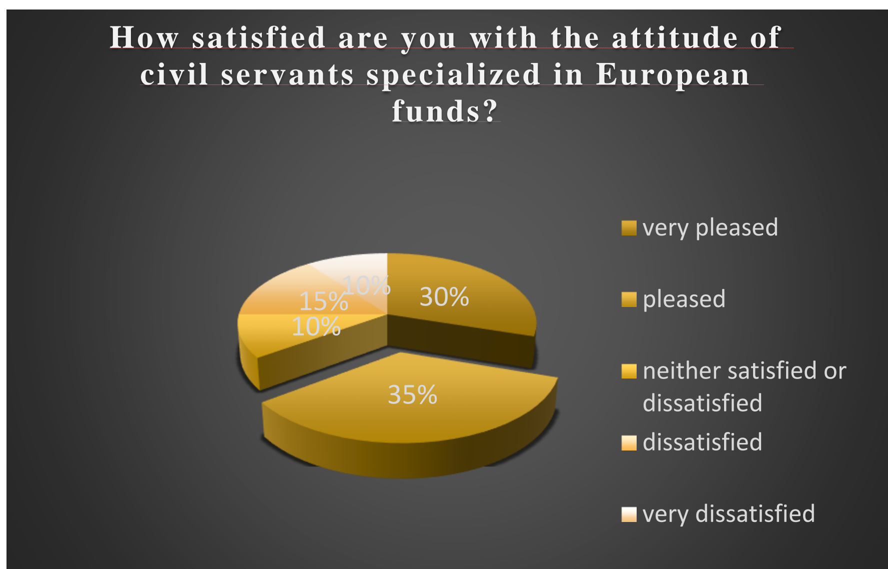
Although there are many ongoing projects at the level of the Vâlcele commune, the administration effectively monitors the ongoing projects.



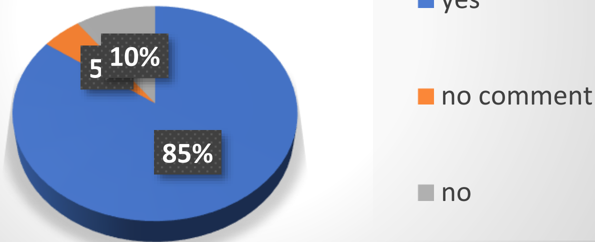
Considering the fact that civil servants responsible for the implementation of structural funds participate in continuous training programs in this field, the citizens of the commune consider that they are professionals.



It seems that many citizens do not know this document, but those who know it have a good opinion.



Most of the people interviewed mentioned that they are satisfied with the attitude of civil servants specialized in European funds.



To this question, we conclude that the civil servants working in this department are credible in front of the citizens.

Projects – structural funds in Vâlcele commune

- ✓ Rehabilitation and modernization of cultural homes in the villages of Araci, Vâlcele and Ariușd, Vâlcele commune, Covasna County – 840,727.47 Euros
- ✓ The Cadastre and Tabulation Program through the Covasna Real Estate Cadastre and Publicity Office – 34042.55 Euros
- ✓ Kindergarten construction in Hetea Village, Vâlcele commune, Covasna County – 313,689.99 Euros
- ✓ Rehabilitation and modernization of internal streets in Araci Village, Vâlcele commune, Covasna County – 1065755.67 Euro
- ✓ Rehabilitation and modernization of ditches, pavements, gutters and sidewalks along DJ 103 in Araci Village, Vâlcele commune, Covasna County – 572540, 45 Euros
- ✓ Construction of a water and wastewater network in the village of Araci, Vâlcele commune, Covasna County – 3321923.78 Euros
- ✓ Rehabilitation and modernization of the human dispensary in the village of Araci, Vâlcele commune, Covasna county – 240,821.67 Euros
- ✓ Establishment of human dispensary and dental office in Vâlcele Village, Vâlcele commune, Covasna county – 590245, 26 Euros
- ✓ Construction of a multifunctional sports field in Vâlcele Village, Vâlcele commune, Covasna County – 82,237.07 Euros
- ✓ Rehabilitation and modernization of ditches, pavements, gutters and sidewalks along DN 13E in Araci Village, Vâlcele commune, Covasna County – 1,191,131.91 Euros

- ✓ Rehabilitation and modernization of the inner street related to the tourist area in Vâlcele village, Vâlcele commune, Covasna County – 464,439.19 Euros
- ✓ Modernization of the bridge over the Olt river on DC33A Ariușd village, Vâlcele commune, Covasna county – 2348361.20 Euro
- ✓ Extension of water and waste water in the village of Araci, Vâlcele commune, Covasna county – 3400000 Euro

The total investments currently underway in the Vâlcele Territorial Administrative Area amount to approximately 15 Million Euros. In addition to these, 3 more projects with a total value of approximately 6 million Euros are submitted for approval. All these projects were submitted through a lot of work, perseverance and above all through ambition, even if the implementation and access procedures are difficult and the bureaucracy is high.

Conclusions

The research project addressed a topic of great topicality and at the same time very interesting for the local public administration in Romania, namely the European funds and especially the civil servants who deal with their attraction and implementation.

The *general objective* was to show the importance of respecting ethical values by the civil servants who manage the structural funds, and as a *specific objective* it was to verify the way in which the officials from the Town Hall of Vâlcele commune, Covasna county respect these values.

The questionnaire was addressed both to citizens who deal directly with specialized civil servants and by their colleagues, and sought to answer the question *ARE THE ETHICAL VALUES OF THE STAFF DEALING WITH THE IMPLEMENTATION OF EUROPEAN FUNDS IN THE FRAMEWORK OF VÁLCELE TOWN HALL RESPECTED?*

The logic of this research in the overall plan of the evaluation is to follow to what extent the deontological values are respected within the institution of the Municipality of Vâlcele commune.

Following the interviews used, it was concluded that they are respected and applied correctly both in the interaction with citizens and in the institutional framework.

At the same time, this evaluation tool will be supplemented with others, of a qualitative nature that will be applied both to this target group, citizens of the commune, and employees from other advisory institutions.

In conclusion, considering the implementation procedures, government policy and the fact that this subject represents an economic hub, European funds represent a research topic of great importance both nationally and internationally. Thus, I believe that the approach of this topic by professional researchers will have a positive impact on the one hand creating a correct perception of these

officials by civil society on the one hand, and on the other hand the institutions / management authorities that manage these structural funds.

Considering the objective of this stage and taking into account the data above, we consider that our goal has been achieved and the ethical values are respected.

The importance of the ethical values of civil servants involved in the development of the process of accessing European and structural funds, both in our case, the Vâlcele town hall, and in the case of other institutions, from the perspective of the efficiency and optimization of the work performed, is a very important aspect, since through this, a finality is ensured in the service and interest of the citizen.

Selective-structured bibliography:

a) **Articles in specialized magazines**

a. Lester Brown, State of the World, Plan B 4.0, Washington, 2000

b. Sorina Dana Veiss, ”*Efficiency and effectiveness of the public service”,* Ed. Recent, Vol.13 no.3(36), page 375

b) **Relevant national and European legislation**

- Emergency Ordinance no. 57 of July 3, 2019 regarding the Administrative Code
- Law no. 188 of December 8, 1999 regarding the Statute of Civil Servants

c) **Web adress**

- https://reform-support.ec.europa.eu/what-we-do/public-administration-and-governance_ro

Considerations regarding the influence of legal cultures on artificial intelligence algorithms from a linguistic perspective

Claudiu Ramon BUTCULESCU[*]

Abstract

This article tackles the issue of influence of legal cultures on artificial intelligence algorithms, mainly from a linguistic perspective. From a technical point of view, it is relevant to assert that computer algorithms are written and configured based on certain programming languages and also a varied amount of computer tools, which all use commands taken predominantly from the English language. On the other hand, from a juridical point of view, legal cultures are closely related to linguistic sciences and also related to the national legal systems, because the medium through which legal cultures are communicated is the language, in many instances, in its specialized juridical form. Nevertheless, linguistics are playing a crucial role in the development of artificial intelligence algorithms and to this purport, the effect of such an influence over any legal system could be significant in the foreseeable future.

Keywords: *artificial intelligence, law, algorithm, legal cultures*

Introduction

In recent years, the research on artificial intelligence has become a point of interest for many scientific communities. Although initially the research focused on more technical directions, as engineering, aviation, database management, social networks or online sales, nowadays it seems that any field of interest or research could properly benefit from the use of artificial intelligence.

According to encyclopedic sources[1], the notion of "intelligence" is defined as a capacity to understand easily and properly, to perceive what is essential, to solve new problems or situations based on prior accumulated experiences, while "artificial" is defined as not natural or as imitating a product of nature[2].

With regard to "artificial intelligence", another well known encyclopedic source defines it as an ability of a computer or computer-controlled robot to perform tasks commonly associated with human beings[3].

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[1] Dicționarul Explicativ al Limbii Române, Edigura Univers Enciclopedic, București, 2016, pag. 562

[2] Dicționarul Explicativ al Limbii Române, Edigura Univers Enciclopedic, București, 2016, pag. 70

[3] Copeland, B.. "artificial intelligence." Encyclopedia Britannica, November 11, 2022. https://www.britannica.com/technology/artificial-intelligence.

In many areas of research, instruments based on artificial intelligence have contributed greatly in various fields and domains of social life, respectively in economy, technical and financial areas, engineering etc. Without a doubt, one could envision substantial advantages from the use of such instruments in the systems of law.

From a theoretical point of view, a system of law can be envisioned as a component of social reality distinct from the system of legislation which encompasses the norms relating to organizing and structuring law norms into branches of law and juridical institutions[4]. From another perspective, the legal system may be considered a sub-system of the social normative system, among other sub-social normative systems like the systems of moral norms[5], religious norms, ethical norms[6] etc. While it is in a interdependent relations to other social normative systems, the system of law remains significantly influenced by legal culture.

An essential trait of the legal system, as well a conditioning element with major influence on its evolution is the language, mainly because the vast majority of the sources of law are now written. All of the regulations, jurisprudence and even the specialized opinions are written and published in various Official journals, collections of Court Decisions etc. In certain areas of law, customary law plays an secondary role, as most legal jurisdictions emphasize the written word as the fundament of law communication.

As such, linguistics play a very important role in the existence and development of law, in the vast majority of legal jurisdictions.

With the ever growing need for digitization, the use of computer sciences became quite important in the evolution of any social system and of course, the legal system makes no difference on this matter.

Considerations regarding possible uses of Artificial Intelligence in Legal Systems (Judiciary System and otherwise)

The possible uses of AI algorithms are quite varied. In fact, this kind of technology is feasible to use in any field of research, business, administration etc. In the legal system, one should of course differentiate between the juridical system, which comprises both the substantial law and procedural law and the judicial system, which represents the actual implementation of law regulations in day to day practice, in courts, arbitration, mediation and so on.

In the larger scope of the legalsystem, in the field of legal theory, AI algorithms can be used for a multitude of purposes : modelling systems and

[4] M. Bădescu, *Teoria generală a dreptului*, Editura Sitech, Craiova, 2013, pag. 39

[5] M. Niemesch, *Teoria generală a dreptului. Ediția a 2-a, revizuită și adăugită*, Editura Hamangiu, București, 2016, pag. 99

[6] N. Popa, *Teoria generală a dreptului. Ediția 3*, Editura C.H. Beck, București, 2008, pag. 111

sub-systems of law, predicting outcomes, emulating systemic development of national regulation networks, analyzing juridical noise and legislativ inflation.

Moreover, AI algorithms can be used to draft texts of different lengths and contents, and such a possibility opens a complete new horizon on legal text drafting.

In the judicial system, AI algorithms may serve to accelerate trials, by assisting clerks of the court with various procedural tasks, such as term calculus, judicial taxes calculus, communication of procedural acts, building and structuring electronic files. Also, AI algorithms may be useful for identification of relevant case law. This hypothesis of course brings any researcher of law to a veritable conundrum relating to the use of AI algorithms in judicial trials. Analyzing and making decisions regarding peoples rights, their obligations and even their freedom (in penal cases) seems to be considered a responsibility that lies alone with human operators of law that are endowed with such rights to judge. Even thinking of parting any of those attributes or competences with a computer algorithm may seem to many people like a red line which should never be crossed. Still, even now there are national jurisdictions[7] that use AI algorithms in the judicial system, the key word being "celerity". Using computer algorithms may lead to reduces expenses, reduced times of law-suit decisions and even a reduced carbon footprint. All these advantages certainly represent strong arguments in favor of using Artificial Intelligence algorithms in judicial systems. First steps in this directions have been made as well in the Romanian Judiciary System, by beginning a process of digitization related to communication of procedural acts, archive imaging etc. At European level, there are already regulations implementing legal digitization, like the proposed regulation regarding the E-Codex system[8].

Moreover, many of the auxiliary fields to justice greatly benefit from the use of AI, like forensics, image recognition, facial identification etc.

It would seem, at first glance that using the Artificial Intelligence opens up extraordinary possibilities in the field of law and that using such an instrument would lead to substantial savings in both financial and time resources.

Possible difficulties, limitations and complications arising from the use of Artificial Intelligence Algorithms in Legal Systems

Interestingly enough, the most relevant difficulties arising form the use of AI algorithms in the justice system are not related do decision making, but rather to technical, financial, linguistic and even legal issues.

[7] https://futurium.ec.europa.eu/en/european-ai-alliance/best-practices/robot-judges-and-ai-systems-chinas-courts-and-public-security-agencies

[8] https://www.consilium.europa.eu/ro/press/press-releases/2021/06/07/digitalisation-of-justice-council-approves-its-mandate-for-negotiations-on-the-e-codex-system/

First of all, when analyzing the perspectives from technical perspectives, it appears clearly that only a select few entities have the technology hardware available to efficiently utilize Artificial Intelligence algorithms. Without naming any of these corporations (which of course are widely known to the public), is is important to mention that without their technology, which includes both hardware and software solutions, artificial intelligence would be extremely difficult, if not impossible to use in any meaningful way. From a local, national perspective, we simply do not have the technical capabilities to develop on our own such technologies from scratch and thus, if we are to use it, we must acquire it (cost wise) from those entities who are capable of producing it. From this point of view, the technological race for smaller countries seems to have ended a long time ago, and if we are to envision any national technological developments in this area, the first thing that comes to mind is the well known Zenon's paradox. As technologies develop further and further, the gap between various social systems will probably widen and deepen substantially. Practically, for a small or medium country, it would take years and years or research and development to obtain a similar proprietary technology, while the more advanced states will already consolidate substantially their lead in this area, not to mention the big corporations, which already act at a transnational level. As a contrary opinion, some might say that using the tools necessary for developing Artificial Intelligence algorithms are accessible to everyone, therefore it can be done by any company or individual from any state. That is apparently true, but such software constructs can be developed under strict licensing from the original copyright and patent owners with regard to the tools used. Of course, some of these instruments may be used somewhat freely under a GNU General Public License[9] or a similar way of licensing. However, it remains to be seen if any advanced systems or instruments will be made available under such a license, or merely just a limited set will be made available for evaluation and/or marketing purposes.

Therefore, a first complication using Artificial Intelligence is related to the monopoly of hardware and software instruments regarding this tool.

Another issue, brought up by the licensing and patent legal issues analyzed in the previous section, shows a rather significant problem, namely the issues regarding copyright and other intelectual property rights. Given the capabilities shown by Artificial Intelligence algorithms to compose and draft texts, it becomes evident that such an instrument could be used not only for legal purposes, but also for more fraudulent purposes. In any case, there are at least two issues to be analyzed from the perspective of copyright when dealing with texts drafted by AI algorithms, respectively : the identity of the owner of legal

[9] https://www.gnu.org/licenses/gpl-3.0.html

copyright over the text that was generated by the AI algorithm and the transcendence of any copyrights from the source material used by the AI to draft the new text. The answer to the first issue seems to be a rather simple one : the AI algorithm itself can be placed among the incorporeal goods, from a civil perspective. It is also a frugiferous good, being a good that produces other goods without consuming its own substance. Therefore, the ownership of the civil fruit should belong to the owner of the AI algorithm. This conclusion however does present some difficulties, because the algorithm itself may be constructed completely by its owner or it may be constructed using certain tools, platforms or other instruments themselves licensed to other parties, under various licensing rights. Moreover, text generation from an AI algorithm imposes a prerequisite, respectively a body of text on which the algorithm trains. In literature and other fields of research, there are plenty of public domain texts that can be used to train such an algorithm, but within the system of law, there is a certain dynamic progression dictated by the evolution of social systems that determine a high rate of volatility for legal norms adopted by state authorities. Therefore, the juridical literature is constantly evolving and old legal texts, with few exceptions, are becoming obsolete quite rapidly, being replaced by newer legal texts. Also, doctrinary and jurisprudence interpretations that address better the needs of the subjects of law are permanently changing. This effect is, of course, generated by the relations between the material sources of law and the formal sources of law. Moreover, at least some of the legal texts used in legal proceedings may be subject to copyright law, an example being the judicial pleadings, which according to Romanian law, are protected under copyright law[10]. As such, within the realm of law, the primary source on which an AI algorithm is used can very well be subject to copyright law, having as a consquences the transfer the obligations and interdictions related to copyright concernignt the source text to the newly generated text.

Therefore, a second issue arising from the use of AI algorithms is related to the protection of copyright and other intelectual property rights.

Thirdly, from a financial point of view, using high computing and advanced AI algorithms necessitate an array of hardware installations, which imply high costs, regarding to the acquisition of the aforementioned systems, but also high costs of maintenance. Moreover, as the source technology is not likely to be owned by national companies in any near to medium future, but only licensed by the patent owner, the costs of licensing may also skyrocket and fluctuate significantly. Besides, the algorithms themselves probably can be offered as aggregated software solutions, including the software itself, but also maintenance and update activities.

[10] Law no. 8 of 1996, article 7

It is also interesting to point out that almost all software solutions nowadays are provided on payed subscriptions and are also dependent on internet connections, through which necessary updates are installed. Online connections can also can be used to suspend software functionalities in case of overdue payments, therefore highlighting a severe limitation or risk to usage of such software. On a contrary stance, one could argue that software solutions regarding AI algorithms that will be used in legal systems are of crucial importance and will be treated accordingly. To this purport, significant safeguards and fail-safes can be put in place to prevent interruptions of such important computer networks, devices etc. However, as such computer solutions (both hardware and software) are to be obtained through public acquisition, knowing the upsides and downsides of legal procedures in the public acquisition domain, it remains to be seen whether a coherent and viable long term solution can be acquired.

Consequently, a fourth problematic issue related to the use of AI algorithms arises from the costs of software and hardware resources and maintenance costs.

Of great significance is a limitation which stems from the linguistic barrier. All juridical and judicial systems are closely related to the language of the national state in which they exist. That is because the laws, the court decisions and generally all regulations must, above all else, be written in the national language, so that the subjects of law may understand and comply with the law. There are a few exceptions in International Law and European Law, where a common legal language is used, but in national systems, the official language of the state has preeminence, and that fact will not change very soon.

There are algorithms of Artificial Intelligence which can translate, with a moderate rate of succes, texts from one language to another, but a legal language has a specialized vocabulary, syntax and morphology. Moreover, usually, the source text on which the principal AI trains is English. As such, the text generated by the AI algorithm will probably be drafted in a widely circulated language, while another AI algorithm will translate it forth from the source language and back.

As such, significant complications will arise from the language barrier. In fact, in text generation, it will be necessary to have a corpus of Romanian texts, including legal texts on which to train such an algorithm, because at this point, most models are trained on English based texts, which of course will not be useful for utilizing AI algorithms.

However, using Romanian legal sources will present some aditional difficulties related to tokenization, from a technical point of view, but also from a legal point of view. For example, any usage of a database comprising jurisprudence texts should be thoroughly screened to eliminate and personal data, in compliance with GDPR regulations.

As a consequence to the assesment stated above, it appears that legal language may pose a significant limitation in usage of AI algoritms in judicial systems.

Conclusions

The use of artificial intelligence algorithms in the legal systems presents a wide array of opportunities, being susceptible of supporting the development of such systems. At the start of this article, the research hypotheses were directed only to the possible influence of legal cultures with regard to the use of AI algorithms and the dificulties posed by the linguistic barriers within the national legal systems. As it appears from the analysis done in this paper, there are more advantages to be had and also more limitations that need to be addressed for proper use of AI algorithms in judicial systems. The advantages are clearly directed toward a reduction of time resources, possibly financial resources and even the possibility of reducing carbon footprint generated by traditional judicial activities as they are done today. The major drawbacks are related to financial difficulties, language barriers, copyright restrictions and technological limitations. Of course there are also other concerns regarding ethical and morality issues, arising from the usage of AI algorithms, but such discussions need a much larger space for analysis and framework and cannot be consistently analyses in such a short paper. Also, the way in which AI algorithms are transfiguring reality, namely the perceived reality could suggest that Artificial Intelligence may one day become a configuring factor of law. In the end, the use of Artificial Intelligence is unavoidable, and as such, the question that remains is not whether we should use it or not, but how should we use it and how to prevent it from negatively impacting our own cognitive and social resources and interactions.

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Short viewpoints regarding the abuse of procedural law

Adela Maria CERCHEZ[*]

Abstract

The parts of the civil process must develop their processual activity by respecting the procedural obligations prosecuted by the law entirely, thus in the limits of the procedural rights recognized by the law. The code of the civil procedure highlights truthfulness as a fundamental principle of the civil process, not just concerning the practice of the procedural rights, but also concerning their observance. The practice of the procedural rights and the fulfillment of the procedural obligations both with truthlessness represents abuse of rights penalized by assuming the responsibility for rectifying the material or the moral damages that were caused and, at the same time, by being obliged to pay a judicial fee according to the law.

Keywords: *procedural obligation, abuse of right, truthfulness, civil process*

According to the dispositions of art.12 from the Code of the civil procedure "(1) The processual rights must be accomplished with truthfulness according to the purpose in which each of it are recognized by the law and without infringing the processual rights of the other part. (2) The part that bears the processual rights in an abusive way has to justify for the material and moral damages that were created. According to the law, she could be obliged to pay a judicial fee. (3) Moreover, the part that does not accomplish the processual obligation with truthfulness is responsible according to par.(2)"[1].

The law identifies a number of procedural rights to the parts of the civil process, but it also imposes to respect some correlative procedural obligations. As far as the area of the procedural rights recognized for the parts of the civil process are concerned, we can mention the following: the right to recourse the court with requests, the right to participate to a process, the right of defense, the right to be represented or assisted by a lawyer, the right to propose and administrate evidences, the right to consult an interpret, the right to organize the documents personally or through an agent that can act on your behalf, if the law allows this, the right to request to move the process to another court, the right to

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[1] Law nr. 134 from 1st of July 2010 concerning the Code of civil procedure, republished in Official Gazette of Romania no. 247 from 10th of April 2015.

reject the judges, the actuaries, the trier assistants, the judicial assistants, the prosecuting attorneys, the experts, the interprets, the translators only under the conditions and only in those cases approved by the law, the right to recede from an instance or to the right inferred by that judgement, the right to adhere to the requirements of the other part or to an established judgement, the right to establish a transaction, the right to bear the effective remedy ,mentioned in the law, the right to trigger the forced execution, etc. As far as the parts of the civil process are concerned, the law recognizes a list of procedural rights, but it also imposes to respect some correlative procedural obligations.

Regarding the procedural obligations, more opinions concerning their number and content have been presented. Thus, in the case of one opinion it was established that there is one single procedural obligation imposed by the law concerning the parts of a civil process, respectively the pursuit of the procedural rights with truthfulness .According to other opinions, this obligation must be completed through a series of other obligations such as the obligation to be in front of the court, of respecting the procedural deadlines, to prove the pretentions and defences, to pay the court expenses in case if the part is obliged to pay the cost of the proceedings, etc, and, nonetheless to have the obligation to say only the truth, even if this obligation lacks an adequate legal basis and also a possible penalty, in case of its violation by the litigants.[2]

Having the dispositions of art 10 par. (1) in Civil Procedural Code related to obligations of both parts in the evolution of the process "both parts are obliged to accomplish the procedural documents under the conditions, order and the deadlines established by the law or by the judge, to simulate the pretentions and the defense, to contribute to the evolution of the process without any delay, by following its ending"[3].

From the perspective of the dispositions of art. 12 par.(1) Code of civil procedure " the procedural rights must be exercised with truthfulness, according to the purpose in which it was recognized by the law and without infringing the procedural rights of other part"[4].

With respect to these legal dispositions we can state that the parts of the civil process have the following procedural obligations: the obligation to bear all the procedural rights with truthfulness related to the purpose for which it was recognized by the law and without infringing the procedural rights of the other part, to accomplish the procedural documents under the conditions, order and the

[2] Boroi G., Stancu M..Civil procedural law. 5th edition reviewed and adjusted, Hamangiu publishing, 2020, p.102

[3] Law no. 134 from 1st of July 2010 concerning the Code of civil procedure, republished in Official Gazette of Romania no 247 from 10th April 2015

[4] Law no. 134 from 1st of July 2010 concerning the Code of civil procedure, republished in Official Gazette of Romania no 247 from 10th April 2015

deadlines established by the law or the judge, to simulate the pretentions and the defense, to contribute to the evolution of the process without any delay and following its ending under the sanction of existing other sanctions, the payment of some fees or even the loss of the process.

The diversion of the procedural rights from the purpose on which they were recognized by the law, the bear of the procedural rights and the accomplishment of the procedural obligations with truthlessness represents an abuse of right penalized with the liability for redressing the caused material or the moral lesions and, at the same time, with the obligation to pay a judicial fee, according to the law.

The abuse of right is established in the actual regulation through provisions art. 15 Civil code according to which " no right can be born with the purpose of injuring or to impair someone in an exceeding and unreasonable, opposite truthfulness"[5].

In a procedural way, the abuse of procedural right is highlighted through provisions of art 12 in the Code of civil procedure according to which "(1) the procedural rights must be born with truthfulness related to the purpose for which it was recognized by the law and without infringing the procedural rights of the other part"[6].

From the corroboration of the provisions art. 15 Civil code and the provisions 12 par.(1) the Code of civil procedure is concluded that the procedural right claims two elements: a subjective and an objective one.

The subjective element of the abuse of the procedural right supposes the bear of the procedural rights with truthlessness in order to tease the other person, with the intention to injure her, to baffle her possibility to value the procedural rights, without any justification of a legal interest and also the violation of the procedural rights of the other person.

The objective element of the abuse of the procedural right supposes the diversion of the procedural rights from the purpose on which they were recognized by the law or the prosecution of the procedural rights in an excessive without justification of a legitimate interest.

A procedural document can be characterized as being abusive if the following conditions are respected[7]:

-the author of the abusive procedural document must be the owner of the borne procedural right and be able to bear it;

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[5] Law no. 287 from 17th of July 2009 concerning the Civil code, republished in Official Gazette of Romania no 505 from 15th July 2011

[6] Law no. 134 from 1st of July 2010 concerning the Code of civil procedure, republished in Official Gazette of Romania no 247 from 10th April 2015

[7] Boroi G., Stancu M..Civil procedural law. 5th edition reviewed and adjusted, Hamangiu publishing, 2020, p.104

- the procedural right should be borne in its external limits established by the law, with a material or judicial nature, respectively to respect the legal provisions concerning the form, the conditions and the deadlines in which it should be borne, so the abusive procedural document supposes only the overcoming of its internal limits and it should not be confused with the document of illegal procedure which supposes the overcoming of its external limits, established by the law;
- the procedural right must be borne by overcoming its internal limits, so the availability of the right should not be confused with the way of bearing the existing right;
-the procedural right should be borne on the contrary of the purpose for which it was recognized by the law or to be borne in an excessive and unreasonable way, without the validity of a legal interest;
-the procedural right which is borne with truthlessness in a carping way, its tutor purpose being to injure the other part through the bearing of the respective procedural document.

The abuse of the procedural right can be evident through multiple forms such as: the introducing of an unfounded address in court, with truthlessness, in a carping way, to obtain undeserved interests ; acting in court of a borrower even if the debt has been already paid so that the debtee can obtain a new payment; the promotion of some displacement requests or of challenge with truthlessness; the promotion of some requests of judicial public help with truthlessness; the specifications of some requests in order to postpone the judgement; the execution of a procedural action in order to delay the evolution of the process; the request of some excessive assurance measures that overcome the area of the legal interest concerning the preservation of the claim through the number and their importance; the promotion of the appeal to the execution exclusively to carp the debtee or to delay the execution of a court order, the prosecution of the right to promote ways to attack with truthlessness through reinforcing a way of attack; the resistance of the respondent towards a clear pretention with a clear truthlessness.[8]

Concerning the penalty of the abuse of the procedural law, regarding the provisions of art. 12 par. (2) The code of civil procedure “ the part that bears the procedural law in an abusive way argues for the caused material and moral damages. According to the law, she can be obliged to the payment of a particular judicial fee.”[9]

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[8] Boroi G., Stancu M..Civil procedural law. 5th edition reviewed and adjusted, Hamangiu publishing, 2020, p.104-105

[9] Law no. 134 from 1st of July 2010 concerning the Code of civil procedure, republished in Official Gazette of Romania no 247 from 10th April 2015

The abuse of the procedural right is penalized with the obligation of the one who bore the procedural rights in ana abusive way to recoveries in order to compensate for the caused material and moral damages. Taking the principle of the availability into consideration, specific to the civil process, the recoveries will not be paid by the office, but at the request of the injured one. In the lack of some specific rules concerning the conditions of taking the responsibility for the caused damage through abusive borne of a procedural right, the rules of the civil responsibility become available wrong for your own case established through the provisions of the art. 1357 Civil Code according to which " the one who causes a prejudice to the other person through an illegal action, realized in a transgressive way, is obliged to repair it." The remedies for reclaiming the material and moral damages caused as a consequence of the abusive prosecution of the procedural rights can be requested within a process in which one of the parts bore the procedural rights abusively, by having a separate process, in this case the limit of prescription being of three years that start from the date on which the injured part knew or should have known the damage and the one who must argue for its realization, regarding the provisions of the art. 2528 par. (1) Civil Code.[10]

The code of the civil procedure readjusts, including the obligation to pay damages and the penalty of the part who bore the procedural rights with truthlessness with a judicial fee, in this way being the provisions of art. 187 Code of civil procedure related to the penalties regarding the violation of the obligation concerning the evolution of the process, but also of art. 188 Code of civil procedure concerning other penalties cases.

As an example title, according to the provisions of art. 187 Code of civil procedure are executed with judicial fee: the introduction of some main requests accessories- auxiliaries or incidental- through truthlessness, but also the introduction of a new useless trial, the formulating with truthlessness of a challenge or displacement; the obtaining with truthlessness of a citation through publicity of any parts; the obtaining with truthlessness by the claimer whose request of new assurance ways were rejected in which the accused one was injured; the disproof with truthlessness from its author of the piece of writing or a document or the authenticity of a video or audio recording.[11]

At the same time, in accordance with the provisions of art 189 Code of civil procedure related to the recoveries for the postponing the process " the one, with intention or by fault, caused the postponing of the trial or the forced execution, through one of the facts stipulated in art. 187 or 188, at the request of the

[10] Law no. 287 from 17th of July 2009 concerning the Civil code, republished in Official Gazette of Romania no 505 from 15th July 2011

[11] Law no. 134 from 1st of July 2010 concerning the Code of civil procedure, republished in Official Gazette of Romania no 247 from 10th April 2015

interested part, can be obliged by the judge or, in some cases, by the president of the execution place to pay a recovery for the material or moral prejudice caused by the postponing."[12] The before mentioned text applies even if the part is guilty or not of accomplishing an abuse of right.

Also, the abusive procedural document will be penalized with the lack of the effects that are on the contrary of the purpose in which the abusive borne right was acknowledged by the law. On the hypothesis in which the document of abusive procedure has a stative availability, the penalty will be available only for this document, but if the document of abusive procedure is the base for other procedure documents, the abusive one but also the other that followed it will be useless.

In accordance with the provisions of art. 12 par. (3) Code of civil procedure and the part who does not accomplish the procedural obligations with truthfulness is responsible for the caused material and moral damages. Moreover, she could be obliged to pay a judicial fee, according to the law.

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News in Use of Arbitration in the Financial Services Sector: Revised Prime finance arbitration rules

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Abstract

Globalization and the increased involvement of parties from emerging markets have resulted in international arbitration being used more frequently as a means of resolving finance disputes. The use of arbitration in finance disputes is not new, but nowadays, more than ever, it requires specialized professionals to be able to arbitrate the complex and intricated issues that trigger broad experience both in finance and in arbitration practice. Financial products are increasingly complex, as technological innovation allows for the development and delivery of services in novel and tailored ways. Complex financial products and transactions increasingly involve parties from emerging markets. International arbitration is the preferred method of dispute resolution in circumstances where parties have concerns about bringing their disputes before domestic courts or where the enforcement of a foreign court judgment may be problematic. Arbitration gives the parties an opportunity to appoint subject-matter experts to determine their claims. At the same time, international arbitration offers parties an alternative neutral forum that is not tied to any particular legal system. The Panel of Recognised International Market Experts in Finance (PRIME Finance) is a specialized institution dedicated to resolving financial disputes. It offers alternative dispute resolution services, such as arbitration and mediation, and facilitates engagement with sector experts and advisers. The PRIME Finance arbitration rules entered into force in 2016 consisted of a modified version of the UNCITRAL Arbitration Rules (as revised in 2010) adapted to suit complex financial transactions. Arbitrations under the PRIME Finance Arbitration Rules are administered by the Permanent Court of Arbitration at The Hague. In 2020, the institution launched a review of its arbitration rules to ensure they remain fit-for-purpose and continue to reflect best practices. PRIME Finance's revised arbitration rules launched on 15 November 2021 are the result of that review and they enter into force on 1 January 2022. Therefore, this paper aims to make a brief introduction to international arbitration and it looks at developments that have led to an increase in its use by the finance sector. The paper introduces

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the PRIME Finance institution and its arbitration rules and especially analyses the key features of these recently revised rules, that are well-crafted to meet the needs of financial institutions and to encourage the use of international arbitration in finance disputes. By responding to the reality of multiparty disputes, the need for efficiency of proceedings, and the push towards greater transparency, PRIME Finance is positioning itself to benefit from the trend of using international arbitration to resolve complex financial disputes.

Keywords: *arbitration, finance dispute, efficiency, PRIME Finance, revised arbitration rules*

Introductory Remarks: (a) on arbitration advantages and (b) key features

(a) On arbitration

Arbitration is a method of dispute resolution by a privately constituted tribunal, typically made up of one or three arbitrators, which culminates in an arbitral award that binds the parties. The binding nature of an arbitral award means that arbitration is a true alternative to the resolution of disputes by litigation in a court. This feature distinguishes arbitration from some forms of alternative dispute resolution, such as mediation, which may be used before or in addition to court litigation, and which do not result in a binding outcome.[1]

The arbitral award can be enforced against a party or its assets by invoking the coercive power of a court. The cross-border enforcement of arbitral awards is supported by an international treaty, the 1958 New York Convention (the "New York Convention").[2] Under the auspices of this Convention the contracting states accept obligations to recognise and enforce arbitral awards subject to limited exceptions. There are approximately 169 contracting states to the New York Convention. This can make arbitration particularly attractive for resolving disputes arising out of international transactions.

As regards the arbitration agreement, the arbitration is based on the parties' consent to settle their dispute outside their national Courts, especially when they conclude international transactions, and the parties are from different countries and cultures. Typically, the agreement to arbitrate is found in a clause in the substantive contract between the parties which provides that all disputes arising out of or in connection with the contract shall be arbitrated (rather than litigated in a court). Arbitration can limit litigation costs and keep disputes confidential. A choice of court agreement (a jurisdiction clause) is not always necessary for a court to have jurisdiction over a party or dispute: the court may have inherent jurisdiction by virtue of its rules of civil procedure. In contrast, arbitration is based on consent.

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[1] Arbitration procedures and practice in Romania: overview | Practical Law (thomsonreuters.com).

[2] The New York Convention » New York Convention.

Arbitrators are obliged to act fairly and impartially in deciding the dispute and to give each party an opportunity to present its case, but based on the proceedings' flexibility, tailored to the case needs and particular circumstances. In this respect, parties may make provision in their arbitration clause as to how the arbitration should be conducted and may agree to arbitrate under rules published by arbitral institutions.

Arbitral rules provide a procedural framework for the arbitration, including conferring procedural powers on the tribunal. Arbitral rules are much briefer than court rules and leave much to the tribunal's discretion unless the parties are able to agree a matter. Arbitral institutions publish procedural rules, and a choice of rules usually also constitutes a choice of that institution to administer the arbitration.[3] The institution will not decide the dispute; rather its role is to assist with the appointment of the tribunal (including selecting arbitrators where a party fails to exercise a right to do so, or where the parties are unable to agree), and the administration of the proceedings (for example, hearing challenges to arbitrators, taking deposits on account of the arbitration costs and fixing the arbitrators' fees, reminding parties and tribunals of deadlines, or making arrangements for hearing facilities).[4]

The arbitral proceedings will also be subject to the arbitration law of the jurisdiction chosen as the "seat" of arbitration (sometimes called the "legal place" or simply the "place" of arbitration). The courts of the seat will also have a range of powers (which vary from country to country) in relation to the arbitration. The seat of arbitration is a legal concept tying the arbitration into a legal jurisdiction. The seat is typically expressed as a city, but the key aspect is the jurisdiction in which the seat is located. (For example, a choice of Bucharest ties the arbitration to the legal jurisdiction of Romania.) While arbitral hearings are often held at the seat, they may usually be held elsewhere.

(b) Key features of international arbitration[5]

International arbitration is an alternative to national court litigation as a means of resolving disputes taking into consideration the parties' needs for an

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[3] The principal exception to this is the UNCITRAL Arbitration Rules, which have no administering institution. UNCITRAL Arbitration Rules | United Nations Commission On International Trade Law.

[4] Arbitration procedures and practice in Romania: overview | Practical Law (thomsonreuters.com); (isda.org) (2013 ISDA Arbitration Guide, Overview of arbitration, Key features of arbitration p. 1-4).

[5] John Fellas, *A Fair and Efficient International Arbitration Process*, Dispute Resolution Journal, Feb-Apr 2004, https://arbitrationlaw.com/library/fair-and-efficient-international-arbitration-process-dispute-resolution-journal-vol-59-no-1 or https://www.hugheshubbard.com/news/a-fair-and-efficient-international-arbitration-process; (isda.org) (2013 ISDA Arbitration Guide, Overview of arbitration, Key features of arbitration p. 1-4).

uniform approach and a denationalized forum. A typical dispute may not only involve parties from two different countries, but also counsel based in a third country, and an arbitral tribunal whose members are each based in different parts of the world. in choosing arbitration parties are opting to have their dispute resolved privately instead of going to a national court.[6]

The arbitration is based on the consensual autonomy and cooperative approaches of the parties. There also other key features on international arbitration, but the cornerstone of resorting to arbitration is the arbitration agreement. Its wording is the essence of the parties' possibility to resort to arbitration. The way are drafted the elements that establish the institutions, rules to be applied, the applicable law, the appointments of arbitrators, arbitration seat and language and other necessary information are of paramount importance to settle a sound framework for arbitration proceedings. Nowadays, arbitral institutions offer draft models for arbitration agreements that are better to be use as such, to avoid any deficiencies, inconsistencies, pitfalls and deadlocks in arbitration agreement interpretation, which otherwise could be, due to excessive keenness, a pathological clause, unable sometimes to save resort to arbitration. A poorly drafted arbitration clause (such as one that does not identify the place or language of arbitration, if issues) could result in delay since the parties will have to resolve those issues before the arbitration can begin. A "pathological" clause, one that does not unequivocally choose arbitration, could result in litigation over whether there will even be an arbitration proceeding at all. Drafting the clause appropriately is, therefore, critical to ensuring that the arbitration process runs smoothly.[7]

The reasons for including an arbitration agreement in a contract between the parties from different countries are not based solely on the supposed cost and time savings, but on the advantages conferred by the arbitration for the settlement of disputes. The most important two reasons would be that the arbitration provides a neutral forum for the settlement of international disputes, as compared to the national courts of one of the parties to the contract, and international

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[6] Overview-of-International-Arbitration.pdf (international-arbitration-attorney.com); Introduction to International Arbitration | Quickguides | Ashurst; The Fallacy of Consent: Should Arbitration Be a Creature of Contract? (emory.edu).

[7] Drafting an Arbitration Clause in 2021 – Recommendations | Aceris Law LLC; Top 10 tips for drafting arbitration agreements | Global law firm | Norton Rose Fulbright; sad200902-arbitration-final-materials.pdf (ctbar.org); IBA Guidelines for Drafting International Clauses COVER.indd (ibanet.org); Legal Solutions (thomsonreuters.com); Layout 1 (sussmanadr.com); https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&cad=rja&uact=8&ved=2ahUKEwjCyM3D-vn2AhXywAIHHXl3AAIQFnoECBkQAQ&url=https%3A%2F%2Fwww.debevoise.com%2F~%2Fmedia%2Ffiles%2Finsights%2Fpublications%2F2018%2F01%2Fdebevoise_international_arbitration_clause_handbook.pdf&usg=AOvVaw2ZkGo_p5efHkQjKAAtfabF.

arbitration decisions are easier to apply and recognized internationally than the decisions of national courts.[8]

When it comes to international arbitration, the focus should be less on whether it is cheaper or quicker than litigation, and more on how the arbitrators, the parties and counsel can make it as fair and efficient as it can be. This is a meaningful enterprise. While lawsuits may be subject to procedural rules that govern even the most minor details of the process, arbitration is different. One of its central characteristics is flexibility. As a general matter, arbitration rules provide a framework within which the proceeding is to be conducted, but are not so detailed that they dictate every stage of the case. The arbitrator and the parties can determine fundamental aspects of the process, unless the parties have otherwise provided in their arbitration agreement.[9]

Consequently, international arbitration can offer significant advantages to parties in cross-border disputes, such as choosing a neutral forum, contributing to the selection of the decision-making factor and the almost worldwide applicability of the decisions.

Therefore, key characteristics of international arbitration include:[10]

- It is **consensual**. In some circumstances national courts may assert jurisdiction over a dispute even in the absence of an agreement between the parties to that effect. In contrast, an arbitral tribunal only has jurisdiction if all parties have agreed to submit the dispute to arbitration. This is commonly dealt with by inserting an arbitration clause in the relevant contract..
- It is **neutral**. Arbitration provides a neutral forum to resolve international disputes, as compared to the national courts of one of the parties to the contract. Hearings can take place in a neutral country where none of the parties are based, and the parties can agree the procedural rules that govern the arbitration, rather than being bound to follow a national court procedure. Usually, they choose the procedural rules of one of the well-known international arbitral institutions such as the ICC (The International Court of Arbitration of the International Chamber of Commerce), LCIA (The London Court of International Arbitration), SCC (The Arbitration Institute of the Stockholm Chamber of Commerce), AAA/ICDR (The American Arbitration Association/ International

[8] John Fellas, *A Fair and Efficient International Arbitration Process*, Dispute Resolution Journal, Feb-Apr 2004, https://arbitrationlaw.com/library/fair-and-efficient-international-arbitration-process-dispute-resolution-journal-vol-59-no-1 or https://www.hugheshubbard.com/news/a-fair-and-efficient-international-arbitration-process.

[9] https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&ved=2ahUKEwiuhMfP-_n2AhVFP-wKHQKaBpcQFnoECDYQAQ&url=https%3A%2F%2Fwww.hugheshubbard.com%2Findex.php%3Fp%3Dactions%2FvmgHhrUtils%2Fdownload%2Fasset%26id%3D336&usg=AOvVaw0dEKG1-MX7RKmNjFo3wLRl; PDF (cerhahempel.com); The Advantages and Disadvantages of Arbitration | San Jose Corporate Lawyers (sacattorneys.com).

[10] Use of arbitration in finance disputes | Ashurst.

Centre for Dispute Resolution), or HKIAC (The Hong Kong International Arbitration Centre), SIAC (The Singapore International Arbitration Centre). They can also choose the language that the arbitration will be conducted in, rather than being bound to use the language of their national courts.

- The process is **private (confidential)**. Unlike court proceedings, hearings are not open to the public. Parties can agree that the hearing and evidence be kept confidential, and that they (and the arbitrators) will not disclose any information about the arbitration.
- Instead of a judge, the decision-making is by **arbitrators** who are usually appointed by the parties. Typically, a sole arbitrator or a panel of three arbitrators is appointed – referred to as the ”tribunal". This also means that the parties can select decision makers with relevant expertise and experience.
- Appointing one or more **arbitrators** in a panel (usually of three members) is a significant decision that obviously has major cost and time considerations in the structure and management of an arbitration case.

Generally, one arbitrator can decide a case more quickly and at less cost to the parties since there is only one arbitrator whose schedule has to be coordinated with the parties and counsel and only one arbitrator to be paid.[11] In addition, one arbitrator can respond more quickly than three to disputes over discovery and other pre-hearing issues. However, three are less likely to make an error.[12] For this reason, it is not recommendable a sole arbitrator in an international dispute in which more than a modest amount of money or important issues of principle or rights are at stake. A sole arbitrator is neither recommendable when the parties come from very different legal traditions or cultures. In this situation, three arbitrators are a better choice to ensure that the parties' different viewpoints are represented. Even when a case requires three arbitrators, efficiency can still be promoted. One approach is for the parties to authorize the chair of the panel to decide discovery disputes and other procedural issues without having to confer with the other members of the tribunal.[13]

Sometimes three arbitrators are appointed pursuant to the parties' agreement, but it later turns out that one arbitrator would be sufficient in the light

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[11] John Fellas, *A Fair and Efficient International Arbitration Process*, Dispute Resolution Journal, Feb-Apr 2004, https://arbitrationlaw.com/library/fair-and-efficient-international-arbitration-process-dispute-resolution-journal-vol-59-no-1 or https://www.hugheshubbard.com/news/a-fair-and-efficient-international-arbitration-process.

[12] Overview-of-International-Arbitration.pdf (international-arbitration-attorney.com).

[13] The rules of some of the arbitral institutions (LCIA, ICDR) explicitly contemplate this approach, but also other leader institutions (such as ICC) are encouraging tribunals in this respect in their conduct and management guide and notes to the parties and tribunals.

of the dispute. In that situation, the parties can agree to have one of the three arbitrators hear the case, notwithstanding the arbitration clause.[14]

Another factor to take into account in selecting arbitrators is their availability. Some arbitrators are in such demand that they are booked well over 20 months ahead. While having the dispute resolved as promptly as possible is not the only (or necessarily decisive) factor to consider in selecting an arbitrator, it is usually important from a business point of view so that the parties can get back to business.[15]

The major arbitral institutions require arbitrator candidates to confirm that they have the time to serve. Arbitrator candidates are required to declare that they are "able and available" to serve. "Ability" to serve goes to the issue of whether one has the qualifications that might be required in a particular case (such as the ability to speak a particular language, certain qualifications and specialization in a particular field, such as finance disputes) and to the absence of conflicts. "Availability" to serve means the arbitrator's schedule allows holding hearings at a reasonable time following the commencement of the case and to issue an award promptly following the closing of the record.[16]

While the arbitrators have the ultimate responsibility to keep the proceeding on track, the parties and counsel are key players and their choices can contribute toward the achievement of the fairness and efficiency goals in arbitration.

- Decisions of an arbitral tribunal – the arbitration **award** – are usually **final** and subject to limited rights of challenge, unlike the judgments of national courts which typically can be appealed through several further rounds of litigation. International arbitration awards are easier to enforce than national court judgments. Awards are widely enforceable around the world by virtue of the New York Convention.
- Another advantage is the ability of judges to **join additional parties** to the litigation and **consolidate** related proceedings. This saves time and money and avoids inconsistent judgments. However, this benefit is more of litigation over arbitration, as arbitrators are constrained in their power to do this because of the consensual nature of arbitration. Although arbitral institutions have revised their rules to permit joinder and consolidation, an arbitral tribunal will not have the power to order a third party which is not a party to the arbitration agreement to join an arbitration without the consent of that third party. The arbitrators can

[14] AAA Handbook on International Arbitration Practice – American Arbitration Association – Google Cărți.

[15] AAA Handbook on International Arbitration Practice – American Arbitration Association – Google Cărți

[16] John Fellas, *A Fair and Efficient International Arbitration Process*, Dispute Resolution Journal, Feb-Apr 2004, https://arbitrationlaw.com/library/fair-and-efficient-international-arbitration-process-dispute-resolution-journal-vol-59-no-1 or https://www.hugheshubbard.com/news/a-fair-and-efficient-international-arbitration-process; guide-to-international-arbitration-2017 (lw.com).

extend the arbitration agreement to non-signatories only in certain specific situation.[17]

Parties usually make the decision about whether to select arbitration over litigation at the time they negotiate their agreement. At that time, the question of the settling the prospective dispute of the parties' process efficiency is difficult and premature to be assess.[18] Whether arbitration would be quicker and cheaper than litigation turns on many factors that cannot be known with any degree of certainty. Parties do sometimes agree to submit a dispute to arbitration after it has arisen, and, in such cases, it might be possible to make a relatively well-informed decision as to the efficiency of the selected forum. But at the time of the conclusion of the contract containing the arbitration agreement, the most important factors are still unknown, such as the nature of the dispute that in fact arises; the relationship between the parties when the dispute arises; whether one of the parties would commence a litigation notwithstanding the arbitration clause and if a lawsuit is commenced, where it would be brought; and whether any arbitration award would be susceptible to challenge.[19]

For example, in the case of a loan agreement under which funder party lends money to the other party, there is a good basis to believe that litigation might be quicker than arbitration. This is because the most likely dispute arising out of such a contract would be that the borrower party fails to pay back the money due to the funder, a dispute susceptible to resolution through summary procedures. But at the same time, arbitration also can be a good option, considering that these kind of summary procedures/ early determinations or expedited/ accelerated procedures can be applied and followed under certain arbitration modern rules. Such rules, dedicated to settle financial disputes, are the ones recently updated and modernized to the latest standard in the field, issued by the The Panel of Recognised International Market Experts in Finance (or "PRIME Finance").

On 15 November 2021, PRIME Finance launched its revised Arbitration Rules which came into effect on 1 January 2022. Alike the previous set of rules

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[17] The arbitration agreement may under certain conditions also bind third parties who did not sign or agree to it (i.e. non-signatories), such as for instance in the case of the assignment of a claim, the (simple or cumulative) assumption of a debt of a contract or in the case of interference by a party in the execution of a contract to which it is not a signatory. There are various mechanisms by which an arbitration agreement might be extended to third parties. This includes the doctrines of group of companies, group of contracts, equitable estoppel, piercing the corporate veil, alter ego, universal succession, agency or apparent authority, subrogation, and assignment of contracts. However, the extension of the arbitration agreement to third parties may not be seen as general rule and may result only in specific cases under specific circumstances.

[18] Alternative Dispute Resolution (ADR): Overview – FindLaw.

[19] John Fellas, *A Fair and Efficient International Arbitration Process*, Dispute Resolution Journal, Feb-Apr 2004, https://arbitrationlaw.com/library/fair-and-efficient-international-arbitration-process-dispute-resolution-journal-vol-59-no-1 or https://www.hugheshubbard.com/news/a-fair-and-efficient-international-arbitration-process.

from 2016, the new ones are designed for the arbitration of complex financial disputes. The 2022 Rules is the third iteration of PRIME Finance's Arbitration Rules, and are said to have undergone "*the most ambitious revision of its rules since its inception",* following an "*extensive global public consultation"*.[20]

International Arbitration application and purpose in finance sector

Litigation has traditionally been the forum of choice for dispute resolution in international finance. However, globalisation and the increased involvement of parties from emerging markets has resulted in international arbitration being used more frequently as a means of resolving finance disputes.[21]

Participants in the financial services sector routinely face complex, technical disputes. Despite the potential benefits of international arbitration, such as the ability to ensure subject-matter expertise in those who adjudicate the dispute, the finance sector has not traditionally embraced arbitration as the default preferred form of dispute resolution in the same way as other sectors, such as construction, energy, insurance and shipping.

Concerns expressed regarding arbitration in general included the following perceptions:[22]

- bias or corruption on the part of a judicial authority (or a perception to that effect);
- delays of many kind;
- lack of confidence in national courts;
- Lack of transparency in arbitration compared to court litigation;
- Lack of precedent and legal certainty for future cases;
- lack of experience or expertise on the part of local lawyers and judges in dealing with finance contracts;
- failure by the court to respect a foreign governing law or lack of familiarity with a foreign governing law;
- lack of consistency in decision-making;
- inability or lack of skills/ necessary training having to litigate in an unfamiliar and/or inconvenient language (giving rise to a need to translate documents and evidence);
- Inability to obtain interim and urgent relief;
- Inability of an arbitral tribunal to issue a summary judgment;

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[20] Prime time for updated arbitration rules for financial disputes? A review of the P.R.I.M.E. Finance Arbitration Rules 2022 | Perspectives & Events | Mayer Brown.

[21] Use of arbitration in finance disputes | Ashurst.

[22] AODocument (uni-koeln.de); Prime time for updated arbitration rules for financial disputes? A review of the P.R.I.M.E. Finance Arbitration Rules 2022 | Perspectives & Events | Mayer Brown.

- Fewer mechanisms to minimise the risk of parallel related proceedings and inconsistent decisions arising from multi-party and multi-contract scenarios.

Until recently, the general approach in many major financial centres had been to use either the English, New York or Asian such as Hong Kong, Singapore courts – jurisdictions with which financial institutions are familiar and can rely on to produce sound judgments.[23]

Whilst finance litigants have historically turned more to the courts in key financial jurisdictions such as New York, England & Wales, and Hong Kong to resolve disputes, arbitration is not uncommon for certain types of finance transaction or involving certain kinds of counterparty, particularly in deals involving emerging markets, or those involving state-owned enterprises. In these cases, there may be reasons from the outset as to why litigating a potential dispute in national courts might not be appropriate or desirable. For example, it might be felt that not all national courts have the same level of technical expertise and working knowledge of complex financial products; nor are they all equally able to resolve disputes speedily; and in some circumstances confidentiality may be of primary concern.[24]

There are some data available from which to observe trends. For example, the finance sector is one of the top three sectors comprising the caseload of **LCIA** in recent years. LCIA recorded a significant increase in 2018: of total claims, 29% were banking and finance disputes, with energy and resources disputes in second place at 19%.[25] In 2019, the sector comprised 32% of the LCIA's total cases and in 2020 it comprised 20%. Similarly, in 2019 the ICDR/AAA reported a 58% year-on-year increase in disputes in financial services, having already reported a 78% increase in 2018. Although the 2020 figures show a slight decrease, it does not contradict the apparent direction of travel.[26]

Many banks and financial institutions operating in the UK have historically tended to favour exclusive English Court jurisdiction clauses as their preferred dispute resolution method, particularly when facing EU-based counterparties, given the ease of enforcement through EU Member States.

[23] Use of arbitration in finance disputes | Ashurst.

[24] Prime time for updated arbitration rules for financial disputes? A review of the P.R.I.M.E. Finance Arbitration Rules 2022 | Perspectives & Events | Mayer Brown.

[25] According to the 2018 International Arbitration Survey: The Evolution of International Arbitration by the School of International Arbitration at Queen Mary University of London, 56% of respondents in the banking and finance sector believed increase in its use in that sector was likely. Although only a small majority, this is an increase on previous years. The survey is available on the QMUL's website: http://www.arbitration.qmul.ac.uk/research/2018.

[26] Time for a change? Financial services and international arbitration – Lexology.

Arbitration clauses have tended to only be used to mitigate enforcement risk when emerging markets are involved.[27]

With arbitration being one of the few areas unaffected by Brexit (the ease of enforcing arbitration agreements and awards internationally, including across the EU, has not changed), Brexit provides a fresh incentive for the finance sector to take a second look at arbitration.[28]

Arbitration offers its users many benefits, but there are key draws that should be of particular interest to banks and financial institutions. These key changes are flexibility, procedural efficiency, confidentiality and predictability, transparency, enforceability, ability to select arbitrators with the right expertise, minimised risk of parallel proceedings, summary judgment and the resolution of urgent matters under special procedures.

It has been perceived an increase generally in the use of international arbitration in finance disputes and that is expected to increase further. The main drivers behind this increase[29] are analysed below.

The increasing complexity in the nature of claims involving financial products: The disputes that arise, including, for example, disagreements over the results produced by complex financial models and formulaic calculations, require a high level of understanding of both the financial products concerned and the financial markets. Decisions are also being taken by courts which impact on global markets, for example, decisions on the close-out mechanics of industry standard contracts such as the ISDA Master Agreement. There is a concern that not all national courts are capable of making these decisions, whereas arbitration allows parties to appoint decision makers with the relevant expertise and avoids the creation of precedent.

The increasing involvement of parties from emerging markets in international finance: Arbitration is often preferred where enforcement of foreign judgments is likely to be problematic, given the comparative ease of enforcement of international arbitration awards under the New York Convention.

Therefore, financial institutions increasingly have turned to arbitration in recent years.[30] For example, the International Swaps and Derivatives Association

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[27] Time to reconsider? Post-Brexit, now is a good opportunity for the finance sector to take a second look at the key benefits arbitration offers to resolve disputes | Bryan Cave Leighton Paisner – JDSupra.

[28] Time to reconsider? Post-Brexit, now is a good opportunity for the finance sector to take a second look at the key benefits arbitration offers to resolve disputes | Bryan Cave Leighton Paisner – JDSupra.

[29] Use of arbitration in finance disputes | Ashurst.

[30] Banking and finance arbitration on the rise – a trend to follow? — Financier Worldwide; USA_Article_-_IFPS_Committee_Newsletter0.pdf (thompsonhine.com); international_arbitration_top_trends_2022.pdf (freshfields.com); International arbitration in the finance sector: Room to grow? | ICLG; Time for a change? Financial services and international arbitration | McCarthy

(ISDA) arbitration guide provides model arbitration clauses for the ISDA Master Agreement.[31]

As one of the drivers behind the increase in the use of arbitration in derivatives transactions, globalisation prompted ISDA to publish a guide in September 2013 on the use of arbitration in the ISDA Master Agreement. The 2013 Guide[32] included sample clauses for use in both the 1992 and 2002 Master Agreements. The Guide was updated in 2018[33]. the main purposes of the second edition of the Guide are (i) to ensure that the model clauses remain up to date (for example, in light of changes to the arbitral rules referred to in the model clauses); (ii) to include new model clauses; and (iii) to update the guidance on arbitration and its key features so as to reflect developments in the arbitration market since the first edition. In revising and expanding the list of model arbitration clauses, ISDA has been led by the responses it has received from members, rather than by any preference of ISDA itself. Such model clauses include PRIME Finance's model clause, alongside traditional offerings from institutions such as ICC, LCIA, AAA/ICDR, SIAC, HKIAC, SCC.[34]

The 2018 Guide included an expanded range of "ISDAfied" model arbitration clauses for a larger number of arbitral institutions and seats around the globe.[35] This reflects the increasing use of arbitration in finance transactions.

Other arbitral institutions, namely ICC, LCIA, and SIAC, have reported a steady increase in disputes from the banking and finance sector.[36] This trend reflects that financial sector deals with complex matters which attract the users' appetite for arbitration, as a suitable and responsive dispute resolution mechanism.

Financial products are increasingly complex, as technological innovation allows for the development and delivery of services in novel and bespoke ways. This is evident, for example, in the use of distributed ledger technology and automation.[37] Disputes arising from detailed financial models and bespoke

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Tétrault; icc-financial-institutions-and-international-arbitration-icc-arbitration-adr-commission-report.pdf (iccwbo.org).

[31] ISDA Master Agreement – International Swaps and Derivatives Association.

[32] _ (isda.org) (2013 ISDA Arbitration Guide).

[33] AODocument (uni-koeln.de).

[34] R. See, *Arbitrating Financial Disputes: The PRIME Finance Arbitration Rules Compared*, Corporate Disputes, Apr-Jun 22, p. 36-40, https://docs.financierworldwide.com/corporatedisputes/CD_Apr22_cd6780cd3424_digital/#page=38.

[35] Use of arbitration in finance disputes | Ashurst.

[36] New P.R.I.M.E. Finance Arbitration Rules | 中国 | Global law firm | Norton Rose Fulbright.

[37] The Difference Between Blockchain and Distributed Ledger Technology (marcopolonetwork.com); Blockchain technology and distributed ledger technology (DLT) in business (i-scoop.eu); Blockchain's Role in Factory Automation | Automation World; Distributed ledger technology for

instruments require a high level of technical understanding. Arbitration gives the parties an opportunity to appoint subject-matter experts to determine their claims.[38]

Complex financial products and transactions increasingly involve parties from emerging markets. International arbitration is the preferred method of dispute resolution in circumstances where parties have concerns about bringing their disputes before domestic courts. This may be for various reasons, such as a perceived lack of neutrality of the judiciary (particularly where there is little separation with the state), concerns about the rule of law, bribery and corruption, or local courts (and juries) lacking the requisite experience in resolving complex financial disputes.[39]

International arbitration offers parties an alternative neutral forum that is not tied to any particular legal system. International arbitration is the preferred choice where the enforcement of a foreign court judgment may be problematic. This is due to the comparative ease of enforcement of foreign arbitral awards under the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York Convention) which has been implemented in nearly all regions of the world.

International arbitration, particularly in the case of complex cross-border disputes, is recognised as offering procedural benefits over domestic litigation, including procedural flexibility, confidentiality, efficiency and finality.

Also, it is worth mentioning that Summary Procedures (Early Determination) are now available in arbitration, this issue being perceived as a significant improvement and benefit in applying arbitration to finance sector. One of the reasons commonly given for preferring national courts is the ability to secure a relatively speedy resolution via the summary judgment procedure. Historically, a similar procedure was not available in arbitration, because of the duty that is commonly imposed on arbitrators to give a ”full opportunity” to parties to set out their respective cases. But that is no longer the case. Several arbitral institutions now include a procedure for summary disposal or early determination of disputes, including SIAC, SCC and HKIAC. ICC has also clarified the procedures already available under the general case management provisions of its Rules for summary dismissal applications.

Arbitration in Banking and Finance

This is the latest initiative aimed at raising awareness of the benefits of international commercial and investment arbitration and ADR in the finance

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fully automated congestion management | Energy Informatics | Full Text (springeropen.com); Distributed ledger technology use cases (itu.int).

[38] New P.R.I.M.E. Finance Arbitration Rules | 中国 | Global law firm | Norton Rose Fulbright.

[39] Idem.

sector. The research project is conducted jointly by the Institute for Banking Law and the Center for Transnational Law (CENTRAL) at the University of Cologne, Germany.[40] The project builds on and references the work carried out by others (including ISDA and the ICC). In addition to raising awareness, it also aims to assist financial institutions in making informed choices on dispute resolution strategy.

Whether arbitration is appropriate for a particular transaction will depend on the particular circumstances of each case. It is therefore important that anyone responsible for drafting financial documents understands when international arbitration is more appropriate than national court litigation; and how to draft an arbitration clause.

These are the project two more important specified goals. First, it is intended to help increase the awareness of banks and financial institutions of the benefits of dispute resolution through arbitration and mediation. Secondly, the information provided here is geared to assist those banks and financial institutions that have recognized the benefits of arbitration and mediation for their litigation strategy in making informed choices, an essential prerequisite for a cost- and time-efficient use of ADR. To this end, the website provides first-hand guidance as well as practical know-how on the use of arbitration and mediation for dispute resolution in international banking and finance transactions as well as sample contract clauses to ensure efficient resolution of disputes arising out of such contracts and a compilation of the growing literature in this field.[41]

The resolution of b2b-disputes in international banking and finance disputes requires both industry-specific know-how and specialized legal knowledge. They can arise out of a wide variety of international banking and finance transactions, ranging from plain loan or project financing agreements to highly sophisticated derivative transactions, sovereign debt and asset management or private wealth agreements.

The increasing complexity and sophistication of financial markets and financial products as well as the lessons learned from the financial crisis of 2007/2008 all call for a larger variety and more sophisticated methods of dispute resolution in cross-border banking and finance transactions. The Corona crisis, Brexit, and the specificities of Islamic finance, whose increased breadth, sophistication and involvement of Islamic law bears a huge potential for arbitration as a viable alternative to dispute resolution by domestic courts, provide additional support for this diversified approach in settling b2b disputes in international banking and finance.[42]

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[40] Home::Arbitration in Banking and Finance (uni-koeln.de)
[41] Idem.
[42] Idem.

In addition to these arguments in favor of arbitration and ADR, the reasons which banks and other financial institutions have traditionally brought forth against the use of arbitration and ADR for the resolution of their b2b-disputes are no longer valid today. This has been confirmed in a number of key publications and reports in recent years:[43]

- the ISDA Arbitration Guide of 2013 and the second edition published in December 2018,
- the Report on Arbitration in Banking and Financial Matters by a Working Group of the French Arbitration Committee (Comité français de l'arbitrage) published in May 2014,
- the Report on Financial Institutions and International Arbitration of the Commission on Arbitration & ADR of the International Chamber of Commerce (ICC), Task Force on Financial Institutions and International Arbitration of 2016, and
- the Report on Arbitration in Banking and Financial Matters of the High Legal Committee for Paris as a Financial Center (Haut Comité Juridique de la Place Financière de Paris) published in 2020.

The project is a plea and an informed guide for exploiting the potential benefits of international commercial and investment arbitration to the full extent possible.

PRIME Finance

The need of private courts with the special ability and expertise to deal with complex finance disputes resulted in the establishment of an international finance disputes centre: PRIME Finance.[44] This is based in The Hague and launched on 16 January 2012.[45]

PRIME Finance offers a specialized forum for resolving banking and finance disputes and they have their own arbitration rules, based on the UNCITRAL arbitration rules, but adapted to meet the needs of the financial markets.

PRIME Finance is a specialized forum for private dispute resolution, which offers mediation, arbitration and other dispute resolution services to the finance sector. The institution seeks to offer tailored arbitration rules and services for complex financial disputes, including disputes concerning sovereign lending,

[43] Idem.
[44] P.R.I.M.E. Finance (primefinancedisputes.org); van Baren – P R I M E Finance – fact sheet.pdf (biicl.org).
[45] See also Lansarea Regulilor de arbitraj financiar „P.R.I.M.E. Finance” de solutionare a litigiilor de pe pietele financiare mondiale – JURIDICE.

investment and advisory banking, trade financing, project financing, private equity and investment management, and blockchain or smart contracts.[46]

PRIME Finance competes both with other arbitral institutions seeking to administer financial services disputes, and with domestic courts – particularly courts in major financial centers like London, New York, Singapore, and Dubai, several of which have established specialized financial or commercial chambers.[47]

In 2015, PRIME Finance joined forces with the Permanent Court of Arbitration (the PCA) in the Hague, the world's oldest arbitral institution with over a century of experience in administering complex international proceedings. Arbitrations under the Rules are administered by the PCA. The combination of the PCA's efficiency in administering arbitral proceedings and the Panel's subject matter expertise brings significant advantages for users in the banking and finance sectors.

PRIME Finance is also one of the international arbitration centres acknowledged by the International Swaps and Derivatives Association (ISDA) in its Arbitration Guide.[48] The ISDA Guide provides a range of model arbitration clauses tailored for use with ISDA's industry standard 1992 and 2002 Master Agreements.

Financial institutions consistently rank technical expertise in banking and finance of arbitrators as one of the key factors in choosing arbitration as a means of dispute resolution. A core feature of PRIME Finance is its offering of a panel of experts, comprising more than 250 arbitrators, judges, central bankers, regulators, academics, representatives from private legal practice and market participants, all with the requisite expertise for the resolution of complex financial disputes. PRIME Finance's Panel may be consulted, when appropriate, for the purpose of arbitrator nominations or appointments.

The persons from PRIME Finance institution's own panel of experts and arbitrators, which includes representatives from both mature and developing markets, dealers and end-users, legal experts and market experts, are available to either arbitrate disputes or offer their expertise for the benefit of arbitrators and judges in other fora.

Even if one of PRIME Finance's key selling points is its pool of over 200 legal and financial experts from which to choose arbitrators, the parties are not

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[46] PRIME Finance announces revision of its arbitration rules | International Bar Association (ibanet.org).

[47] Revamping of P.R.I.M.E. Finance Arbitration Rules Underway – Kluwer Arbitration Blog; P.R.I.M.E. Finance Launches Revised Arbitration Rules – Kluwer Arbitration Blog; Updates to the PRIME Finance Arbitration Rules for Complex, Cross-Border Financial Disputes | Covington & Burling LLP.

[48] 2018 ISDA Arbitration Guide & Choice of Court & Jurisdiction Guide – International Swaps and Derivatives Association; AODocument (uni-koeln.de); _ (isda.org).

tied to choosing from that pool. If in doubt of selecting an arbitrator with experience and qualification in finance sector, this list could be a good place to start. These arbitrators are not exclusive to PRIME and parties could nominate them even if using different arbitration rules. the pool mainly seems to be drawn from the legal sector, although PRIME Finance's description of the panel says that the pool also includes central bankers, regulators and derivatives market participants.[49]

The PRIME Finance Rules are not used as often as other institutional arbitration rules, but are worth bearing in mind and this paper aims to promote and made the community aware of their existence and potential.

PRIME Finance Arbitration Rules and its advantages

On its launch at its establishment in 2012, PRIME Finance also released the first version of its Arbitration Rules, which were based on the 2010 UNCITRAL Rules.[50] In 2016 followed a revised version, consisting of a modified version of the UNCITRAL Arbitration Rules (as revised in 2010) adapted to suit complex financial transactions.

As the PRIME Finance Arbitration Rules are inspired by, and very closely follow, the UNCITRAL Arbitration Rules,[51] PRIME kept deviations from the original UNCITRAL text to a minimum, both with a view to the role of the Permanent Court of Arbitration and in order to ensure that, in the case of any ambiguities, reference could easily be made to the commentaries on the UNCITRAL Rules. The PRIME Finance Arbitration Rules have been tailored to the needs of arbitration in financial markets and tailored to reflect the fact that they provide for an arbitral institution that will administer the arbitral proceedings (PRIME Finance), whereas the UNCITRAL Rules have been written for ad hoc arbitration. The main adjustments made to the UNCITRAL Rules reflect the market need of speedy resolution of disputes, with the inclusion of several provisions and annexes allowing parties to arbitral proceedings to shorten time frames in several ways.[52]

[49] Time to reconsider? Post-Brexit, now is a good opportunity for the finance sector to take a second look at the key benefits arbitration offers to resolve disputes | Bryan Cave Leighton Paisner – JDSupra

[50] Lansarea Regulilor de arbitraj financiar „P.R.I.M.E. Finance" de solutionare a litigiilor de pe pietele financiare mondiale – JURIDICE.

[51] The UNCITRAL Arbitration Rules provide a comprehensive set of procedural rules upon which parties may agree for the conduct of arbitral proceedings and are widely used in ad hoc arbitrations. as well as administered arbitrations.

[52] Launch of P.R.I.M.E. Finance Arbitration Rules: dispute resolution in global financial markets – Kluwer Arbitration Blog.

Definitely, numerous finance-related disputes are already settled under the rules of established arbitral institutions. However, resorting to PRIME Finance's offer appears to be strengthened by the following characteristics:[53]

- **Arbitration rules aimed at finance disputes** – the rules are specifically designed for the settlement of the complex financial disputes, including those concerning derivatives, sovereign lending, investment and advisory banking, financing, private equity and asset management. PRIME Finance say that the 2022 Rules are also suitable for resolving disputes in emerging areas such as fintech[54] and sustainable finance.[55]
- **A Panel of Experts –** the Panel comprises now around 250 international specialists with technical expertise and market experience in areas such as derivatives, private equity, and asset management, thus providing the parties with a sound list of arbitrators specialized in the finance sector. One change brought about by the 2022 Rules is that, whilst parties continue to be able to select arbitrators from the Panel, they are no longer *expected* to do so (as was previously the case under the 2016 Rules) as it is not a closed list.
- **Support of the PCA** – all arbitrations under the 2022 Rules are administered by the PCA in The Hague, a long-standing arbitral institution.

The new revised 2022 PRIME Finance Arbitration Rules

In 2020, the organisation launched a review of its arbitration rules to ensure they remain fit-for-purpose and continue to reflect best practices.[56]

The endeavour from June 2020 aims to ensure that the new Rules will be fitted for purpose, reflected current best practice in arbitration, and preserved – and expanded – features of particular interest to financial market participants. The guiding target has been to offer arbitrators and users a comprehensive, clear, and straightforward set of procedural rules in complex financial disputes.

The revision of the PRIME Rules follows in the wake of other leader arbitration institutions revision in the last two years, such as those by ICC, AAA/ICDR, SCC, LCIA, HKIAC, VIAC and others.

The Rules review was undertaken by a drafting group and a consulting group, with the latter providing guidance and strategic advice.[57] The drafting

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[53] https://www.mayerbrown.com/en/perspectives-events/publications/2022/01/prime-time-for-updated-arbitration-rules-for-financial-disputes-a-review-of-the-prime-finance-arbitration-rules-2022; PRIME Finance: a new dispute resolution option for the financial sector | Arbitration notes (hsfnotes.com); PRIME Finance: making arbitration attractive for financial disputes – Commentary – Lexology.

[54] Fintech and the digital transformation of financial services: implications for market structure and public policy (bis.org).

[55] https://www.ibanet.org/prime-finance-revision-arbitration-rules.

[56] New P.R.I.M.E. Finance Arbitration Rules | Global law firm | Norton Rose Fulbright.

[57] https://www.ibanet.org/prime-finance-revision-arbitration-rules.

group was chaired by Georges Affaki,[58] Professor of International Banking Law and Dispute Resolution, independent arbitrator and Chairman of the ICC Banking Commission Legal Committee. The consulting group was chaired by Carolyn Lamm, Co-Chair International Disputes Americas, White & Case LLP, and Heikki Cantell, General Counsel, Head of Legal Department and Secretary General of the Nordic Investment Bank. Both groups brought together pre-eminent experts with a range of banking and arbitration experience.

In January 2021, PRIME Finance launched the draft Rules for public comment. PRIME Finance's revised arbitration rules[59] are the result of that review and public consultation. On 6 December it was held a launch event to present and discuss the new Rules. At the event, Georges Affaki, Martin Doe of the Permanent Court of Arbitration (PCA) and Secretary-General of PRIME Finance Kasper Krzeminski gave an overview of the Rules.[60]

The new Rules entered into force on 1 January 2022 and will apply to PRIME Finance arbitrations commencing on or after 1 January 2022, unless the parties specify that an earlier version should apply.

Camilla Macpherson, Head of Secretariat, PRIME Finance Foundation, said about the new rules:[61]

"The new PRIME Finance Arbitration Rules offer a highly attractive means of dispute resolution to financial institutions, their customers and counterparties. Fundamental to PRIME Finance's mission is reducing uncertainty and creating stability and confidence in global finance, and the re-launch of the Rules is a key part of achieving this aim."

"Fundamental to PRIME Finance's mission is reducing uncertainty and creating stability and confidence in global finance, and the re-launch of the Rules is a key part of achieving this aim"[62]

Importantly, the changes reflected in the 2022 PRIME Finance Arbitration Rules seek to streamline the procedural arbitration framework, reflecting the importance of speedy resolution for financial market users.[63]

Key features of the 2022 PRIME Finance Rules

In line with the rule revisions made by leader arbitral institutions, the 2022 PRIME Finance Rules[64] intent to reflect current best practice in arbitration –

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[58] Georges Affaki speaks at the launch of the new P.R.I.M.E. Finance Arbitration Rules | AFFAKI
[59] https://primefinancedisputes.org/page/p-r-i-m-e-finance-arbitration-rules.
[60] https://us02web.zoom.us/rec/play/uUgqD6xrU8916BhGhcXVULI_-xGktuv02dI_93OZeh0VdPxUm7bo5tGV_5uLV3ZUIZT4UpCFGxLuKzJZ.1giXpoc7yB7Qqtc7.
[61] New P.R.I.M.E. Finance Arbitration Rules | Global law firm | Norton Rose Fulbright.
[62] https://www.ibanet.org/prime-finance-revision-arbitration-rules.
[63] New P.R.I.M.E. Finance Arbitration Rules | Global law firm | Norton Rose Fulbright.
[64] 211111-Prime-booklet-for-web.pdf (primefinancedisputes.org).

including provision for remote hearings and paperless hearings. Other key features of the 2022 Rules appear to be aimed at addressing other concerns such as:

- Increasing transparency and publication of awards;
- Increasing unique role of PCA as administering institution;
- Insuring arbitrators' suitable expertise and special appointment offer from institution's panel of specialists under a greater degree of control over the process;
- Increasing confidentiality and predictability (legal certainty, consistency);
- Efficiency, flexibility and cost-effectiveness, including an expedited procedure;
- Offering emergency and interim relief as well as an early determination process;
- Multi-party and multi-contract arbitrations;
- Insuring enforceability.

The transparency and predictability aspects

Regarding the transparency, the issue of *amicus curiae* is of interest in finance sector. In the amicus curiae submissions, the industry bodies and experts may explain policy positions or industry practices to the arbitral tribunal.[65] These interventions may enhance the relevance and the background of certain regulations and practices, but they come also in the interests of consistency and uniformization.[66]

Along the same trend with the ICC new provisions from 2019, the 2022 PRIME Finance Rules clarified the issue of publication of awards (Article 39(10)) by default. In other arbitration rules, the publication is permitted and made only with the consent of all parties.

The awards will be published in anonymized form (subject to party agreement), to permit the emergence of a body of jurisprudence similar to the case law of courts in major financial centres. This will increase predictability and transparency of the arbitral process (without endangering confidentiality) and further PRIME Finance's mission to reduce legal uncertainty and systemic risk, and to foster stability and confidence in, and a more settled and authoritative body of law for, world finance.[67]

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[65] Time to reconsider? Post-Brexit, now is a good opportunity for the finance sector to take a second look at the key benefits arbitration offers to resolve disputes | Bryan Cave Leighton Paisner – JDSupra.

[66] https://docs.financierworldwide.com/corporatedisputes/CD_Apr22_cd6780cd3424_digital/#page=42.

[67] http://arbitrationblog.kluwerarbitration.com/2022/01/07/p-r-i-m-e-finance-launches-revised-arbitration-rules/.

Also related to transparency, parties are required to disclose at the outset[68] the identity of any third party with a significant interest in the outcome of the dispute[69] (see Articles 5(3)(g), 6(2)(b) and 12(2)), and the nature of such interest to the other party(s), the tribunal and the PCA. This is a new element to the Rules[70] and it is clear that parties are supposed from now on to disclose the identity of third party funders but leaves the door open to the interpretation of the 'significant interest' of that third parties, as for the large corporations with diversified and numerous shareholders it is needless to disclose all of their interests (for confidentiality reasons).

The PCA central role

By default, the PCA offers a light touch administration.[71] That does not prevent it from securing the necessary tools to safeguard the integrity and the impartiality of the arbitration proceedings. In this respect, the PCA can confirm arbitrators but in the same time has the discretion to refuse the appointment of an arbitrator even where they have been nominated by the parties[72] (Article 11), extend or shorten time limits (Article 4) and exercise limited scrutiny over the arbitral award (Article 39). The new Rules also change the default number of arbitrators: unless the parties agree or the PCA determines otherwise, cases will be heard by a sole arbitrator instead of a panel of three arbitrators (Article 7). The PCA therefore acts as a security regulator for the arbitration proceedings under the 2022 Rules.[73]

Ability to select arbitrators with the appropriate expertise

One of the most precious arbitration advantage is the parties' ability to choose its arbitrator. In arbitration, a party has the benefit to consider the nature of the dispute that has arisen and the experience and sector knowledge that it would be required for an arbitrator in determining the dispute, so that they can choose the best candidate with the proper expertise. A party could select an arbitrator from the finance sector with specific technical knowledge and experience, or an arbitrator from a legal background who is also experienced in resolving banking and finance disputes. This feature is highly valued by

[68] https://www.mills-reeve.com/insights/publications/prime-finance-arbitration-what-is-it.

[69] For example, third persons funding a claim or defence or other members of the same corporate group.

[70] http://arbitrationblog.kluwerarbitration.com/2022/01/07/p-r-i-m-e-finance-launches-revised-arbitration-rules/.

[71] https://homburger.ch/de/insights/p-r-i-m-e-finance-launches-revised-arbitration-rules.

[72] This is in contrast with the position under the 2016 Rules, which permitted the parties to choose an appointing authority other than the PCA (see Article 6(1) of the 2016 Rules). https://www.traverssmith.com/knowledge/knowledge-container/prime-finance-launches-updated-arbitration-rules/.

[73] https://homburger.ch/de/insights/p-r-i-m-e-finance-launches-revised-arbitration-rules.

most parties, as they are rest assured that any tribunal appointed will have expertise and knowledge of the products and subject area in dispute.[74]

The arbitrators from the panel are not exclusive to PRIME and they could be nominated even using different arbitration rules. The Panel predominantly seems to be composed of persons with legal background, although PRIME Finance's description of the panel says that the pool also includes central bankers, regulators and derivatives market participants.[75]

In addition to facilitating the selection of qualified arbitrators, the new Rules contain provisions on the use of tribunal-appointed independent experts on market practice and other technical issues (Article 28). The 2022 Rules clarify that parties or their experts may make written submissions responding to the conclusions of tribunal-appointed experts, and may question tribunal-appointed experts at a hearing.[76]

Finally, the PRIME Rules contain more specific provisions than other common arbitral rules on the currency of the award, and expressly address the tribunal's ability to award pre- and post-judgment interest and to account for taxation of awards. While the latter provisions are not prescriptive, their inclusion should help to facilitate considered rulings on currency, interest, and taxation issues – which can critically affect the quantum of damages awarded, but are not always adequately briefed and considered.[77]

Updated provisions related to electronic communications

It is worth mentioning that nowadays, one of the key features of any arbitration rules revision is the continuous need to adapt to the new technology challenges. And because we have been forced to adapt and use this technology and to tailor it for virtual hearings, to communicate and interact online, the arbitration rules of several leading institutions changed in the last two years exactly to be better equipped for these new challenges and evolutions. It was a real race to revise institutional arbitration rules on how to maintain the attractiveness of arbitration in a changing world,[78] as following the amendments of these arbitration rules, now, the PRIME Finance Rules are designed to promote, to facilitate and collect together all these new developments and ideas

[74] https://www.bclplaw.com/en-US/insights/time-to-reconsider-post-brexit-now-is-a-good-opportunity-for-the-finance-sector-to-take-a-second-look-at-the-key-benefits-arbitration-offers-to-resolve-disputes.html.

[75] van Baren – P R I M E Finance – fact sheet.pdf (biicl.org).

[76] Updates to the PRIME Finance Arbitration Rules for Complex, Cross-Border Financial Disputes | Covington & Burling LLP; 211111-Prime-booklet-for-web.pdf (primefinancedisputes.org).

[77] Updates to the PRIME Finance Arbitration Rules for Complex, Cross-Border Financial Disputes | Covington & Burling LLP.

[78] RACING TO REVISE INSTITUTIONAL ARBITRATION RULES — Corporate Disputes (corporatedisputesmagazine.com).

of using the new modern technologies in arbitration to improve efficiency.[79] The Rules became in a certain degree a new tool, an useful one that could assist the arbitration practitioners to be aware and better acquaint with these new technology resources we all are compelling to use from now on.

It is interested to notice that since 2014 the usage of the paperless arbitration was encouraged by several institutions. The users were initially charmed by the idea of the possibility to easier transfer to all the participants the data case. However, the hard copies always accompanied the electronic documents and exhibits. Until the pandemic came and force us to apply the existent technology that was awaiting to be really used at its real potential, nobody was convinced that the electronic means of communication, the whole package, including the virtual hearing used so far sporadically, are really fit and appropriate, flexible enough to cover the arbitration needs. The last two years demonstrated us all that the technology wisely applied and adapted to the necessity of each case can be a benefit we can all keep even at the outset of this pandemic. We can carry on the development of these tools, include them in the general practice and spread its routine of everyday work and thus make the most of them.

Therefore, the 2022 Rules have been updated to reflect the common usage of electronic communications. For instance, the 2016 Rules only permitted notices or communications to be sent electronically through the details '*provided by the addressee'* (Article 2 of the 2016 Rules). However, Article 2(2) of the 2022 Rules permits, save where the parties have designated otherwise, notices and communications to be sent "*by any means, whether physical or electronic, that provides for or allows for a record of its transmissions and shall be deemed received and effective when it is delivered to the last-known place of business, habitual residence, or mailing address of the recipient or sent to any electronic address (including any name, number, account, or electronic messaging system) used in the ordinary course of business by the recipient*".[80]

Expanded emergency and expedited provisions

The 2022 Rules comprehensively address emergency situations both before and after the tribunal is constituted, with updated provisions on emergency arbitration (Article 25) and a new provision on interim measures (Article 24). Prior to the issue of the final award, the arbitral tribunal may grant *any interim measures which it deems appropriate* in the form of an order or an award. The 2022 Rules also now include detailed provisions at Article 50 on the tribunal's ability to grant security for costs.

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[79] PRIME Finance releases new arbitration rules | ArbitrationLinks | Blogs | Insights | Linklaters.
[80] https://www.traverssmith.com/knowledge/knowledge-container/prime-finance-launches-updated-arbitration-rules/.

The 2016 Rules allowed the parties to expedite proceedings by agreeing, subject to tribunal approval, shortened timelines (Article 2a of the 2016 Rules). However, similar to the ICC Arbitration Rules, the 2022 Rules provide for a full expedited arbitration procedure.

The power to make provision for an arbitration on an emergency basis has now clearly been placed in the hands of the PCA, which is empowered to appoint an emergency arbitrator, usually within two days of receiving the request. The 2022 Rules provide detailed provisions about the emergency arbitration process at Article 25, which are broadly consistent with those offered by other major arbitral institutions. Further, they clarify that, notwithstanding these provisions and those on interim measures generally, the parties may still seek interim measures before a court, *including* measures covered by Article 25, where permitted under the applicable law.

Article 1(4) of the 2022 Rules states that the expedited procedure shall apply if (i) the amount in dispute does not exceed EUR 4,000,000 at the time the response to the notice of arbitration is filed; or (ii) the parties agree. As per Article 1(5), except as otherwise decided by the PCA, the application of the expedited procedure shall not be affected by any amendment to the claim, or the filing of additional claims, which means the amount in dispute exceeds EUR 4,000,000. This prevents parties from filing deflated claims in order to benefit from the expedited procedure before then increasing the quantum of their claims thereafter.

The full process and timing for the expedited procedure is set out in Article 17. In particular, Article 17 states that (i) expedited proceedings shall be determined by a sole arbitrator, notwithstanding what the parties may have agreed in the arbitration agreement, though the PCA does retain a discretion to appoint 3 arbitrators; and (ii) the arbitral tribunal shall render its final award within 180 days from the constitution of the arbitral tribunal.[81]

In the case of expedition, the Rules retain a measure of flexibility in the sense that the PCA may decide at any time, at the request of the tribunal or a party, to convert the arbitration from expedited to ordinary proceedings (Article 17(2)).[82]

Early Determination

Parties now have the express ability to request early determination of a matter, within 30 days of the date on which the claim or defence is raised. Article 35 of the 2022 Rules permits a party to request ”early determination” of a dispute, which reflects the same right that exists under Article 22(1)(viii) of the LCIA

[81] https://www.traverssmith.com/knowledge/knowledge-container/prime-finance-launches-updated-arbitration-rules/.

[82] New P.R.I.M.E. Finance Arbitration Rules | Global law firm | Norton Rose Fulbright.

Arbitration Rules. In particular, Article 35 states that a party may request the early determination of a claim or defence on the basis that it is manifestly (i) outside the jurisdiction of the arbitral tribunal; (ii) inadmissible; or (iii) without legal merit. Whilst such power was implicit prior to the 2022 Rules, tribunals may have been hesitant in exercising it to avoid the risk of allegations of procedural unfairness or irregularity.[83]

Article 35(3) requires the tribunal to determine a request for early determination within 30 days of receipt. These provisions will no doubt give tribunals comfort that they may, on application of the party, and where appropriate, dispose of claims at an early stage. That said, it remains to be seen how arbitrators will be given the possibility of such applications giving rise to an argument that an award should not be enforced because a party was unable to present its case (for instance, as per Article V.1(b) of the New York Convention).[84]

Multi-party and multi-contract arbitrations

Complex financial transactions may involve many parties, sometimes with adverse interests, and multiple contracts. Banks and financial institutions are often concerned about the prospect of parallel proceedings in different jurisdictions, particularly in more complex transactions, such as in a typical project finance deal, where there are multiple contracts between multiple parties, which relate to the same transaction or series of transactions.[85] The new PRIME Finance Rules now include enhanced joinder and consolidation provisions, in consideration of minimizing the risk of parallel proceedings in cases where there are more than two parties.

In the arbitration proceedings all claimants, on the one hand, and all respondents, on the other, are to be treated based on the procedural rights principles of equal and fair treatment regardless of their interests. The previous version of the Rules dealt only in very brief terms with joinder (see Article 17(5) of the 2016 Rules). However, there were no other provisions relating to joinder, consolidation, or related matters. Now, the Rules include detailed provisions not only on joinder (see Article 31), but also on consolidation of arbitrations (see Article 32), single arbitration under multiple contracts (Article 33) and coordination of proceedings (see Article 34). The last one is a new provision

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[83] Prime time for updated arbitration rules for financial disputes? A review of the P.R.I.M.E. Finance Arbitration Rules 2022 | Perspectives & Events | Mayer Brown.

[84] https://www.traverssmith.com/knowledge/knowledge-container/prime-finance-launches-updated-arbitration-rules/.

[85] Time to reconsider? Post-Brexit, now is a good opportunity for the finance sector to take a second look at the key benefits arbitration offers to resolve disputes | Bryan Cave Leighton Paisner – JDSupra.

enabling separate arbitrations that are not eligible for consolidation to be coordinated in certain cases.[86] Express provisions relating to such matters is particularly important in the context of financial disputes where often there are inter-related and inter-dependent contracts that form one overall financial transaction.[87]

Enforceability

Arbitral awards under the PRIME Rules are subject to enforcement under the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards. In common with other arbitration awards, therefore, PRIME Finance awards should be enforceable in substantially all major jurisdictions, subject only to limited grounds for objection.

The New York Convention ensures a possible advantage of obtaining a PRIME Finance or other arbitral award, as compared to a judgment from a domestic court. Generally, the process for enforcing foreign judgments can be more complex and challenging than the process for enforcing foreign arbitral awards. Moreover, while parties obtaining judgments in major financial centers can seek to enforce funds and assets through those centers, attaching transitory funds and assets can pose practical and legal challenges, making enforcement under the New York Convention more valuable in cases involving counterparties with assets in jurisdictions that do not easily recognize the judgments of foreign courts.[88]

Brief comparison with other arbitration rules[89]

The 2022 Rules combine elements of other major arbitration rules, including the LCIA Rules 2020, the ICC Rules 2021, and the SIAC Rules 2016,

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[86] http://arbitrationblog.kluwerarbitration.com/2022/01/07/p-r-i-m-e-finance-launches-revised-arbitration-rules/.

[87] Time to reconsider? Post-Brexit, now is a good opportunity for the finance sector to take a second look at the key benefits arbitration offers to resolve disputes | Bryan Cave Leighton Paisner – JDSupra.

[88] https://www.cov.com/en/news-and-insights/insights/2021/01/updates-to-the-prime-finance-arbitration-rules--for-complex-cross-border-financial-disputes.

[89] Prime time for updated arbitration rules for financial disputes? A review of the P.R.I.M.E. Finance Arbitration Rules 2022 | Perspectives & Events | Mayer Brown; Updates to the PRIME Finance Arbitration Rules for Complex, Cross-Border Financial Disputes | Covington & Burling LLP; New P.R.I.M.E. Finance Arbitration Rules | Global law firm | Norton Rose Fulbright; Georges Affaki speaks at the launch of the new P.R.I.M.E. Finance Arbitration Rules | AFFAKI; 211111-Prime-booklet-for-web.pdf (primefinancedisputes.org); R. See, *Arbitrating Financial Disputes: The PRIME Finance Arbitration Rules Compared*, Corporate Disputes, Apr-Jun 22, p. 36-40, https://docs.financierworldwide.com/corporatedisputes/CD_Apr22_cd6780cd3424_digital/#page=38.

all of which are likely to have influenced the 2022 Rules during the feedback and revision process.

They display certain aspects of ICC arbitrations, such as the default application of expedited rules for claims of a certain value, the publication of awards, party nominations in a multi-party situation, and the requirement to disclose those with an economic interest in the outcome (albeit, under the 2022 Rules, the requirement is limited to 'significant interest[s]' only).

The 2022 Rules are close to the LCIA Rules 2020 in many regards including: the default appointment of a sole arbitrator, the institution's role in confirming appointments, the early determination procedure, and the ability to recover any substitute deposit paid. Resembling to LCIA Rules, the coordination procedure also appears very similar to the tribunal option to conduct concurrent arbitrations in multi-party and multi-contract situations.

A focus of recent rule revisions has been complex arbitrations, meaning multi-party and multi related-contract disputes, such that there are many similar provisions in the market to those in the 2022 Rules. The joinder, consolidation and 'single arbitration under multiple contracts' provisions in the 2022 Rules are closely aligned with the SIAC Rules 2016. As expected, though, all institutional rules have their nuances. One key difference between the 2022 Rules and the SIAC Rules is that there is no express provision for a tribunal to order consolidation under the 2022 Rules, as this responsibility rests with the PCA. Interestingly, if the PCA decides to consolidate, it can revoke arbitral appointments already made (and appoint or reappoint arbitrators), since all parties are deemed to have waived their right to appoint an arbitrator in this scenario.

The 2022 Rules also go further than the above-mentioned institutional rules in certain respects, including in relation to non-party intervention, security for costs, and the ability to choose between an ad-valorem and time-based system for arbitrator fees.[90]

Conclusions

PRIME Finance was established to lead the way in this regard, with a mission to reduce legal uncertainty and foster stability and confidence in the global financial markets.

PRIME Finance is dedicated to promoting a more sophisticated approach to financial markets dispute resolution. From the outset, this mission included the provision of the PRIME Finance Arbitration Rules, designed to provide parties with a specialized mechanism for resolving financial disputes.

[90] Prime time for updated arbitration rules for financial disputes? A review of the P.R.I.M.E. Finance Arbitration Rules 2022 | Perspectives & Events | Mayer Brown.

The 2022 Rules contain helpful changes and updates, which bring them into line with other leading institutions and reflect the developing needs and wishes of the arbitration community. In time, only practice will demonstrate the best approach the tribunals adopt to manage and determine arbitrations under the 2022 Rules, particularly in relation to early determination and multi-party and multi-contract arbitrations.

The introduction of mode rn, clear and accurate rules and measures that correspond to the needs and expectations of the arbitration users is welcomed in the finance sector and the parties are therefore invited to benefit from this offer. Despite certain criticism regarding the increase of the judicialization of the arbitration procedure, the introduction of new procedural rules and instruments is necessary in most cases to assist parties to choose the most appropriate rules for their case, based on the specificity and circumstances of their particular situation and their need of efficiency in arbitration.

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10. Cristina Florescu, *Lansarea Regulilor de arbitraj financiar "P.R.I.M.E. Finance" de solutionare a litigiilor de pe pietele financiare mondiale*, 2012. Available at: Lansarea Regulilor de arbitraj financiar "P.R.I.M.E. Finance" de solutionare a litigiilor de pe pietele financiare mondiale – JURIDICE, [Accessed 07 April 2022].
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Variations Regarding the Regionalization Concept of Romania in the Current Political-Economic Context

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Abstract

The issue of the administrative-territorial reorganization of the country has recently attracted increased attention of the political factor, of public opinion, and the approaches, debates, criticisms and observations have been launched in the public space. In this sense, the publication of the results of the 2021 Census on the number of resident population per locality, combined with a massive depopulation of localities compared to the previous census, amplified and stimulated the debate on this topic. The gravity of the situation is accentuated by the loss of a resident population of over 4 million inhabitants after 1989, and the prospects are increasingly dramatic. In the context of the massive depopulation of the counties, but also of territorially differentiated economic developments, the current territorial division at the county level became after 1989 a brake on the economic and social development of the country. In this rather complicated political-economic context, the political class did not show a major interest in an administrative-territorial redraw of the country into regions, provinces or new counties, other than the existing ones. For political and economic reasons, the political decision-makers opposed, seeking electoral gain, positions and functions, waste of public money, nepotism. We can wonder if the existence of the current counties and the narrow interests of the county barons and their envoys in the governing structures are also responsible for the pathetic state of the road, railway, river infrastructures and their corresponding endowments, their vision was not and is not is to see and evaluate things at the national/macro level. The deterioration of the country's demography, depopulation and their economic consequences have reached dangerous levels, if not decisive, for the realization of the projects of the National Recovery and Resilience Plan by setting up the foreseeable crisis of the labor force and accentuating it in the short and medium term. The current system of dividing Romania has proven its limits, and at this moment Romania is in a situation where 3,228 localities (municipalities, cities) can no longer manage administrative expenses.

Introduction

After the adoption in 1864 of the laws on the organization of communes and the functioning of county councils, the creation of a regional level in modern Romania aroused political interest through intense debates, as well as the interest of established specialists of the era.

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Paul Negulescu, in the *Treaty of Administrative Law*, conceived decentralization and deconcentration only at the communal and county level. He addressed the issue of ensuring greater financial resources and better satisfaction of the interests of the local community by merging some counties, but not by creating county superstructures. From a political point of view, the first idea about the region is found in the conservative P.P. Carp in the public administration reform project, on February 13, 1912. The official highlighted the fact that the counties and communes did not meet the requirements of decentralization, which made necessary an administrative regime on a regional basis. After October 27, 1918, when the Council of State adopted the Declaration of Union, Romania's regionalization began to become a political concern. The fears were related to the fragility of the unitary state at the beginning of the consolidation process, by invoking separatist tendencies and the increase in expenses. Immediately after the unification in 1859, A.I. Cuza began the process of modernizing the administration, with the counties representing the intermediate level.

The constitution of 1866 provided for the representation by laws of county and communal institutions and confirmed complete administrative decentralization and communal independence.

The Romanian Constitution of 1923 stipulated in art. 108 *that county and communal institutions were to be regulated by laws, based on the principle of administrative decentralization.*

The law for the organization of local administration from August 1929 brought changes to the system created in 1925. In this sense, *"all urban or rural communes could be divided into sectors, and these, like counties and communes, enjoyed legal personality"*[1].

The period of the royal dictatorship completely changed the functioning logic of the local public administration. Local autonomy was no longer a constitutional principle, and the regulation of county and communal institutions was based on the law. The communal council, with elected and de jure members, had restricted areas of competence and functioned more as an advisory body.

The communist period radically changed the concept of public administration. Local people's councils, local organs of state power elected by universal suffrage, were provided for in the Constitution of 1948, as well as local executive committees, bodies of direction and execution of the people's councils elected by them, having double subordination – to them and to bodies of the central state administration.

After the Second World War, a new law was adopted in 1950, which established as the main administrative-territorial forms: the region, the city, the

[1] Gruia George, *Dezvoltare durabila si protectia mediului*, Editura Fundatiei Romania de Maine, Bucuresti, 2019, p.134

district and the commune; the region consisted of districts and cities of regional subordination, 28 regions being established.[2].

Starting with 1952, with the new amendment to the Constitution, the administration was organized through political control. The local bodies of the state power were represented by the popular councils elected by universal vote, and their executive and dispositional bodies were the executive committees, elected by the popular councils. In 1952 there were 18 regions, 198 districts, 171 cities, 4314 communes and 15221 villages.

In 1968 there were: 39 counties, 189 cities, 2706 communes (144 suburban) and 13149 villages, a division that remained between 1968-1981, only Ilfov county being, at that time, resized and renamed ”Ilfov Agricultural Sector". Thus, in 1981 there were 40 counties and one city assimilated to the county, 236 cities (56 municipalities), 2705 communes (135 suburban) and 13,124 villages[3].

After 1989, the decentralization process entered favorable ground, in the context of the democratization process triggered after the fall of the communist regime. No less influential were the international political pressures of the Council of Europe and the European Union.

Proposed variants

A. The variant proposed by the business environment (Romanian Chamber of Commerce and Industry)

In the context of the elections and the increasingly acute problems related to the absorption of European money, the debate regarding the need for territorial administrative reorganization of Romania has resumed in force. This problem arises all the more since last year's census showed areas that have been massively depopulated, but also new population agglomerations. There is an urgent need for administrative reorganization of Romania, by reducing the number of

[2] Gruia George, *Dezvoltare durabila si protectia mediului,* Editura Fundatiei Romania de Maine,Bucuresti, 2019, p.135.

[3] Gruia George, *Dezvoltarea durabila si protectia mediului*, Editura Fundatiei Romania de Maine, Bucuresti, 2019, p.136.

counties from 42 to 15, considering the budgetary situation presented by the Ministry of Finance. In the context of the very large deficit in the State Budget, which is approximately 20 billion lei, the Chamber of Commerce and Industry of Romania (CCIR) came up with the proposal that there should be a maximum of 15 counties throughout the country.

CCIR, together with other employer organizations and associations, launched a call to the authorities for an administrative reform of Romania through territorial reorganization and decentralization of public institutions. This initiative was taken in the context of the need to improve the efficiency and quality of public services, but also to stimulate the economic and regional development of the country.

The CCIR calls for the territorial reorganization and decentralization of public institutions, in a context where the governors seem to no longer consider this idea and the subject has disappeared from the public agenda, although Romania is the only ex-communist country that has not made such a reform, establishing its current territorial division since 1968.

The main measures proposed by the CCIR:

- reducing the number of counties from 42 to 15;

- redefining the notion of commune as a locality with at least 5,000 inhabitants;

- redefining the notion of a city as a locality with at least 10,000 inhabitants;

- all decentralized public institutions must be regrouped under this new form administration.

In this context, at the same time, all decentralized public institutions must be regrouped under this new administrative form. Such a territorial administrative reorganization would lead to a very large economy for the State Budget, by substantially reducing the positions of directors and heads of services, prefectures or in decentralized institutions.

Romania is no longer attractive for investors

From the analysis made by business specialists, they say that Romania no longer has the labor force for future foreign investments and that at the European level, several important brands have announced the relocation of their production units to countries in South East Asia. ”In these current conditions, Romania is no longer an attractive destination for foreign investors from the point of view of qualified labor force and because of the chaotic retrocessions. Thus, Romania could find itself unable to provide land for the opening of some production lines, especially in the context in which many businesses have started their relocation from Asia”, the CCIR press release also states.

In the current political and economic context, the only solution is to promote a coherent fiscal policy in accordance with the technical and economic possibilities of Romania.

In this particularly complicated social and economic context, CCIR claims that the only viable solution for Romania is the adoption of a medium and long-term fiscal policy, by reducing taxes and fees. ”In this complicated situation, the CCIR believes that there is a risk that by adopting some erroneous measures in terms of covering budget holes, the business environment will become, if not a scapegoat, then at least a collateral victim. This approach of the National Chamber, absolutely necessary for the urgent territorial reorganization of Romania, was joined by several employers' organizations and associations".

Romania's regions are the least competitive in the entire European Union

The South-East of Romania ranks 234th out of the 234 regions of the European Union, according to the Regional Competitiveness Index (RCI), a completely revised version of an already established instrument that measures different dimensions of competitiveness for all EU regions, published by the European Commission.

On the 233rd place out of the 234 regions of the EU is the North-East region of Romania, with a score of 46.6 points compared to an average of 100 at the EU level. Only the Southeast region of Romania has a lower score, with 44.9 points.

The giant Goldman Sachs releases a note with a warning to investors, as follows: the electoral ”Super-year” 2024 will postpone fiscal adjustments in Romania. The Romanian Leu is overvalued by 5-6% and will depreciate over time. At the opposite pole, the regions of Utrecht and Zuid-Holland, both in the Netherlands, as well as the French capital region Île-de-France are the most competitive in the EU, with scores of 150.9 points, 144.1 points and 142, respectively. 8 points. ”Territorial competitiveness is the ability of a region to provide an attractive and sustainable environment for businesses and residents to live and work in. This revised index gives us a deeper insight into the different levels of competitiveness of EU regions and is a valuable tool for better policy making. It will allow us to develop better policies that can provide attractive and sustainable living conditions for citizens in Europe's regions”, said the Commissioner for Cohesion and Reforms, Elisa Ferreira. According to the Community Executive, between the 2016 edition of the index and that of 2022, regional competitiveness improved in less developed regions, while the performance of transition regions was more heterogeneous. More developed regions continue to perform best. All regions in Eastern EU Member States improved their performance between in 2016 and 2019, while in the southern EU regions, which themselves have relatively low levels of competitiveness, performance was uneven. Between the 2019 and 2022 editions, most of the eastern EU regions continued to catch up, including the Baltic States, Croatia, Hungary, Poland and Slovenia However, parts of the Czech Republic, Romania, Slovakia and Bulgaria have moved further away from the EU average. Capital regions are also the most competitive in all Member States except Germany, Italy and the Netherlands.

The gap with other regions can be large and is particularly high in France, Romania and Slovakia. More competitive countries tend to have a smaller gap between the capital region and the other regions. This underlines that public policies and investments should promote upward convergence, which helps less competitive regions to improve their performance and catch up, while ensuring that the most competitive regions continue to prosper. In more competitive regions, GDP per capita is higher. In these regions, women benefit from better framework conditions and are therefore able to achieve better results, and there are fewer young women who are not in employment, education or training (NEET rates). At the same time, more competitive regions are particularly attractive to recent graduates, who find it easier to find a job there. The ICR 2.0 results show that EU regions still need support from the Union to improve their competitiveness and reduce gaps between them. Cohesion policy is the EU's main investment policy aimed at supporting regions in areas such as job creation, business competitiveness, economic growth, sustainable development and improving citizens' quality of life.

Launched in 2010 and published every three years, the ICR allows EU regions to monitor and assess their progress over time and in comparison with other regions. This is an important tool that provides a European perspective on the competitiveness of regions, based on 68 indicators. The 2022 edition of the ICR uses a completely revised methodology and recalculates the two previous editions. ICR 2.0 is composed of 3 secondary indices: ”*Basic*”, ”*Efficiency*” and ”*Innovation*” and 11 pillars regarding the different aspects of competitiveness: ”Institutions”, ”Macroeconomic Stability”, ”Infrastructures”, ”Health”, ”Education basic', 'Higher education, training and lifelong learning', 'Labour market efficiency', 'Market size', 'Technological maturity', 'Enterprise sophistication' and 'Innovation'.

B. Reorganization variant on the Development Regions

Historically, there are 3 traditional provinces: Wallachia (consisting of the regions of Oltenia, Muntenia and Dobrogea), Moldova and Transylvania (consisting of the regions of Banat and Transylvania). One of the objectives of

the European Union is the promotion of economic and social progress, balanced and sustainable, by strengthening the cohesion between the member countries. The Region (Territorial Administrative Unit) is considered, in the sense of the Council of Europe, as a unit located immediately below the state level, with elected authority of the Public Administration and having its own financial means[4]. Romania is divided into administrative-territorial units called counties. In order to be able to apply the regional development policy, 8 development regions were established on the territory of Romania as a result of a free agreement between the county and local councils, corresponding to the NUTS-2 level (Nomenclature of Territorial Statistical Units) of divisions of the EU, but without having regional administrative capacities. The development regions refer to the regional subdivisions of Romania created in 1998 and function, in particular, to coordinate regional development projects. *Development regions are not administrative-territorial units, they do not have legal personality, they are the result of a free agreement between county and local councils.*

The development regions in Romania represent ”*areas that include the territories of two or more counties, established on the basis of an agreement concluded between the representatives of the county councils and, as the case may be, of the General Council of the Municipality of Bucharest”*[5]. According to Law no. 315/2004 regarding regional development in Romania[6], eight development regions are established on the territory of Romania[7]. Through the two legislative acts regarding sustainable regional development, in this case Law no. 151/1998 regarding regional development in Romania and Law no. 315/2004 regarding regional development in Romania, no new higher-level administrative-territorial units were created, as were the regions in Romania starting from 1950 and until the adoption of Law no. 2/1968 regarding the administrative organization of the territory, which returned to the Romanian traditions in the administrative-territorial organization, namely: counties, communes and cities[8].

Romania's development regions are named after the geographical position occupied in the country:

1) Region 1 North-East, formed by the counties: Iasi, Bacău, Botoşani, Neamţ, Suceava,

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[4] George Gruia, *Dezvoltarea durabilă și protecția mediului*, Editura Fundației România de Mâine, București, 2019, p.317,

[5] George Gruia, *Dezvoltarea durabilă și protecția mediului*, Editura Fundației România de Mâine, București, 2019, p.317

[6] Legea nr. 315 din 28 iunie 2004 privind dezvoltarea regională pubicată în Monitorul Oficial al României, nr. 577 din 29 iune 2004, cu modificările și completările ulterioare (*Law no. 315 of June 28, 2004 regarding regional development published in the Official Gazette of Romania, no. 577 of June 29, 2004, with subsequent amendments and additions*)

[7] George Gruia, *supra cit.,* p.317

Vaslui. Totals 3,148,577 inhabitants and an area of 36,850 km^2**.**

2) Region 2 South-East, made up of the counties: Brăila, Buzău, Constanţa, Galati, Tulcea,

Vrancea. Totals 2,399,604 inhabitants and an area of 35,762 km^2**.**

3) ***Region 3 South Muntenia,*** consisting of the counties: Prahova, Dâmboviţa, Argeş, Ialomiţa, Călăraşi, Giurgiu, Teleorman. Totals 2,998,679 inhabitants and an area of 34,450 km^2**.**

4) Region 4 South-West Oltenia, consisting of the counties: Mehedinţi, Gorj, Vâlcea, Olt, Dolj. Totals 1,977,986 inhabitants and an area of 29,212 km^2.

5) Region 5 West, formed by the counties: Arad, Caraş-Severin, Hunedoara and Timiş.

Totals a population of 1,730,146 inhabitants and an area of 32,034 km^2.

6) Region 6 North-West, consisting of the counties: Bihor, Bistrita-Năsăud, Cluj, Maramureş, Satu-Mare and Sălaj. Totals 2,495,247 inhabitants and an area of 34,159 km^2.

7) Region 7 Center, formed by the counties: Alba, Sibiu, Mureş, Harghita, Covasna, Brasov. Totals 2,251,302 inhabitants and an area of 34,100 km^2.

8) Region 8 Bucharest-Ilfov formed by the municipality of Bucharest and Ilfov County.

Totals 2,042,226 inhabitants and an area of 1,821 km^2.

They correspond to the NUTS II level, according to the EUROSTAT classification, and represent the framework for the collection of specific statistical data in a territorial profile. The Regional Development Councils group together representatives of county and local authorities, and their executive bodies are the Regional Development Agencies (ADR).

All development regions of Romania, including Bucharest-Ilfov, have a gross domestic product (GDP) per capita lower than 75% of the community average and are eligible for financing from the EU Structural Instruments within the Convergence objective.

From the perspective of the principles and objectives of sustainable development, developments at the regional level are of crucial importance, accentuated in Romania's specific conditions of increasing territorial disparities in terms of economic and social development, the rational use of resources and the quality of the environmental infrastructure.

C. Reorganization variant based on the Courts of Appeal (C.A.) model

The administrative model of the Judiciary can be used for the territorial reorganization of Romania. The architecture of the Romanian State, organized on the 15 existing courts of appeal, were created for the mobility of the citizen, regardless of ethnicity. Therefore, 15 counties will be created instead of 42. This variant proposes a total of 15 counties, divided into the localities where a

CA operates, respectively: Bucharest, Craiova, Timişoara, Oradea, Cluj, Suceava, Iaşi, Galati, Constanţa, Ploiesti, Pitesti, Alba-Iulia, Târgu Mures, Bacau, Brasov. It is preferable that on this variant we focus on the actual configuration of the 15 counties, made according to the existing model of the Courts of Appeal.

This is how this administrative-territorial architecture would appear:

County 1*, with the capital at Alba Iulia, including the territory of the former counties of Alba, Hunedoara and Sibiu.*

County 2*, with the capital at Bacau, including the territory of the former counties of Bacau and Neamț.*

County 3*, with the capital in Brașov, including the territory of the former Brașov and Covasna counties.*

County 4*, with the capital in Bucharest, comprising the territory of the former Bucharest municipality and the former counties of Călărași, Giurgiu, Ialomița, Teleorman and Ilfov.*

County 5*, with the capital in Cluj, including the territory of the former counties of Cluj, Bistrița-Năsăud, Maramureș and Sălaj.*

County 6*, with the capital in Constanța, including the territory of the former counties of Constanța and Tulcea.*

County *7, with the capital in Craiova, including the territory of the former counties of Dolj, Gorj, Mehedinți and Olt.*

County 8*, with the capital in Galati, including the territory of the former Galati, Brăila and Vrancea counties.*

County 9*, with the capital in Iași, including the territory of the former counties of Iași and Vaslui.*

County 10*, with the capital in Oradea, including the territory of the former counties of Bihor and Satu Mare.*

County 11*, with the capital in Pitesti, including the territory of the former Argeș and Vâlcea counties.*

County 12*, with the capital in Ploiești, including the territory of the former counties of Prahova, Buzău and Dâmbovița.*

County 13*, with the capital at Suceava, including the territory of the former Suceava and Botoșani counties.*

County 14*, with the capital in Timișoara, including the territory of the former Timiș, Arad and Caraș-Severin counties.*

County 15, *with the capital at Târgu-Mureș, including the territory of the former counties of Mureș and Harghita.*

At this moment, no one can guarantee that this will also be the final version of the administrative-territorial redistribution project of Romania, especially in the context where the availability of the authorities to subject the details of certain draft laws to a real public debate is relatively low. After the regionalization of Romania, the number of Courts of Appeal will no longer be 15, as they currently are, but will be the same as that of the future administrative regions that will most likely result in a future referendum for the amendment of the Constitution that will have place. According to the current law on the judicial organization, each county has a Court in addition to which there is a Public Prosecutor's Office, and the court superior to the Court is the Court of Appeal, each of the 15 established since 1992 having territorial jurisdiction over at least two counties. The application of the administrative regionalization project on the structure of the eight development regions would lead to the abolition of the Courts of Appeal: Oradea, Pitesti, Alba, Târgu – Mureş and Galati, most likely the headquarters of the future Courts of Appeal remaining in Cluj – Napoca, Timisoara, Braşov, Craiova, Ploiesti, Bucharest and Constanta. But if there will be nine regions instead of eight, then it is possible that the Galati Court of Appeal will not be abolished – currently this is the superior court of the Galati, Brăila and Vrancea courts.

Aspects regarding decentralization

In this context, an administrative-territorial reorganization of Romania is necessary. The government has already started the decentralization of institutions in Romania, a first step towards an administrative resettlement of Romania. However, in order to reach a regionalization of Romania, the process is an extremely complicated one. The process of decentralization and regionalization was tried before in Romania, but the reform project then led by Liviu Dragnea and Klaus Iohannis failed at the Constitutional Court. Recently, the minister of

regional development explained that the first steps can be taken by unifying certain administrative-territorial units, but he admits that there are differences between the heads of county councils, but it is necessary to do this administrative-territorial reorganization first, in order to facilitate the financing of projects by the European Union.

Currently, we have eight development regions, each region has six subordinate counties. This first variant obliges the Ministry of Development to correlate the administrative code, bringing improvements/modifications to allow the creation of *administrative consortia*.

At the level of each administrative consortium, several *administrative constructions* can be created, this would imply ”an association” of local public administrations/authorities to be able to create integrated systems and create efficiency in the exercise of the administrative act. It is a condition that the European Commission sets in the first stage to create this legislative framework.

At the same time, these administrative consortia will have legal personality, their own budgets, as well as their own employees. All these steps will constitute a first step towards the administrative-territorial reorganization of Romania. In the opinion of the political factor, this process of carrying out administrative constructions will start from next year – election year, respectively 2024.

The administrative-territorial reorganization involves firstly the modification of the legislative framework and mainly of the fundamental law – the Constitution of Romania, which imposes the mandatory condition ”consultation of the citizens, by referendum". In the last 25 years, there has not been a referendum on the modification of the territorial administrative unit of Romania, respectively that of the counties, having the commune as the basic unit. In order to achieve this objective, the legislation must first be amended, and for this a strong political will is necessary, in the realistic assessment of the administrative-territorial areas that can later be merged.

Aspects proposed by the executive regarding the decentralization of institutions:

Through the attached draft law, it is proposed that, starting from January 1, 2024, *public services* under the coordination/subordination of central public authorities are transferred to the authority/coordination/subordination of county public authorities.

They are part of the categories of *public services* under the coordination/subordination of central public authorities in the following institutions:

a) County family and youth directorates that are under the coordination/subordination of the Ministry of Family, Youth and Equal Opportunities or, as the case may be, those under the coordination/subordination

of the National Sports Agency or the coordination/subordination of other similar structures/entities;

b) County Youth and Sports Directorates or, as the case may be, County Sports Directorates that are under the coordination/subordination of the National Sports Agency;

c) The County Houses of Students and the related heritage under the coordination/subordination of the Ministry of Education.

Along with the decentralization of public services of national interest and the transfer of their activity to the county public authorities, there is also the transfer of patrimony and the funds necessary to ensure their proper functioning.

With all the steps taken by the executive and the central structures of the public administration, which realizes the gravity of the situation, it established the start of the administrative-territorial reorganization after the 2024 elections. In the opinion of the specialists, this ”*after*” implies another 1-2 years of ”settlement” of the governmental and parliamentary, local and central administrative structures after the elections and the pushing of the territorial reorganization in 2030, if there will be genuine political will, competence and responsibility. *With all these prerogatives, it is not the political factor that is called to ”redraw the administrative-territorial map of the country”, but the specialists in regional development, in the economy, in transport and communications, in geography, in demography, in education, in health, in culture and in other areas vital to the national economy.*

In the specialized materials published, the demographic factor in the design of future regions is treated somewhat superficially, and especially the medium and long-term strategy regarding the demographic evolution of Romania. However, it is imperative to create a new administrative-territorial framework to facilitate the development and execution of actions regarding economic-social development in a territorial profile at the national level. But the finality of this territorial reorganization can only be ”another standard of living for the country's population".

The question is asked! *Which population looking into the future?*

In this context, this article provides a territorial demographic framework in the coming decades according to the perspectives developed by Eurostat. Until the end of the 1st quarter of 2023 (end of March), the most recent data on the population prospects of the EU-27 Member States developed by Eurostat were those published in 2020[8]. The respective projections covered the years 2019-2100 at the national and territorial level, covering 1216 regions at the NUTS-3 level.

For our country, the data are highlighted at the county level. On 30 March 2023, Eurostat published the first data of a new series of projections [9], covering

[8] Europop2019
[9] Europop2023

the period 2022-2100. The data published are only at the national level. Other results and perspectives in the territorial profile are to be published. Data at the level of regions (counties for Romania) is expected to be published in the third quarter of the current year -2023.

If we want to make a correct analysis and have a clear vision of perspective on the population of counties and regions in the debates that will take place regarding regionalization, the data from Europop 2019 are the only ones we have and can use, until the results of the series are published Europop 2023 in territorial profile. In the presentation of the results of the Eurostat projections, it is specified that these projections only show us ”*what-if*". It is a warning of caution regarding the interpretation of these results in the perspective of birth, mortality and long-term internal and external migration developments that are difficult to predict, especially in a territorial profile. Population projections do not constitute population forecasts; the adopted hypotheses are only some of the possible one.

Conclusions

Regional development is an extremely complex process, which supports each territory in building or improving its future, by capitalizing on its own territorial capital, thus contributing to the reduction of imbalances between different regions.

Eurostat projections show that other European populations will also be in decline in the coming decades: ex-communist countries, less the Czech Republic and Estonia, Italy, Greece, Portugal and Finland.

Romania is among the countries with the largest decline projected for 2050, along with Latvia, Lithuania, Bulgaria, Croatia and Greece. On the other hand, Eurostat data for 2021 show natural population decline in 18 of the EU-27 countries. In 9 of them the positive external migration exceeded the natural decrease and the population did not decrease.

Decline was registered in the other 9 countries: Bulgaria, Croatia, Greece, Italy, Latvia, Slovakia, Slovenia, Hungary and Romania. If we leave aside the countries affected by massive emigration after 1990, which largely determined the decline of the population (Poland, Bulgaria, Romania), the disease of European populations on their way to population decline is the same: *birth rate.*

The evolution of a population over time is determined by the extent to which the generations that compose it ensure their replacement in number of births. In other words, only in the *longitudinal* approach, by generations, can we see the replacement of generations and the evolution of the population over time. The synthetic indicator is the *final offspring* calculated at the end of the fertile period of life, age 50. A value of 2 children per woman indicates replacement of generations and a numerically stable population. A value of less than 2 children

shows the numerical non-replacement of the generation and inevitable decline of the population over time. The last generation that secured its replacement in our country is the 1961 generation. In the following generations, the indicator is in decline, reaching 1.6 in the 1975 generation. The final offspring is therefore calculated at the end of the fertile period of life, at the age of 50 and it can only have predictive value by analyzing fertility rates at all ages 15-49 over a large number of generations to discern and quantify changes over time in successive generations. The values of the final descent have a remarkable rigidity in evolutions. However, demographic science has devised an indicator with predictive power calculated from annual data on births and the female population aged 15-49 – it is: the total *fertility rate*.

Without pretending to be a complete study, this paper tried to capture the main aspects of regional policies, which are, in fact, procedures by which both national governments and European institutions choose to intervene in the economic market, in order to remove the negative consequences found in contemporary societies, as a result of the actions of the principles of the market economy, being notable both at the level of the states that form the current European Union, and at the level of the entire Union, because they constitute the mechanisms that support the removal of economic gaps and, ultimately, social cohesion and integration economy of all citizens.

In this sense, through this scientific research, it was pursued:

- Study and analysis of scientific investigations, of the evolution of the legal framework of development regional sustainability in Romania as well as the extent to which it corresponds or not to European requirements (Council of Europe, European Union);
- Analysis of sustainable regional development methods applied in public administration for

reducing regional disparities, elucidating the optimal ones;

Highlighting the objectives and policies of the European Union for reducing disparities

regional;

- Identification and analysis of public administration authorities in the field of regional development durable;
- Identifying the main dysfunctions in the current administrative-territorial organization of Romania and highlighting the need to optimize the current administrative-territorial organization;

For the purpose of a successful investigation of the theme proposed for research, the study and analysis of the experience of the European Union in the field of sustainable regional development policies, the evaluation of different doctrines, theories, their analysis, comparison with the problems and disparities in Romania was organized. The analysis of the aspects included in the research

objectives was possible thanks to the following analytical methods: *historical* – applied to the research of the evolution of regional development in the European space, including in Romania, and *logical* (comprising deductive, inductive analysis, generalization, specification) – used in order to interpret and systematize both the normative framework in the field of regional development and the doctrinal opinions in the field.

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EU Policies to Prevent, Control and Sanction Terrorism and Harmonization of National Legislation with International Law and the Relevant Acquis Communautaire

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Abstract

Preventing terrorism and fighting it will become henceforth a priority while extremely delicate mission to the European Union, The measures and strategies adopted at EU level aimed both at phenomenon prevention through adopted legal framework and its control by law enforcement instruments and operational capabilities thus created.Romania, as the EU and NATO member, had fulfilled its incumbent duties on the harmonization of national legislation with international law and the acquis communautaire in the field, had ratified the international conventions on preventing and combating terrorism, had signed numerous agreements and cooperation protocols and had adopted the EU acquis in the field of prevention, combat and sanction terrorism.

Keywords: *EU Strategy to combat terrorism, counter-terrorism legislation, the acquis communautaire*

EU policies and strategies to prevent, combat and sanction terrorism

Preventing terrorism and fighting it will become henceforth a priority while extremely delicate mission to the European Union, which must coordinate action on several, fronts, but also have to observe the fundamental human rights. The balance between adoption and implementation and complying with the principles of democracy, will be the main challenge for the EU.

The first step in this area has resulted in the adoption by the European Council at the extraordinary meeting of 21 September 2001, of the "Anti-terrorist Action Plan". The plan includes proposals to improve cooperation among law enforcement bodies, the development of international legal instruments, actions to halt the paths of terrorist financing, strengthen airports security and synchronization of the EU's activities in combating terrorism with the initiatives

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taken globally[1] .The provisions of this plan were subsequently translated into legislative instruments implemented in all Member States.

In June 2002 the European Council adopted “Framework Decision 2002/475/JAI on combating terrorism”. This decision established the EU pillar, “Justice and Home Affairs“having as main goal the legal uniformity in the EU regarding the definition of terrorist acts and their punishment.

In December 2003, has been adopted, the European Union's Security Strategy – “A Secure Europe in a Better World”. The strategy places the terrorism first among other threats to EU countries, together with the proliferation of weapons of mass destruction, organized crime and regional conflicts. The strategy was, in fact, a set of guiding principles and long-term goals, the EU undertook to meet with the means they have available.

All measures taken at EU level in 2001-2004, could not prevent the Madrid bombings of March 11, 2004, one of the worst Europe had known to date.

Shortly after the attack in Madrid, the European Council adopted “The Declaration on Combating Terrorism” (March 25, 2004), which provides some of the most important measures against terrorism to date: creation of a “Coordinator of EU Counter-Terrorism” adopted “the solidarity clause” that, in the event of a terrorist attack, Member States shall undertake appropriate measures to provide mutual assistance, including military means.

However, the London suicide bomb attacks occurred in July 2005. Since then, the issue of combating terrorism has become a priority for the UK Presidency of the EU (June to December 2005), and also for the entire Europe.

Thus, in December 2005 the European Council had adopted the “European Strategy for Combating Terrorism”. The strategy was structured around four pillars: Prevention, Protection, Tracking and Response. This strategy continues to be to this day the main reference framework for EU action in this field.

The first pillar of the strategy (“Prevention”) aimed at preventing radicalization and recruitment inciting to commit terrorist offenses. Measures proposed to achieve this goal are focused on eradicating early stage of the organization and structure of terrorist groups.

The second pillar of the strategy (“Protection”) main objective is to protect citizens and infrastructure. This one proposed measures to strengthen strategic points by reducing vulnerability to attacks namely, at Community level, the Visa Information System and the Schengen Information System, both of which had implemented some standards on civil aviation and maritime and port security, and create a EU program to protect critical infrastructure elements.

The third pillar (“Tracking”) aims to monitor and investigate terrorist activities, both at EU level and internationally. The proposed measures aimed

[1] Cristian Barna, *Terrorism, the ultimate solution?,* Publishing house: Top Forum, Bucharest, 2007, p.136.

prevention, planning, movement and communication of terrorists and dismantling terrorist networks. Finally, the ultimate goal is to bring terrorists to justice. In this regard, an effective tool for tracking and investigating terrorists across borders, constitutes the "European arrest warrant" adopted by Member States in 2002, which allows more rapid extradition of suspects.

The last pillar ("Reaction" or "Respond ") aims to create a crisis reaction mechanism, so that in the event of a terrorist attack on the territory of an EU Member State, other EU countries are to mobilize and achieve a rapid exchange of information, media coordination and, if needed, even military cooperation.

Subsequently arising from the strategy and the guidelines established by them was adopted a Sector Strategy set of documents and the EU Action Plan on combating radicalization and recruitment and the media communication strategy[2].

In addition to the strategies and plans of action against terrorism, adopted at EU level, it is relevant to mention some of the instruments on judicial cooperation in criminal matters, namely a series of conventions, protocols and Framework Decision, as follows:

a) Conventions and Protocols:

- Convention on Mutual Assistance in Criminal Matters between the Member States concluded on 29 May 2000;

- Convention drawn up on the basis of Article K3 of the Treaty on European Union, on simplified extradition procedure between the Member States;

- Protocol drawn up pursuant to Article 43 paragraph 1 of the Convention on the establishment of a European Police Office (Europol Convention) amending Article 2 and the Annex to the Convention ;

- Convention implementing the Schengen Agreement between the Governments of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at common borders.

b) Decisions of the Council of the European Union[3]:

- Framework Decision no. 2002/584/JAI on the European arrest warrant and the surrender procedures

between Member States;

- Framework Decision no. 2003/577/JAI on the execution in the EU of orders freezing property or evidence;

- Framework Decision no. 2005/671/JAI on the exchange of information and cooperation concerning terrorist offenses.

At EU level, the issue of counter-terrorism is addressed, in particular the Common Foreign and Security Policy (CFSP), whose tools are joint actions, common positions, declarations and conclusions of the European Council or the

[2] www.sri.ro, *Strategies of the EU and NATO in preventing and combating terrorism*.
[3] Gabriel Paraschiv, *EU criminal law*, CH Beck Publishing House, Bucharest, 2008, p.34-36

Council of the EU, and the part of the acquis communautaire is related to intergovernmental cooperation.

European bodies with competence and responsibility in preventing and combating terrorism

EUROPOL (European Police Office)

EUROPOL is a body created by the signing of the Convention of July 1995, with effect from 1 October 1998. Had the mission to develop police cooperation in the EU Member States to prevent and combat international organized crime including terrorism and drug trafficking. EUROPOL works in The Hague, and from January 1, 1999, in addition to the activities undertaken by the Drugs Unit in 1994, had expertise in combating terrorism and counterfeiting.

Combating Terrorism Group (CTG)

CTG was created in the Club of Berne, in September 2001, serve as a means of connection between the European Union on the issue of terrorism and intelligence and security services of the Member States of the Union.

Terrorism Coordinator

Terrorism Coordinator is depending established by the European Council in March 2004, after the terrorist attacks in Madrid, with the task of coordinating all EU efforts to combat terrorism. Since December 2007, the Terrorism Coordinator is under the authority of the High Representative for the Common Foreign and Security Policy, the institution created by the Treaty of Lisbon.

Terrorism Working Group ("TWG – Terrorism Working Group")

TWG operates within the EU third pillar, "Justice and Home Affairs", it is composed from representatives of national ministries of Member States in order to monitor the internal aspects of each group member on terrorism .

Terrorism Committee (Group COTER)

Operational Committee on Internal Security (COSI)

COSI, established in February 2010, brings together representatives from the capitals of the Member States that are responsible for combating organized crime and terrorism. COSI responsibilities includes among others: coordination of police and customs cooperation, external border protection and judicial cooperation in criminal matters.

Harmonization of national legislation with international law and the acquis communautaire in the art

To achieve the goal of harmonization of national legislation with international law and the acquis communautaire in the field of terrorism, Romania has ratified all international conventions on preventing and combating terrorism and signed many agreements and protocols of bilateral and multilateral cooperation in combating international terrorism.

Romania has ratified all UN Convention on counterterrorism. Of these, we will review the most important:

- Convention for the Unlawful Seizure of Aircraft (Hague Convention, 1970) – ratified by Romania by Decree no. 143/1972 ;
- Convention against the Taking of Hostages, adopted in New York at 17.12. 1979 – Ratified by Romania by Decree no. 111/1990;
- Convention on the Physical Protection of Nuclear Material, adopted in Vienna on 03.03.1980;
- Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, done at Rome on 01.03.1991;
- UN Convention on the Suppression of Financing of Terrorism, adopted on 15.12.1997.

In terms of UN Security Council Resolution no. 1373/2001, which called upon all Member States to prevent and suppress terrorist acts by criminalizing and by repressing their funding by the freezing of funds and assets of persons who commit or attempt to commit terrorist acts, Romania has reacted with the Emergency Ordinance no. 153/2001, which led to the establishment of an inter-ministerial council designed to monitor the application of Resolution 1373 /2001[4]. Romania adopted the same period the Emergency Ordinance 141/2001 to sanction the terrorist acts. Among other provisions it raises the overall maximum prison sentence for acts of terrorism up to 30 years.

Also at the end of 2001, Romania adopted Emergency Ordinance no. 159/2001 on preventing and combating financial and banking system to finance terrorist acts, followed by Norms developed by the National Bank of Romania.

In 2003 a revised Constitution, the text of which is harmonized with EU Member States, led to compatibility of Romanian fundamental values to the ones of similar European institutions. In order to not establish restrictions for international cooperation, particularly related to extradition proceedings, the new constitution states the extradition of nationals, under international conventions to which Romania is party, under the law, and reciprocal. This allows, without limitation, implementation of commitments undertaken by Romania on the UN and Council of Europe Conventions to which it is or will become a party.

Regarding the EU acquis, the requirement of its adoption by the candidate is imperative legally regulated in Article 2 of the EU Treaty. Thus the stage of accession, states are obliged to take necessary judicial and economic reforms. Takeover unconditional obligation of the acquis in the EU system fulfills a

[4] Simona Maya Teodoroiu, *Legal means to fight terrorism, regional and universal level. Romania's contribution*, Annual Scientific Session, the Protection and Guard Service, Bucharest, 2004

normalization of relations between the newcomers and the states that participated in the formation of these rules[5].

In the process of accession to the EU, harmonization of national legislation with the acquis communautaire in the field of preventing and combating terrorism and sanctions has been the subject of negotiation Chapter 24, entitled "Justice and Home Affairs". Negotiation itself was based on concrete activities of the legislative and institutional construction and implementation of the acquis communautaire, including combating terrorism[6] .

Romania also ratified the European Convention for Combating Terrorism and its Additional Protocol. Romania signed the Warsaw Convention, on 16 May 2005 and ratified by Law nr.411/2006.

Romania has aligned the legal and institutional point of view in terms of preventing and combating terrorist financing activities. Thus, Romania was among the 20 countries that have signed the Council of Europe Convention on laundering, search, and seizure of the means used to finance terrorism, the Convention was ratified by Law no. 420/2006. In this field, Law no. 535/2004 on preventing and combating terrorism include a separate chapter to prevent terrorist financing.

The strategy allocates a large space to the combat of terrorism, through an approach both domestically and internationally.

Along with efforts on the of line creating a framework to meet the requirements of Euro-Atlantic security in the field of preventing and combating terrorism it was created, strengthened and made operational a "system" in which activities are conducted in a uniform manner and under the strategic direction of the Council Supreme Defense.

Romania's national security as part of Euro-Atlantic security can be achieved through permanent cooperation between all state institutions, on the one hand, and on the other hand, is imperative and cooperation at regional and global levels so that Romania's efforts to join the overall effort against terrorism of our partners .

Conclusions

Defense needs due to changes in Europe, the European Union as an international actor is determined to take a more active role in security and defense. Fight against terrorism is more than ever a major objective of the Union. In this respect, stand testimony the legislative and operational measures taken at European level in the field of preventing and combating terrorism.

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[5] Daniela Cristina Morariu, *Adaptation of the Romanian legislation with the acquis communautaire,* Legal Publishing House, Bucharest, 2008, p.71.

[6] Journal Profile, no. 8/July 2005, publication of the Romanian Intelligence Service, *Preventing and Combating Terrorism*, p.11

Although we cannot say that is forthcoming in the short term the assumption of the EU of some supranational powers, it may however be observed in recent years that European level efforts had been made to eliminate legal and judicial disparities between Member States and facilitate the national authorities jurisdiction to identify and criminalize individuals or groups suspected of combating terrorism, throughout the EU.

Measures and strategies adopted at EU level in order to ensure an area of freedom, security and justice, aimed at both preventing these phenomena, the legal instruments created and their control through legal instruments adopted and operational capabilities created.

Romania, as a member of the EU and NATO to harmonize its national legislation with international law and the acquis communautaire in the field has ratified all international conventions on preventing and combating terrorism, has signed numerous bilateral and multilateral agreements and cooperation protocols and fully adopted the EU acquis in the field of prevention, combat and sanction terrorism.

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The Wider Black Sea Area, A Place of Strategic Opportunities

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Abstract

The concept of a "Wider Black Sea Area" is a relatively new concept. It was mainly defined after the terrorist attacks of September 11, 2001 and it has become visible as a result of NATO's and EU's enlargement. Among the states placed in this area, we can find NATO members, states that have a partnership with NATO, EU member states and states that have expressed their desire to join the EU and NATO.

Keywords: *NATO, EU, Wider Black Sea Area, terrorist attacks.*

The approach to the Black Sea area started taking shape since the 1990s, when the first projects were developed, to build the networks meant to transport the energy resources of the East, to the Euro-Atlantic area or, to use a phrase employed by Wallerstein, "the centre of the modern world system[1]. Gradually, the Black Sea region has been pushed on the West's immediate agenda, as the West increased its efforts to project its interests towards the Middle East and the Caucasus.

The Wider Black See Area and the evolutions of its security environment became an independent study topic rather late, and in connection to other specific areas of interest. The concept itself was launched only in 2004, in a study made by researchers Ronald D. Asmus and Bruce P. Jackson[2], in direct connection with the development of other similar concepts, such as that of the "Great Middle East"

There is a combination of functional, geographical, economic, cultural and security criteria, forming the basis of this concept. Essentially, the "Wider Black Sea Area is a << security complex>> joining together those states whose security

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[1] Ronald D. ASMUS, Konstantin DIMITROV, Joerg FORBRIG, *O nouă strategie euro-atlantică pentru regiunea Mării Negre,* Publishing House of the Romanian Institute for International Studies – „Nicolae TITULESCU", 2004, p. 22.

[2] Ronald D, Asmus, Bruce P. Jackson, *„The Black Sea and the Frontiers of Freedom",* in Policy Review, June 2004.

problems cannot be solved individually, without the cooperation of the other countries in the region.[3]"

These countries' economic development and security cannot be conceived in the context of an autarchic existence, because, due to geographical factors, they are inclined to make joint efforts, to cooperate, in order to solve the numerous regional problems conditioning, increasing and accelerating their own development and their integration [4].

From a historical perspective, the Black Sea has rarely been an economically or politically coherent area. On the contrary, it has been a place where empires and powers have crossed paths, often with violent results. Some might argue that, all of this region's history – even the recent one, since the cold war – indicates that the countries in this area, have been part of different blocks, and they have fought each other quite often. History has designated this region not as a transit, integrated area, but as a mixture of blocks and cultures, with a conflicting dynamic.

Today, the space defined by the new concept of Wider Black Sea Area, is finally starting to look like a true geopolitical pivot, not only as a NATO and EU outpost, but also as an area of strategic interest for Western economic circuits.

This region is strongly promoted on the international security agenda, thanks to its geopolitical and geostrategic position, in relation to the major structuring vectors of the international relations system and the European security environment, such as: the vital interests of the EU states in having easy access to the Caspian energy resources, the need to create a stable and coherent security environment in the immediate vicinity of the common European space borders, the need for the United States of America and its allies in the international anti-terrorist coalition, to use this region as a turning point and a support hub in the anti-terrorist campaigns conducted in Afghanistan and Iraq.

From a geographical point of view, it is obvious that the Wider Black Sea Area is a coherent and unitary space. It is part of a unitary dynamic, that has been coherently influenced by the United States of America and the transatlantic world, while also being equally coherently and unitarily regarded by Moscow.

And, as a region, it also includes the Euro-Asian energy corridor, connecting the Euro-Atlantic system to the energy reserves in the Caspian Sea and to the Central Asian states.

Unfortunately, there is no uniform understanding of the geographical delimitation of the Wider Black Sea Area. If we consider strictly the geographical criterion, then the area includes the six riparian states. However, the term "wider" refers to a political-economic space rather than a geographical one. That's why,

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[3] *Marea Neagră, spaţiu de confluenţă a intereselor geostrategice,* – Publishing House of the Army's Technical – Editorial Centre, Bucharest, 2005, p. 189.
[4] Ibidem, *p. 189.*

we cannot ignore the political, economic and strategic importance of countries like: Armenia, Azerbaijan, Greece, the Republic of Moldova, etc. Thus, in our opinion, the Wider Black Sea Area stretches from the Balkans to the Caspian Sea, becoming one of the most dynamic zones in the post-Cold War and the post-Soviet Union era. It is flanked by the Balkans to the West and by the Caucasus to the East, two areas with a very high conflict potential. Besides, we must highlight the importance of the Euro-Asian energy corridor, connecting the large consumers in the West to the rich energy reserves in the Caspian Sea and Central Asia[5].

Romania's accession to the European Union implicitly leads to the Union accepting the defining elements of the country's geostrategic identity. Apart from the size of its territory and its population (which makes Romania the seventh largest country in EU-27), its geographical position is also relevant in this context, as the country is placed on the Eastern border of the EU, with the entire set of challenges and opportunities that comes with it. The following representation of Romania's geostrategic positioning is relevant in this context.

It is important to highlight Romania's location within the Wider Black Sea Area, which is, from a geopolitical point of view, at the intersection of three ”tectonic plates”:

- the EU area (highlighted in blue), which is also the European pillar of the ”transatlantic community”, due to the ”institutional extension” of NATO to the USA and Canada,;
- the area covered by Russia and its immediate vicinity, which is, in fact, the ex-Soviet space, minus the Baltic countries (the area highlighted in grey on the map);
- the ”Wider Middle East” and North Africa space (highlighted in yellow on the map).

What's interesting here, is the fact that, no other EU border area has such a complex vicinity, of such relevance for EU's foreign and defence policy, and for a series of economic projects, especially energy projects, of great current relevance.

The geostrategic importance of this area, squeezed between two zones with a very high conflict potential (the Balkans and the Caucasus) and located near the eastern basin of the Mediterranean Sea (which has been marked by the conflicts in the Middle East and the exacerbation of Islamic terrorism) is highlighted, mainly, by the following aspects:

- it is the overlapping point of three geopolitical and geostrategic areas considered to be among the most active zones, with particularly acute problems

[5] Alexandra Sarcinschi, Cristian Băhnăreanu, *Redimensionări şi reconfigurări ale mediului de securitate regional (zona Mării Negre şi Balcani),* Publishing House of the National Defence University, Bucharest, 2005, pp.39-40.

related to security and stability (Southern Europe, Eastern Europe and the Middle East);

- it is placed at the intersection of four geopolitical corridors – the Aegean, the Danube, the Caspian and the Dnieper – which are communication routes connecting areas of major geopolitical importance;
- it comprises a segment of the southern border of the Russian Federation (an inheritance of the late U.S.S.R.) and it is the easternmost edge of NATO's southern flank, a possible area of confrontation between the interests held by major nuclear powers;
- it is placed along the route foreseen to transport the Caspian and the Central Asian oil to consumers in the West;
- it comprises a segment of the corridor used for trafficking illegal arms, narcotics and illegal migrants from Central Asia and the Middle East to the West;
- it has important marine resources (large fish reserves: sturgeon, turbot, dolphins, sharks, mullet, horse mackerel, etc.) and large underwater reserves (oil and natural gas);
- it is the shortest way for Russia to the south and then to the east (through the Suez Canal) and to the North African coast; besides, according to an old Russian concept (the testament of Peter the Great), it is the only path that gives immediate access to the "warm seas";
- it offers many commercial and touristic facilities;
- it has an important number of civil and military ports and port facilities;
- it is an environment that facilitates economic, technical-scientific, cultural and military cooperation;
- it is a market of approximately 350 million consumers;
- it has a very high demographic and economic potential. It has a highly qualified and cheap labour force, natural wealth, both in the sea and in its adjacent areas;
- it constantly piques the interest of the major actors on the world geopolitical scene, both traditional actors, such as states, and new actors playing a role on the world geopolitical scene, such as international organisations and transnational companies.

The growing importance of the Black Sea Area has also translated, in 1998, into the creation of two major regional initiatives, each based on a perspective related to the new security architecture in Europe, at the beginning of the third millennium, placing the OSCE, and, respectively, NATO and the EU, at their centre:

- negotiating a multilateral agreement, including measures to increase regional confidence and security, in the spirit of the OSCE documents issued in Vienna, in 1994 (a Ukrainian proposal, probably of Russian "origin");

- setting up a multinational naval force in the Black Sea (BLACK SEA FORCE), capable of acting in crisis situations, including at the request of international security bodies, such as NATO or the EU (a Turkish proposal, probably of American “origin”).

Over the centuries, the geostrategic importance of this area has been based on the role it played as a bridge and a border, a buffer zone and a transit area, between Europe and Asia, being located at the crossroads between the old powers and empires. In addition, the Black Sea has always represented a junction point between trade routes and regions rich in energy resources.

Most routes used to transport energy resources from Central Asia, the Caspian Sea and the Caucasus to Europe, along the southern route, go across the Black Sea; for instance, the route from Baku to Tbilisi and Ceyhan or the one from the shores of Kazakhstan, the Caspian Sea, to the port of Novorossiysk. The northern half of the Black Sea basin provides significant opportunities in the economic and the transport fields, thanks to its navigable rivers such as: the Danube, the Dnieper and the Don, while the southern part can connect the region to the Mediterranean ports.

We can also talk about the existence of a continuum between the Mediterranean and the Black Sea areas, joining together the main trade routes in Europe, a continuum that has been there since the agreements signed between the Venetian and Ottoman cities. This allows us to talk, today, about the materialisation of a new strategic concept, namely, the development of an ”Extended Southern Coast of NATO and the European Union”, from the Western Mediterranean Sea to the Black Sea, going all the way to other regions such as the Middle East, the Caspian area and Central Asia.

There are several ”key positions” in the Black Sea area, which make it special, give it special value in any analysis, but, above all, they decisively contribute to the worth of this space’s geostrategic importance:

- the system of straits leading towards the immense space called the planetary ocean. Traffic through these straits is three times more intense than the one recorded through the Suez Canal and four times more intense than the one recorded through the Panama Canal. If no other means or options (pipelines, oil ducts, etc.) are built to transport crude oil from the ”reservoirs” located in the Caspian space, we cannot exclude a certain ”dangerous saturation” of the number of oil tankers transiting these straits;
- the Crimean Peninsula, an ”advanced maritime bastion”, ”a veritable aircraft carrier, which is well anchored”, with multiple facilities, surrounded by sufficient naval forces, ready for action;
- the Danube outlets and those of other important rivers, that also make the connection to the planetary ocean.

Currently, the situation in the Wider Black Sea Area, can be described as follows:

- stability and desire for European and Euro-Atlantic integration, and for some states such as: Georgia, Armenia, Azerbaijan, a tendency to have a more and more open and increasingly wider dialogue, with the transatlantic space;
- instability and lack of security in the area of ”frozen and smouldering conflicts";
- Russia's tendency to restore its sphere of influence.

In this international context, Romania's strategic interest is determined, on the one hand, by its political options, placing it, from a political, military, economic, cultural and financial point of view in the Western world, and, on the other hand, by the developments and changes taking place in the regional and international security environment, to which our country must respond in accordance with its interests, but also in harmony with what our current and our future partners define as their position. In full accordance with these assertions, Romania's strategic interest is for the Wider Black Sea Area to turn into a stable, prosperous region, integrated in the Euro-Atlantic democratic and security space.

We can say that the strategic importance of the Wider Black Sea area resides, nowadays, in the fulfilment of the following two strategic flows: the flow of raw materials, going from east to west and the flow of security, democracy and stability going in the opposite direction. Obviously, the second flow mentioned above is strictly related to the first one, being even determined by it and its form of practical manifestation is the enlargement of NATO and the EU to the Wider Black Sea Area.

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The strategic NATO – EU partnership for civil protection in situation of armed conflict and humanitarian crisis

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Abstract

Our paper presents how the recent security threats changed the strategic partnership between states. In recent years, the need of a stable security environment also increased the role of international agencies. We'll start our paper by talking about an interesting concept in this matter, from our point of view, namely: the state's responsibility to protect its citizens during an armed conflict. States troubled by war do not provide the necessary protection during an anarchic period. In this delicate situation, the state itself, although it does not prevent, nor does it intervene to restore the order and to ensure an adequate protection of individuals, allows the development and maintenance of chaos, a situation in which individuals are at risk. When the affected nations cannot cope by means of their own resources, they can request international assistance in order to protect their common interest, by ensuring a closer cooperation and greater efficiency in the case of emergencies. In the second part of the article we will address the issue, ensuring the cooperation of different agencies, taking into account the efforts made by Euro-Atlantic Disaster Response Center to coordinate aid in the NATO states affected by crises.

Keywords: *NATO, coordinate aid, agency, protection of civilians*

Introduction

Europe and the whole world are involved in a major changing process. At the beginning of the millennium people started to realize that without permanent changes, that would be consistent with all the requirements of social life, they can not achieve full protection and a safe community in which to live. The changes in question consist of finding new methods to counteract nuisances to society. We refer here to contemporary crime as a phenomenon threatening social value system which is the basis of states. It is understood that in the fight against domestic and international crime, the best results can be obtained without special cooperation between states. [1]

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[1] Constantin-Gheorghe Balaban, "Securitatea Şi Dreptul Internaţional: Provocări La Început De Secol XXI," *Bucureşti, Editura CH Beck* (2006).

The huge struggle to maintain security within the borders is one of the major concerns of all states and above all activity, a priority over many other demands that society imposes at some point. In these circumstances, states are forced to render mutual assistance, thus cooperating in the process of initiation and action to limit the dangers and external threats.[2] Studies undertaken worldwide in the subject of defense emphasize the fact that in this context, at the current stage, public policies are based on some tradition, complemented and adapted to the moment. Transatlantic cooperation literature is divided into several areas of interest, including security studies, international law and recent military sociology. The initiative of studying applied military sociology also belongs to the Americans, being used in the North Atlantic structures, the proof being the imperative of all activities of the newest body of NATO – Allied Command Transformation formulated by the Americans and it represents the motto of the transposition of theory into practice. According to Weber's tradition of thought (Max Weber, 1864 to 1920), the army is seen as a prototype of the modern bureaucratic organization of the state, especially when considering the problems in stratification (hierarchy). For Max Weber, the essence of large organizations and bureaucratic organizations is "hierarchical organization, legal authority rational and impersonal procedures."

Through the work of the American sociologists P. Huntington and Morris Janowitz, towards the late '50s, military sociology is distinguished as a distinct field of social research. Janowitz presents a very clear distinction between the concept of moral, become irrelevant and the new concept – organization effectiveness. It should be noted that the promotion of integrated sociological perspectives on the phenomenon of trans-Atlantic and European cooperation is developed by Janowitz and successfully applied in the U.S. and the other founding members, remain applicable after more than 50 years, Romania and other countries that have been or will be integrated into NATO having followed the same strategy in three main areas: military organization, military profession, army and society. [3]

These studies are of increasing importance for the light they shed on the changes taking place in the NATO-EU cooperation. For the current condition and organizational change in the military, Janowitz has developed five sociological statements that the academic community has largely accepted and current uses.[4]

These are:

a) mass military decline and the transition to professional army;

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[2] Costică Bulai – „Drept penal.Partea generală", Casa de Editură şi Presă „ŞANSA" S.R.L., Bucureşti, 1992, pg 81;

[3] Morris Janowitz, "The Future of NATO," *Survival* 13, no. 12 (1971): 412-415.

[4] Morris Janowitz, *The Military in the Political Development of New Nations*Cambridge Univ Press, 1964).

b) narrowing the gap between civilian and military sphere, ”the civilization of” military organization; ”the militarization of” civil organization;

c) changing the organizational authority and managerial techniques leading two models: military commander and manager (leader) military;

d) changes in the recruitment of officers and military career shift pattern – personnel management and career management;

e) changing military missions in ways that expand the military action, from national to global namely primary mission-preventing war, secondary mission – keeping social stability and international (peace-keeping) Tertiary mission – military assistance, nation building interventions in emergency situations. Therefore, we define reorganization and professionalization of armies in the modern era as ”the process by which the format and organizational structure, size, resources and missions of the armed forces are restructured and adapted according to changing social needs.” Humanitarian intervention and the support of the civilian population against the actions of humanitarian intervention and humanitarian protection is influenced by these changes. Narrowing the gap between the military and the civilian involves a fundamental change in the management of public affairs.

Janowitz believes that technological changes affect civil-military convergence trend. Professionalization of military personnel and the civil technicians' considerable presence in the military of the USA, for instance, makes the share, 75% to represent technical staff, maintenance and support (logistics) and only 25% are combatant personnel. Military security is included in national security with internal security and the security situation. Military security is the professional responsibility of the military, while national security policy is the responsibility of politicians. (Sava,1998, pg.30, 31) The implementation of the democratic political control of society made by elected representatives in Parliament and state leadership differs from one country to another and is exercised through several mechanisms, structures and attitudes. The option of political and military integration into the European Union and the Euro-Atlantic security structures generated a complex process of reform of the Army, whose objective is to achieve compatibility with NATO member states. Usually perceived as a simple restructuring, reform has implications on all components of the military organization. Following November 2002, when it was invited to join the ranks of NATO members, Romania is involved in achieving the overall objectives of the Alliance, along with the reform and restructuring of the army. The alliance includes the whole alliance in this regard and has devoted the term transformation to achieve this goal, creating, on June 19, 2003 an organization called ”Allied Command Transformation.” Reform and restructuring of

correcting understood as reorganization, according to NATO doctrine means complete change, rebuilding from scratch, renewal.[5]

Crisis management and NATO – EU collaboration

We intend to analyze the following conditions have led to the development of NATO-EU crisis management. No doubt, we observe what the specialized literature revealed, specifically that after the events of September 9, 2001 the Allies have discovered how important it is to develop a network of crisis management. Thus the civil protection mechanism took form, an engagement of Member States which permits activation of cell crisis in order to effectively manage crisis situations. These relate to major disasters and emergencies that occur in or outside the EU, and the existence of a central mechanism for coordination of resources is a strategic advantage of the Union. International cooperation between the two organizations brings added value to the resources involved in the efficient resolution of risks and issues. Joint commitments for crisis management and hazard statements bring into discussion the imperative need of cooperation in order to increase efficiency, giving states the opportunity to deepen and broaden their cooperation in crisis management.

From terrorist attacks to natural disasters, a number of multilateral bodies have responsibilities in prevention and crisis management, so this requires a high level inter-level coordination and strategic policy. Institutional process was initiated in 2004 by the European Council to create such a joint arrangement and ultimately to establish an agreement at EU level.

This cross border agreement for crisis management was followed in 2005 by a statement of the Justice and Home Affairs, which came amid terrorist attacks in London in 2005. The bombings in London ”have called for the:" (...) commitments to facilitate the exchange of information to ensure coordination and enable collective decision making in emergency situations such as terrorist attacks on a member state".

Another important institutional development of international cooperation was the tsunami in 2004/2005, which involved taking a specific arrangement for the strategic management of the humanitarian crisis, which was established as a political priority during the UK Presidency in autumn 2005. This policy priority union resulted in a commitment called Crisis Coordination Arrangements (CCA).

It is necessary to do a review of the EU institutions favoring the pursuit of the interests of union security through cooperation in the field of foreign and security policy (CFSP) and Common Security and Defense Policy (CSDP). We need to differentiate between NATO-EU missions, illustrated by the fact that the EU is acting outside common area especially for peacekeeping, conflict

[5] Timo Noetzel and Benjamin Schreer, "Does a Multi-tier NATO Matter? the Atlantic Alliance and the Process of Strategic Change," *International Affairs* 85, no. 2 (2009): 211-226.

prevention and regional International, and strengthening the security of the European space unlike the NATO organization which integrates functions special joint actions disarmament, humanitarian missions, evacuation, advice and assistance to the military, conflict prevention and peacekeeping. In addition, tasks of combat forces in crisis management including peacemaking missions NATO are a crucial actor for stability operations in the conflict zone after the cease of violence.

Regarding European bodies with responsibilities in coordinating the activities listed we reiterate the existence of a Council and a committee with a mandate to take all the necessary arrangements for crisis management, a Politico-Military Group (PMG) responsible for political-military aspects of the CFSP, a committee for Civilian Aspects of crisis Management (Circom) management capabilities and civil planning (CPCC), an advisory body of the PSC, a body of work of the Foreign Relations Counselors (RELEX) monitoring the mechanism for financing military operations concerned and institutional and legal aspects of launching missions EU situation Centre (SitCen), part of the European External Action Service, which analyzes the security and prepare for the European Council, Management and Planning Directorate (CMPD) and the EU Military Staff (EUMS). Another component is the permanent structure Cooperation (PermStrucCoop), which illustrates another important provision included in the Lisbon Treaty. Under the Treaty, PermStrucCoop is open to any member who engages more intensively to develop its defense capacities in multinational forces. The participating Member States should be involved in pooling defense resources to ensure the confluence for the effort to harmonize security.

All these components reaffirm the role of security and the rule of law has in European and transatlantic integration. In a work characterized by the famous author Samuel Huntington: ”The Future of Freedom is one of the most important works on global political trends that have emerged in the last decade,” the author, Fareed Zakaria, the Indian-born American, investigates the future development of human society, concluding that ”democracy alone can not bring peace and prosperity".[6]

The European Union is built on the pillar of human rights and democracy. The spirit of cooperation and mutual aid fosters a positive perception of citizens and European leaders to the doctrine of the Responsibility to Protect.[7] If a century ago no country in the world today had what we call democracy, today over one hundred countries have a democracy. Unprecedented rise of democracy globally made this the standard form of government and political legitimacy in most countries. In his visionary paper, *The Future of Liberty*, the American author

[6] Fareed Zakaria, "The Rise of the Rest," *Newsweek, May* 12 (2008): 24-31.
[7] Dumitru Mazilu, "Drepturile Omului," *Human Rights* (2000).

shows that democracy must be accompanied by constitutional liberalism to be functional and democracy understood as the maximum dispersion of power in society hides unsuspected dangers to individual freedom. [8]Developed during the conflict in Yugoslavia, it can be synthesized in the statement made by British Prime Minister Tony Blair, genocide is not an internal problem.

Extending this idea to European institutions campaigning for intervention in the internal affairs of countries (even if such action goes against the idea of national sovereignty) there is also a framework that developed cooperation actions since the 1990s to solve the humanitarian crisis in the Western Balkans.[9] And in our country, in the era of post-revolutionary democracy, individual freedom has evolved to have a perception of religion (see the title of the literature context of former Prime Minister Adrian Nastase: Human Rights – a new religion).

NATO-EU cooperation makes special missions for solving humanitarian crises amplify a consensus between practice and security policies and it is very selective when it comes to intervention. A careful study of where ESDP missions have been humanitarian crises shows that they will be dealt with only if they are adjacent to the EU (eg, Kosovo / Bosnia and Herzegovina) or where there are powerful agents in the EU, which pushes in making application for special missions (eg for France on CSDP missions in Africa). Under the Lisbon Treaty, the EU endorses the mission to St. Petersburg, which is defined ”... joint operations disarmament, humanitarian and rescue tasks, military advice and assistance to conflict prevention and peacekeeping tasks given by tasks of combat forces in crisis management, including peacekeeping operations and post-conflict stabilization operations. All these tasks may contribute to the fight against terrorism, including by supporting third countries in combating terrorism in their territories. ”(Article 28 Treaty of Lisbon). There is no doubt that our research study covering the circumstances of NATO and the EU, will develop in the future.[10] Creating CFSP and EU intervention in Kosovo, Macedonia and Bosnia have paved thinking of another place for Europe as a whole geo-strategic military force of the world. [11]

Under this strategic objective, the EU committed military resources in the Democratic Republic of Congo (Artemis mission, in 2003, following a UN resolution). So, in 2005, at the request of the UN, the EU intervened to ensure

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[8] Ibid.

[9] Philip Alston, Mara R. Bustelo and James Heenan, *The EU and Human Rights* (Oxford, England ;New York: Oxford University Press, 1999), 946 (accessed 8/31/2013 3:04:11 PM).

[10] Neil Winn, "Towards a Common European Security and Defence Policy? the Debate on NATO, the European Army and Transatlantic Security," (2003).

[11] Anca Oltean, "Security and Politics in European Union," *Eurolimes* 14 (2012): 202 (accessed 8/21/2013 12:42:48 PM).

peace and transition process during peace agreements in Aceh, Indonesia. Following tasks in the multinational forces sent to Afghanistan (in 2005) and Lebanon (since 2006), and after recognizing Kosovo as an independent state by the Foreign Service, the EU organized the device of military police and police training locally not only in Kosovo, with the participation of Romanian contingent, but also in Afghanistan, the Palestinian territories and Timor.

Secondly, the EU took the initiative in the UN peacekeeping operations budgeting 43% of needs, while the U.S. contribution, the main contributor in the past was limited to 25% of contributions. EU contribution has been increased also in the funding support of the states. "So the EU's influence in the world is on an upward trend, discreet but sure." [12]

Thirdly, the ability to boost and model the world by the EU space is visible in the increasing trade and regional trade associations tasks. They were created in all regions of the planet: Mercosur (South America), ECOWAS (West Africa), Apec (countries bordering the Pacific), Alena (for North American countries).[13] To these we should add the institutional relations and bilateral relations between the EU and Russia, or between the EU and the Indian Union.[14] It is clear that these relationships go beyond trade. In fact political relations and dialogues aimed to agree on rules that target regional and global development are articulated. In this action for inclusion in the global coordinates of its involvement, the EU has given special attention to countries in Africa and the Middle East, for reasons of geographical proximity, and political compatibility tradition. The Mediterranean Partnership (Barcelona Process)[15] came as an output in meeting local needs for involvement in world exchange, and as a continuation of the Europeans to grant privileged links with former colonies issued in the twentieth century. Here we take into account, of course, not only the sensitive issue of migration, but also the prospect of a shortage of young labor in 2050s Europe, and a controlled and productive transfer of skilled labor on the European labor market.[16]

"From another point of view, the relationship with Africa and the Middle East counteracts strong voluntarism of other global players, the U.S. and China,"

[12] Paul Cornish and Geoffrey Edwards, "Beyond the EU/NATO Dichotomy: The Beginnings of a European Strategic Culture," *International Affairs* 77, no. 3 (2001): 587-603.

[13] Simon Duke, "Politica Externă Şi De Securitate Comună. Provocările Extinderii Uniunii Europene," *Ed.Economică, Bucureşti* (2006).

[14] Winn, *Towards a Common European Security and Defence Policy? the Debate on NATO, the European Army and Transatlantic Security*

[15] Richard Gillespie, "Reshaping the Agenda? the Internal Politics of the Barcelona Process in the Aftermath of September 11," *Mediterranean Politics* 8, no. 2-3 (2003): 22-36.

[16] Harun Arikan, *Turkey and the EU : An Awkward Candidate for EU Membership?*, 2nd ed. (Aldershot, England ;Burlington, VT: Ashgate, 2006), 290, http://www.loc.gov/catdir/toc/ecip066/2006000105.html.

which are important economic exchanges and bilateral free trade agreements with many countries in the region.[17]

The current Strategic Concept dates from 1999 and the Allies intend to approve a new one at the NATO summit to be convened in Portugal at the end of 2010. The fundamental problem in the new Strategic Concept of the Alliance is to define key objectives, including the main function of collective protection. Although the Alliance has undertaken several new features, from the early 1990s, it remains fundamental imperative to ensure the protection of a common space. Add here new threats and technologies, new means of defense and the challenges that rise to the level of collective security. In the European context, the Allies have to mobilize effectively finding coherence between political will and the vision of security.

Studies have often addressed the historical analysis of the evolution of NATO objectives which often emphasizes final contrast between the basic objectives of the Alliance during the Cold War and the additional functions they assumed at the end of the Cold War, 1989-1991.[18]

We need to address this dichotomy between military operations offensive and defensive purposes and civil protection operations. We are currently in an environment that allows the development of offensive powers as a priority for crisis response.[19] More specifically, through the steps taken it can be stated that the Allies give a new meaning to collective defense commitments without abandoning the traditional sense of the term (protection of national territory of an ally against an armed attack). Allied forces have reduced the distinction regarding territorial jurisdiction under Article 5 (collective defense)[20] and therefore extended security commitments to the territories of non-allies. Here we have examples of actions during the Kosovo conflict in 1999, or those taken by the International Security Assistance Force in Afghanistan under UN Security Council mandates, in order to prevent threats to Article 5. Moreover, some experts have noted a tendency towards a certain ”deterritorialization” for collective defense of the missions of NATO allies about the emergence of a greater purpose, one which is ”proactive” and anticipatory.[21]

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[17] IN Sava, Gh Tibil and M. Zulean, "Armata Şi Societatea. Culegere De Texte De Sociologie Militară/Army and Society. Military Sociology Texts Collection,” (1998).
[18] Sten Rynning, *NATO Renewed: The Power and Purpose of Transatlantic Cooperation* Macmillan, 2005).
[19] Duke, Politica Externă Şi De Securitate Comună. Provocările Extinderii Uniunii Europene
[20] Karin M. Fierke and Antje Wiener, "Constructing Institutional Interests: EU and NATO Enlargement,” *Journal of European Public Policy* 6, no. 5 (1999): 721-742.
[21] Alyson JK Bailes, "The EU and a ‘better World’: What Role for the European Security and Defence Policy?” *International Affairs* 84, no. 1 (2008): 115-130.

Common objectives and the NATO-EU strategic cooperation

In the classic formulation of the Harmel Report of 1967, the objectives were to maintain military strength to deter aggression and to constrain, to defend allies in case of aggression, and ”to ensure the balance of power, thus creating a climate of stability, security and trust.” Fulfilling the first end, the collective defense enshrined in Article 5 of the 1949 North Atlantic Treaty would create a solid foundation for the second ”to continue searching for progress towards a more stable relationship in which underlying political issues can be solved.” In practice, during the Cold War, the second function of NATO allies followed a dialogue towards eastern arms control negotiations. Allies articulated, however, a longer-term vision: ”The ultimate goal of the Alliance's policy is to achieve a just and lasting peaceful order in Europe accompanied by appropriate security safeguards.” [22]

The ambitious goal of ”security” as defined above, is consistent with the vision of the Harmel Report, specifically the part about ”a lasting peaceful order in Europe accompanied by appropriate security safeguards.” Tasks ”consultation” and ”deterrence and defense” also represent the continuity of the purposes articulated for the alliance during the Cold War. The purpose of the NATO-EU ”partnership” is *sensu lato* called the ”crisis management”, which can be seen as an action of these two organizations to support the long term vision of ”security". Allies have developed policies to strengthen partnerships democratic progress in contemporary Europe.[23] Common security and defense policy is no longer regarded as impossible: on the contrary, it is seen by the EU as an achievable goal in the near future. Even before the entry into force of the Treaty of Amsterdam in 1998 it has been stated that what the EU needs is autonomous operating capability, even with military means.[24] In 2000, new ESDP institutions began to work on an ad-hoc basis, while Member States have started to consider military capabilities available to the Union. The common objective of defense ceased to be an abstraction: the capacity for autonomous action would in any case need standards, planning and operating procedures of the armed forces of participating countries. Implementation of the objectives of the security and defense novelties brought by the Constitutional Treaty began immediately, without waiting for the Treaty to enter into force. The EU as whole is the largest donor of humanitarian aid worldwide and emergency action. Member States of

[22] Grigore Stolojescu and Paula-Loredana Gaspar, "European Security Strategy-the European Union's Response to the Challenges and Threats Against the International Security Environment, The,” *Pub.Sec.Stud.* 1 (2012): 39.

[23] Iordan Gheorghe Bărbulescu, *Uniunea Europeană: Politicile Extinderii*Tritonic, 2006).

[24] Steven Blockmans and Ramses A. Wessel, "The European Union and Crisis Management: Will the Lisbon Treaty make the EU More Effective?” *Journal of Conflict and Security Law* 14, no. 2 (2009): 265-308.

the EU and its institutions contribute more than 50% of official humanitarian aid worldwide. ECHO (European Community Humanitarian Aid) was founded in 1992 and has provided € 14 billion for victims of conflict and disasters in 140 countries. In 2010, ECHO has appointed for the first time a dedicated EU commissioner for international cooperation, humanitarian aid and crisis responses. In the last two decades, ECHO has become active in supporting and assisting humanitarian assistance to populations in Italy, Greece and Turkey hit by natural disasters. Regarding ECHO activities, it has more than 300 people working in the headquarters in Brussels and 400 in 44 field offices in 38 countries. ECHO is working on a needs based approach and works with over 200 partners, including the UN, nearly 200 NGOs and international organizations, together with the ICRC and the International Organization for Migration (ECHO, 2012). The main objective of ECHO is to provide an integrated rapid response in case of emergency. In order to help ensure the coordination of humanitarian work, the department maintains a database of its lists of experts in all areas, from logistics, public health measures, geopolitical / geography, anthropology, international humanitarian law, education and so on. Referring to educational activities humanitarian ECHO supports higher education institutions through research conducted study programs to disseminate knowledge necessary for the coordination of humanitarian emergencies. In a report in 2012 based on Euro-barometer survey of attitudes of European citizens on how they perceive cooperation in humanitarian actions, a majority of over 70% was in favor of inter-institutional collaboration for humanitarian aid. Using expertise and logistical resources of NATO, the EU works closely, based on common principles of humanism, accountability, neutrality, the importance of humanitarian aid with other organizations, support for humanitarian aid using the shared resources efficiently. The purpose of ”crisis management”, however, was an important turning point in the Cold War objectives of the role of NATO.[25] Indeed, even in 1991, the strategic concept is written at the beginning of a post-Cold War era, the Alliance stated that ”none of its weapons will ever be used except in self-defense.” The Allies did not anticipate that the following year they will begin to engage in a wide range of extremely demanding operations in the Balkans. Operations of this kind will be repeated by allies who will carry them out in Afghanistan, starting with 2003, under various legal forms. The operations were thus redefined around the NATO strategy, operations becoming crisis management, crisis response, or different operations to stabilize the region and peacekeeping operations. In these operations the Allies sought what will be called in the doctrine of specialty a ”comprehensive approach” of NATO objectives. This approach involved a better collection of media tools in NATO crisis

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[25] Anca Oltean, *Security and Politics in European Union*, 202.

management to coordinate large-scale operations with local authorities and even the European Union.[26]

Since the end of the Cold War, NATO allies have given three additional functions: opposing mass destruction proliferation and support EU-led operations for crisis management, and serve as a ”toolbox” for general security operations on an ad-hoc basis.

The North Atlantic Council refers primarily to the proliferation of weapons of mass destruction as one of the ”new security risks and challenges of a global nature” facing the alliance in 1990. The ideological debate on relations of cooperation or competition between two international organizations, NATO and the European Union, is far from exhausted. As other scholars have noted, it is noted that recent events in the Balkans and Afghanistan, clearly show that each of the two institutions have different resources, which can lead to conducting large-scale, transcontinental operations, in order to manage crisis by stabilizing operations, maintaining order in areas affected by conflict, or in response to threats that may be charged against our economic and security interests. It may be noted that both institutions have a common pillar supporting measures to strengthen the rule of law in the relevant regions based on supra-national entities and logistical resources beyond the boundaries of a state. Based on the experience of NATO in the field it may be noted that the EU would benefit from result-oriented expertise and the NATO-EU cooperation will develop in the coming years.[27]

Conclusions

By joining the European Union and NATO, Romania is assuming aligning to a set of values, specific rules and the fulfillment of the constitutional requirements. At the same time, our country has been and is actively involved in reforming the Alliance, 2010 being the year of launching NATO's New Strategic Concept, whose development began in September 2009. In the process, Romania has called for reaffirmation, in an unequivocal manner, of the collective defense and of Article 5 of the NATO Treaty as main responsibilities for updating and strengthening the core tasks of the Alliance's current Strategic Concept adopted în1999 (security, deterrence, consulting, crisis management and partnerships) where we should add the answer to the new challenges, with a focus on energy insecurity and the proliferation of missile technologies. Romania would want also, according to documents made, to shape a new strategic concept to be included among other important elements, such as reinforcing the interest of NATO and the development of cooperation with partners in the immediate

[26] Cornish and Edwards, *Beyond the EU/NATO Dichotomy: The Beginnings of a European Strategic Culture*, 587-603.
[27] Fierke and Wiener, *Constructing Institutional Interests: EU and NATO Enlargement*, 721-742.

vicinity of the Alliance and Romania, the Western Balkans and wider Black Sea area, including the South Caucasus and Central Asia, and to strengthen the network and maintaining the partnerships of the enlargement of the Alliance Policy (open door policy), which had an important contribution to strengthening stability and security in Europe. Thus, the deadline for the completion of the new Strategic Concept of NATO was the future Summit that was held in November 2010 in Portugal.

The Alliance expanded to 16 countries at the end of the Cold War, to 28 countries today, and some of them can not be protected unless their allies are prepared to project power. In other words, NATO today needs improved management means not only for crisis response operations in remote territories of the Allies, but also to defend allies collectively. This means investing in aviation and in ”strategic mobility means', in logistics assets, in mobile communication networks, supporting services to conduct operations. An objective of the cooperation between the two organizations is to develop the ability of the Allies to be able to significantly design resources in each area. For strategic cooperation, the pillars for collective defense and reducing external threats require an organization to make them smooth and rapidly deployable, coordinating them at headquarters. The NATO-EU cooperation is based on humanitarian ideas because these ideas are accepted as a point of reference for undertaking strategic actions. Respect for human rights, which is mentioned in the EU documents may involve various instruments, but brings up the key to external threats in Europe. However, Atlanticism is still very strong in certain EU countries. No EU member state is willing to take major risks that may alienate the EU from the U.S. Joining Atlanticism is considered by some authors as a devaluation of the EU and a tendency to avoid responsibility by some Member States. The Lisbon Treaty recognizes the role of NATO as a defense organization concerned with protecting EU Member States. However, the Treaty also has a solidarity clause, which implies that a progressive framing of a common defense and security may be possible in the future, thus leaving room for optimism regarding the undertaking of defensive tasks in the future. It has to take on more responsibility if it is to count as a global actor.

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Rule of law and state of emergency management

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Abstract

The pandemic could be fought based on the provisions of an existent law which regulates constitutional dictatorship. If this law had not existed, now we would have been in a pathetic state, especially when we speak about constitutional democracy. Anyway, this act has been never used, and, in the meantime, 20 years have passed, besides a review of the fundamental law. It was cvasinormal that, after a constitutional test, some shortcomings to be revealed by the Constitutional Court especially under the circumstances when this institution has had a extremely dense activity, acquiring a vast expertise, consolidated, also, on the principles promoted by European Union. In our state, we buid democracy on experimental basis, rather than on lessons offered by others. Perhaps this way provides an advantage to some people, in the detriment of much more others. Anyway, e-governance is a modern method that could evolve parallelly to the basic principles of democracy. However, it would be better to know what we want, and, only after that, to begin working to e-governance. The main idea is to decide fast, as a nation not as a group of people with a certain interest.

Keywords: *constitution, democracy, state of emergency, fundamental rights and freedoms, legality, proportionality, nondiscrimination*

In fundamental law, at articles 22 – 53, there are presented regulations regarding citizen's fundamental rights and freedoms. Some of them are untouchable, for some others the exercise can be restricted under some circumstances. Let's see what are the provisions of article 53 from Romanian Constitution: ”**(1) The exercise of certain rights or freedoms may only be restricted by law, and only if necessary, as the case may be, for: the defence of national security, of public order, health, or morals, of the citizens' rights and freedoms; conducting a criminal investigation; preventing the consequences of a natural calamity, disaster, or an extremely severe catastrophe.**

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(2) Such restriction shall only be ordered if necessary in a democratic society. The measure shall be proportional to the situation having caused it, applied without discrimination, and without infringing on the existence of such right or freedom.”

Taking into account those enunciated upper, briefly, we mention the principles that have to be followed when an exceptional state are declared/proclaimed/established.

The first one is **to respect the superior level of regulation**. Talking about fundamental rights and freedoms, their restriction of exercise can be done only through constitutional or organic law provisions. Thus, for exemple, the Constitution of Romania, at article 73, stipulates: “…(3) Organic laws shall regulate: …f) the state of partial or total mobilization of the armed forces and the state of war; g) the state of siege and emergency;…” These laws are in force. **The fundamental law does not allow the Government to regulate such restrictions, even if they are done by normative acts with the force of the law (e.g. emergency ordinances):** ”Article 115 …(6) Emergency ordinances cannot be adopted in the field of constitutional laws, or affect the status of fundamental institutions of the State, the rights, freedoms and duties stipulated in the Constitution, the electoral rights, and cannot establish steps for transferring assets to public property forcibly.”

Another principle is **the legality**. This is about the coherence between establishing an execeptional state and special and specific measures, taken in order to manage this state, on one hand, and the existence of a real danger, on the other hand. Of course, the idea can be elaborated – there are many opinions supported by a variety of arguments.

A consistency or compatibility has to be done, also, between the provisions of internal law and those belonging to international treaties where Romania is a party (this is the principle of consistency, included by us in the principle of legality). A relevant appearance which comes from respecting the legality principle is that the Parliament is the fundamental institution called to watch over the measures taken by the Government to manage the crisis.

The third principle is the proclamation of the exceptional state. In Romania, the emergency state was officially proclaimed, we say, regardless a deep and systematic analysis, and, so far, there is no reason to insist in this field.

The next principle mentioned is **the notification**. It is about the obligation of the state to inform the other states and international bodies on the exceptional and derogatory measures internally imposed. Nothing to comment or to criticize on this principle.

The fifth principle is the intangibility. In a nutshell, there is a core of rights where the exercise cannot be restricted (e.g. free access to justice, right to life – the debate could be amplified). We do not believe that it is necessary to

examine if, in Romania, this principle was respected during the state of emergency, plainly and simply, because nobody complained in this respect (except the free access to justice, as the Constitutional Court stated).

The next principle tackled is the **proportionality**. According to this principle, they cannot adopt measures tougher than the severity of the managed crisis. Here, during the emergency state and the measures imposed in order to restrict the exercise of some rights in Romania, there were debates at the level of fundamental institution of the state, of mass media and the citizens, *the opinions regarding the way this principle was followed being divided in pros and cons.*

Another principle is **the temporality**. It refers to the limited duration of the exceptional state, it was debated and decided in the Parliament and, so far, it did not give birth to serious discution in doctrine, in spite of the fact that people had different opinions on how long this duration should have been. We have no comments.

Besides of what was enumerated before, we mention the **principle of nondiscrimination**, stipulated, together with the proportionality, in the Constitution of Romania and in international treaties, too. *It appears that this principle, also, suffered some distorsions during the state of emergency, in Romania.*

The last but not least principle is the existence of a real peril to national security, including a pandemic or an epidemic. This principle was tested when the Parliament approved the decrees on this theme, issued by the President of Romania.

The exceptional state has two components. The first one is the **legal frame**, and the second one is the **operational frame**. The first one addresses to constitutional and legislative basis, the Parliament and Constitutional Court or other democratic bodies control, and to the subordination to the principles described above. The operational frame includes organizational structure and the strategic plans which are necessary to manage the exceptional state.

Lower, we will approach, briefly, details regarding the legal frame, and, with less knowledge, the operational frame.

The establishment of the exceptional state was not only timely, but also necessary from the legal and democratic point of view. It was a decision made after the study of national and international situation regarding the pandemic, and the principles enunciated were considered. The restriction of some fundamental rights and freedom could be done only during the state of emergency. **Otherwise, the measures would have been fully unconstitutional.**

Fencing the exercise of some rights and freedoms, according to the principles shown before was beneficial for citizens' health, system of health functioning, and a large variety of other systems connected to it, including public order, national economy etc.

However, in some fields, the taken measures, besides unconditional support from some parties and citizens, generated, at some levels, adverse reactions more or less legitimate. We emphasize some of the measures suspected to affect the principles that were described, with the mention that our debate could have been vast. Our discussion is rather a challenge in order to start a profound and much more extensive analisys.

1. Medical assistance supply was not given to persons who needed that, because they did not suffer from the pandemic, although their diseases were, maybe, more dangerous than COVID 19. **This measure could contravene to the principles of proportionality, nondiscrimination and even to legality**.

2. The establishment of some measures that affect the exercise of the fundamental rights and freedom through emergency ordinance. Taking into account the provisions of article 115 paragraph (6) from Constitution of Romania, about which we discussed before, it is obvious that **such normative acts were not consistent with the fundamental law**. In these cases, the Constitutional Court must perform only an extrinsical analisys to find unconstitutionality.

3. The indulgence regarding some actions of leaving the quarantine zone. Naturally, this is not permitted. It appears that this situation, proved that it was real, it would not have been possible without the approval of the authorities. **It was infringed the principle of nondiscrimination** (some people were allowed, some not), **and, more severe, the legality.**

4. The establishment of some measures in the education field that sounds as being forced or disconnected from reality. The work of some students was evaluated at random. The rules in this field were unjust. Also, besides the fact that many students do not have access to internet, many teachers, otherwise very appreciated, did not have the necessary endowment and proper skills to instruct their students on-line. **Again, we can talk about distortion of nondiscrimination and legality.**

More or less, we will comment what we enunciated at the four bullets situated above, reminding to the reader that our analisys does not reach the completeness, from many points of view.

1. Therefore, we tackle medical assistance supply matters. The state of emergency started, in the third decade of march, with a measure that upset not only the hospitals' activity, but created injustice for a lot of persons who were suffering from different illness, and were in need for treatment and rapid intervention. In a few words, the minister of interior, Marcel Vela, authorized by the law with special powers to manage the state of emergency, approved an order stipulating the evacuation, in two days, of all the patients who did not need urgent intervention, and, besides that, the suspension, for fourteen days, of all surgical

interventions that could be rescheduled[3]. Focusing on the best measures to diminish the danger generated by the spread of new coronavirus, the authorities neglected or even ignored numerous persons with other diseases different than Covid 19, even if these were more severe.

Obviously, a discrimination, a thing described by mass media, as well as medical personnel or nongovernamental organizations[4]. The error was seen and recognized by the authorities, too, but they started adopting correction measures only at the beginning of June[5].

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[3] https://romania.europalibera.org/a/pacientii-care-nu-sunt-cazuri-de-urgenta-vor-fi-externati-in-termen-de-48-de-ore/30504288.html. March 23, 2020 Free Europe Radio. The patients who did not need urgent intervention will be evacuated in 48 hours. The measures implemented by the minister of the interior are applied in both, public and private hospitals. "Today, the 23rd of March, the order of the action commander was issued, approved by the minister of interior, Ion Marcel Vela, for the establishment of measures necessary to stop the spread of SARS-COV-2 (new coronavirus), at the level of public and private hospitals. Thus, beginning with 24th of March, tomorrow, for fourteen days, surgical interventions, other treatments, and medical investigations, in hospitals, private or public, are suspended, if they can be rescheduled because they are not urgent. Also, the scheduled and potentially scheduled consultations are suspended. In 48 hours, from the time the order come into force, all the patients who did not need urgent intervention will be evacuated from the hospitals.

[4] Also, to be seen https://www.zf.ro/eveniment/consultatiile-si-internarile-pentru-afectiunile-care-nu-sunt-urgente-suspendate-in-spitalele-publice-si-private-19012198Financial dailypaper Georgiana Mihalache 23.03.2020, 14:28. The consultations and the hospitalizations for not urgent cases, suspended in private and public hospitals. The minister of interior, Macel Vela, issued an order to suspend for 14 days the interments for surgical interventions, other treatments and medical investigations, which are not urgent and can be rescheduled. The measure is applied to private and public hospitals and comes into force tomorrow, on the 24th of march, for the next two weeks.

„They suspended, also, scheduled or potentially scheduled consutation. In 48 hours, from the time the order come into force, all the patients who did not need urgent intervention will be evacuated from the hospitals. The command of the hospitals can decide on the work schedule of the personnel, by inserting shifts or permanent guards, not influencing the employees' salary." informed the Strategic Communication Group.

[5] https://www.digi24.ro/stiri/actualitate/sanatate/nelu-tataru-cere-redeschiderea-spitalelor-pentru-pacientii-care-nu-sunt-bolnavi-de-covid-19-1320290 Nelu Tataru asks for reopening of the hospitals for the patients not suffering from COVID 19 the 9th of june 2020 14:51. The minister of health asked on Tuesday to public health directorates to evaluate quickly the situation in hospitals that treat coronavirus, in order to make possible the access to medical care for non COVID patients.

"Today, I asked public health directorates to make at the local level an analisys of the patients, of the way of how the functional tracks for infected and uninfected people are separated and to identify all the necessary measures to restart the activity in phase 1, 2 and support hospitals. Personally, I will begin an evaluation of this situation in these units, because I receive complains from uninfected with coronavirus patients who do not benefit from medical care they need. We are in a new epidemiological phase and must reopen the hospitals for people with diseases, even if we keep on the measures to prevent and diminish the spread of SARS-CoV-2" declared Nelu Tataru, the minister of health, according to a communiqué of the ministry.

The representatives of Patients with Chronic Disease Organizations Coalition (COPAC is the abbreviation in Romanian) have shown, also, the infringement of some patients' rights, and their action has contributed crucially in the deciders' attitude[6]. Discrimination is suggestively emphasized by the sentence: "The authorities must understand, at this moment, that they have to manage all the health system not only COVID patients."

2. We go now to the constitutionality matters. It was obvious that a large part of the emergency ordinance adopted to complete and modify the older law, regarding the state of siege and the state of emergency, affecting some fundamental rights and freedoms would be declared as unconstitutional[7]. Earlier, we recalled, together, the provisions of article 115 paragraph 6 of the Constitution. The text of the fundamental law is crystal clear, so that cannot generate confusions or variants of interpretation. Logically, is inexplicable how it was possible for Government to issue such a normative act.

The Government, according to the regulations adopted by itself, before voting that ordinance, was obliged to take into account the advise of The Juridical Directorate of the General Secretariat, The Ministry of Justice, The Departament

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[6] https://www.edumedical.ro/copac-incetati-sa-incalcati-drepturile-pacientilor/
Even if, in other fields, the things were relaxed, in the health field, it does not happen the same, say the representatives of COPAC who show the "continuously infringement of the patients' rights".COPAC says that they made a list in this respect: only the patients with urgent need are hospitalized; patients are postponed after the 15th of June; patients' relatives are not permited to enter hospitals, even if there are special cases which can be justified (persons who cannot walk, births etc.) Fathers are not allowed to see their children even if they passed the COVID test, and some mothers must desperately wait the test result in order to see their kids; patients are oblidged to go personally to take the treatment, because their families are not allowed; patients with infectious diseases (tuberculosis, HIV, hepatitis) may not go to the hospitals where they were treated before, because these hospitals are established as COVID or COVID support hospitals; …If, in march, we did not know the scope of this pandemic and these types of measures seemed to be justified, in present, we have to cease them. "The authorities must understand, at this moment, that they have to manage all the health system not only COVID patients. As always, we, Romanians, place ourselves in an extreme situation: we infringe all the rights and refuse to think of the patients' good. It seems that they lost common sense and all the humanity and this is unacceptable. We do not tolerate this situation anymore and ask for corrective actions. In June, these measures are not justified at all." declared Radu Ganescu, the president of COPAC.

[7] *The Government Emergency Ordinance 34/2020 to modify and complete The Government Emergency Ordinance 1/1999 regarding the regime of siege and emergency state* published in the Official Monitor 268/the 31st of March 2020
1. The article 28 is modified and will have the following content:
"The article 28 – (1) The failure of the provisions of article 9 is contravention and it is sanctioned with fine from 2,000 RON up to 20,000 RON, for individuals, and from 10,000 RON up to 70,000 RON for legal persons.
(2) Besides the main contraventional sanction, mentioned at the first paragraph, according to the nature and the severity of the deed, they can add some other complementary sanctions, as provided in military ordinances:"

for the Parliament Relationship and The Legislative Council, all these bodies being specialized in juridical matters regarding emergency ordinances. It was impossible that at least a professional belonging to these entities to not notice and show the trespass, under the circumstances where this kind of event happened more times in the past and the Constitutional Court accomplished its duty each time. Maybe the reason why this occurred could be found in the shadow of some political vanities that cannot be tolerated in a democracy, and, also, of some wrong ideas conforming to which a generous end justifies the unconstitutional means.

The Constitutional Court, also, has withheld that even the older article 28 from *The Government Emergency Ordinance 1/1999 regarding the regime of siege and emergency state* is unconstitutional: "The failure of the provisions of article 9 is contravention and it is sanctioned with fine from 100 RON up to 5,000 RON, for individuals, and from 1,000 RON up to 70,000 RON for legal persons". In fact, from the state of emergency beginning, in Romania, the police had applied over 300,000 contraventional sanctions, adding up 120 millions euro, for the infringement of the restrictions provided by military ordinances[8]. This performance placed our country in a leading position, if we make a top of the states that adopted tough measures to impede the spread of the new coronavirus. It is necessary to emphasize the fact the fines were applied in substantial quantums to citizens, but they have relatively small incomes.

The Constitutional Court was intransigent and adopted The Decision 152/2020[9] regarding the exception of unconstitutionality for the provisions of article 9, 14 c[1]) – f) and 28 from *The Government Emergency Ordinance 1/1999 regarding the regime of siege and emergency state,* entirely, as well as *The Emergency Ordinance 34/2020 to modify and complete The Government Emergency Ordinance 1/1999 regarding the regime of siege and emergency state,* entirely. The Court noticed some elements relevant enough in constitutional and contraventional law. Further, we will replicate passages from this decision, without serious intervention on the text, avoiding in this way to alter their meaning.

An element is that the decree of the President of Romania, by which the state of emergency was established, can only to organize the fulfillment of the provisions of the law that regulates the juridical regime of the state of emergency, at primary level (*the Government Emergency Ordinance 1/1999*). With other words, the decree that establish the state of emergency is an administrative document, subsequently to the law, through which they can enumerate concrete measures to be taken, as well as the rights and freedoms to be restricted. Taking

[8] https://www.digi24.ro/stiri/actualitate/amenzile-pentru-incalcarea-ordonantelor-militare-sunt-neconstitutionale-1302981 06.05.2020 16:46

[9] To be seen the Official Monitor 387/the 13th of May 2020

into consideration its juridical force that is inferior to the law, the decree of the President cannot derogate, to replace or to add to the law, so that it cannot contain primary provisions. Therefore, the decree can include only measures to organize the fulfillment of law and to customize and adapt the law provisions to the existent concrete situation, in the essential fields, to manage the situation that generated the establishment of the state of emergency, without deviations (by modification or completions) from the legal frame.

Thus, considering its constitutional value, the decree for state of emergency establishment – an administrative document issued to exercise some constitutional tasks and to accomplish the provisions of a law regarding some fundamental rights and freedoms restriction and the damage of some fundamental institution of the state – can be controlled in two steps: the first one, ex officio, by the Parliament, based on article 93 paragraph 1 from Constitution, and the second one, by the Constitutional Court, based on article 146 letter l) from Constitution, after the decision of the Parliament approves or not the state of emergency.

After all these conclusions which convince us that the President of Romania exceeded his legal tasks, the Constitutional Court affirms that the Parliament only approved the measure, without the verification of the way the decree followed the provisions of the law and the Constitution. The Parliament should sanction the President *ultra vires* (beyond his legal powers) behavior. The Court noticed that the President, on one hand, suspended or eliminated some legal provisions, and, on the other hand, he modified or added to some other provisions. By his decisions some fundamental rights and freedoms were affected (the right to labour, the free access to justice, the economic freedom etc.).

Therefore, we have some things that are good to know and remember, especially by those who, ignoring the law, believe that the President of Romania is the most important institution of the state, while, in fact, he is an element of the executive power. It is possible that this deformed and harmful perception was created by our socialist past, when we were ruled by a dictator, and the Parliament was substituted by the Great National Gathering, a body that used to work sporadicly, especially to approve the decrees issued by a little group of persons that led the country. The fact that the President of Romania, in present, is elected by vote by all the citizens who have this right confers him an undeniable legitimacy, but he does not have increased powers that exceed the law.

Looking at contraventional aspects, we mention some arguments that we think that must be known by all the persons who study this field. The Court pronounced that "the application of contraventional sanctions…, takes place according to some principles similar to those pertaining to criminal law. In this respect, through the *Decision 197/the 9th of April 2019*, paragraph 31, the Court mentioned the principle of legality, principle of proportionality, and the principle

of uniqueness (*non bis in idem*), regarding contaventional sanctions. According to proportionality principle, all the main or complementary sanctions must be dosed depending on the severity of the deed. This principle is reflected by article 5 paragraphs (5) and (6) from *Government Ordinance 2/2001*. There it is stipulated that "the established sanction must be proportional to the social danger degree of the deed", and "the complementary sanctions are applied depending on the nature and the gravity of the deed". The principle of proportionality is close to the principle of opportunity, the last one meaning that main and complementary sanctions have to be applied to accomplish the repressive and preventive aim of the contraventional sanction.

At the same time, the Court mentioned that, as reffered at article 21 from *Government Ordinance 2/2001*, some criteria have to be respected when we speak about the proportionality: the circumstances of the offense, the way and the means, the purpose and consequence, personal situation of the trespasser, as well as the other information written in the official document that shaws how the deed was noticed and sanctioned.

With other words, the investigating agent who decides on the proportionality between sanction and the offense, must look at the general criteria from article 21 from *Government Ordinance 2/2001,* as well as at some special criteria, if they exist. Otherwise, if the proportionality is neglected, the court of justice will adapt the sanction to the legal provisions.

So, we have just seen a good summary (including pertinent arguments) of the theory of proportionality as a principle in contraventional law. This principle is also known as the principle of individualization.

More, the Constitutional Court says that contraventional law, as criminal law, has a subsidiary character, intervening only in the situation where other juridical means are not enough to protect some social values. On these conditions, the normative acts with law power and the normative administrative acts that establish and sanction contraventions must meet certain conditions regarding the quality: accessibility, clarity, precision and predictability. The Court ascertained that the provisions of article 28 paragraph 1 by the phrase "the violation of article 9 is contravention" describe as contravention the violation of a general obligation to comply with all the measures established by the *Government Ordinance 2/2001,* by normative acts connected to this ordinance, as well as military ordinances or other orders, specific to the state of emergency, without showing explicitly the facts or the omissions which can be punished. Hence, the establishment of the facts that are contravention is arbitrarily let to the investigative agent and it is not done by the lawmaker who should determine the criteria and the conditions necessary to find and discover contraventions. At the same time, missing a clear picture of the elements that create a contravention,

even the judge lacks the references needed to solve the complaint against the administrative document where the contravention is described.

Regarding the military ordinances, it is distinguished that these do not show clearly and unambiguously the type of juridical liability. Limiting itself to make reference only to the article 27 from the *Government Emergency Ordinance 1/1999,* where they speak about all the types of juridical liability, military ordinance fails to indicate what kind of behavior leads to contraventional liability. This sentence is valid for all the military ordinances issued until the constitutionality control was performed.

Concluding, **the Constitutional Court ascertained that the analized provisions infringe the legality and proportionality principles that govern the contraventional law, because they make reference to a general obligation to comply with an undefined number of norms, difficult to be identified, and establish contraventions without describing concrete facts.**

Obviously, those who have education and training in this field do not have another choice but to fully agree or even applaud the comments and the arguments of the Constitutional Court. Unfortunately, some persons who enjoy a great publicity, due to the position they occupy or due to their speaking skills, used the freedom of opinion and expression condemning the decision or making fun. In fact, that is the reason why, often, some of us complain that we do not live in a democratic and normal society, but, sometimes, they are not able to understand that, first of all, we have to respect and comply with the fundamental law. We cannot reach some important goals endlessly repeting notorious mistakes and then blaming those who explain to us when and how we err.

Also, we must know that, in spite of the Constitutional Court Decision, from which we drew some ideas and conclusions, the fines can be cancelled only by a qualified court of justice.[10]

[10] To be seen https://romania.europalibera.org/a/amenzi-neconstitutionale-ccr-stergere-in-instan ta-prin-contestare/30597461.html ACTUALITATEA ROMÂNEASCĂ
6 May, 2020 Adelina Radulescu "The Constitutional Court declares unconstitutional the fine for violation of the state of emergency. The fine can be erased only by a court of justice decision.
The Constitutional Court admitted the notification of The People' Advocate regarding the fines applied during the state of emergency. This means that those who were fined have the chance to contest the penalties in the court and to get rid of them. The penalties are not erased ex officio. The decision of the Constitutional Court is about the fines applied by the police for violations of the restrictions of the state of emergency. The judges said that these fines were let in the hands of the police, and the law did not provide exactly what are the facts and the conditions. So, the regulation was too general. Also, the Court decided that the size of the fines were too big in comparison to the people's incomes. There were fines between 2,000 and 20,000 RON, while, on average, the pension is 1,200 RON and the salary a little above 3,000 RON. In March, the authorities announced that, for the violation of the restriction, the fines will be increased between

After this decision of Constitutional Court, the number and the amount of the fines decreased dramatically. While, before the decision, the police applied 3,500 fines a day, sometimes even over 5,500, after the decision, the number was diminished under 1,000. Also, the amount of a fine went to a half.[11]

Even if, after the Constitutional Court Decision, the number and the amount of the fines decrised, it is easy to anticipate that a huge wave of fined persons will go to courts of justice to claim that the sanctions have to be annuled or shrunk down. The sentence is based, too, on the minister Vela public declaration according to which the police (his subordinates) abused and this fact was obvious.[12]

The General Prosecutor had a very interesting comment, too. From this comment, we can draw some conclusions belonging to contraventional law, regarding the difference between criminal deeds and contraventional ones, the abolishment of contraventional prison, but, also, about the predicted tempest that will burst in the courts to cancell the fines.[13]

Even the mayor of Bucharest sector 3 could not avoid a scathing fine, when he was seen in a park, together with his girlfriend, traveling by bicycle, although, during the state of emergency, the park was closed. We feel sorry for him only a little, but we fully regret that poor but respectable persons suffered because they did not fill with accuracy the forms justifing the leaving of home or that people above 65 years were not rapid enough to solve their dayly problems only in two hours, as it was regulated.

To prevent courts of justice to become blocked, and, also, to exonerate some inocent people to pay exorbitant fines, some parlamentarians thought to initiate

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2.000 RON and 20.000 RON. The argument was to have tougher fines for the deterrence of persons to spread the virus. Initially, the fines were between 1,000 RON and 10,000 RON…"

[11] https://www.digi24.ro/stiri/actualitate/evenimente/cu-cat-a-scazut-numarul-amenzilor-dupa-ce-au-fost-declarate-neconstitutionale-cum-se-reflecta-decizia-ccr-in-activitatea-politiei-1304358 Bogdan Pacurar 09.05.2020 17:10

[12] https://romania.europalibera.org/a/amenzi-neconstitutionale-ccr-stergere-in-instanta-prin-contestare/30597461.html "It is obvious that these abuses are made, because there are many persons, many young persons who, after a six month school, were sent in the field. We were in need in order to cover all the missions. Those who made mistakes will be evaluated professionally and disciplinary" said Vela.

[13] "Criminal sanctions are separated from contraventional sanctions. Basicly, from 2002, the contraventional fine cannot be transformed in contraventional prison. I am convinced that, after the state of emergency will cease and the activities in courts wil restart, there will be this giant wave of complains against contraventional fines documents.", declared Gabriela Scutea for Europa FM.

Asked if she expects a massive mass of people to attack the fines in the courts of justice, Gabriela Scutea said: "Maybe, the citizens will do that because the fines' quantum is bigger than for another kinds of fines, and you realize that to each person 2,000 RON means an important loss"

a project to cancell abusive fines.[14] The draft does not make reference to the severe deeds that can be qualified as crimes. Although the intention was laudable, it has not come to reality, yet. We have been still waiting and watching.

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[14] *https://romania.europalibera.org/a/proiect-de-lege-pentru-stergerea-amenzilor-in-baza-ordonantelor-militare/30607853.html*

the 12th of May 2020 Draft of law to erase the fines applied on the base of military ordinances

PSD, ALDE and Pro Romania presented to the Parliament a draft of law in order to erase the fines applied based on military ordinances during the state of emergency. The oposition motivates the necessity of this act with the fact that Constitutional Court Decision will make the courts overcrowded when hundreds of thousands of citizens will claim the erase of the fines. „The Constitutional Court Decision abolished the abusive fines applied to Romanians. As a consequence of that, to avoid blocking the courts of justice and to help the citizens who were abusively fined we submitted to other parties to be consulted the draft written by the specialists of PSD, ALDE and Pro Romania. By this draft, we intend to erase the fines applied based on military ordinances during the state of emergency.", wrote Calin Popescu Tariceanu on Facebook. The head of ALDE mentioned that „the draft is not about the perpetrators who fled from isolation or quarantine or disturbed the public order".

„Can you imagine what means another 300,000 cases brought to courts? Their already swamped activity will be blocked. And these cases can increase the danger of spreding the virus when people storm the courts.", said Calin Popescu Tariceanu. According to him, the justice will be made for those abusively fined. „The value of all the fines during the state of emergency is the biggest in the world, probably. Who thought that a retired person who has 1,000 RON a month as pension must pay 5,000 RON because the two hours permited out of the home were exceded was insane", added he.

Memories about the future. A non-conformist approach to the law of contravention.

Florin MACIU[1]

Abstract

The Constitutional Court determines, in a decision, some deficiencies regarding the text of the Emergency Ordinance of Government no. 1/1999 on the siege state regime and the emergency state regime. These deficiencies block the implementation of the rules on fines. Even if the effects of the last ordinance which amended this normative act were wiped, the provisions have been still containing some weaknesses that make them unusable when necessary. It is mandatory to review the entire legislation on military field, inside the law of contravention branch, to make it consistent to the Constitutional Court control and remarks. The procrastination of this fulfilment cannot bring anything good but a considerable shrinking of the effectiveness and the image of the military, exactly when the soldiers are asked to perform the main constitutional mission. There are, also, other laws belonging to the military area, that have not been yet analyzed by the Constitutional Court but which are susceptible to comprise mistakes in the contravention space. In this situation, waiting cannot be beneficial. Three years have passed.....

Keywords: *constitution, the military, law of contravention, fine, proportionality, legality, non-applicability*

Motto: Audere est facere – To dare means to succeed

In our opinion, the law of contravention it is not a branch of law which is difficult to be understood or applied. It is not, either, a field that is easy to tackle. It regulates the organization and the functioning of public administration, this matter including also the ways by which the state and the persons are defended against those who perpetrate or try to perpetrate deeds that are dangerous to society.

The law of contravention, part of administrative law, is a subbranch the establishes the conditions under which some facts can be qualified as minor offences, the sanctions and their limits, the competence to determine (record) a contravention and to apply a sanction, as well as the way to contest a sanction. Paradoxically for some people, law of contravention, in spite of belonging to administrative law, it has many principles and concepts regarding the general notions, the contravention establishment and the application of a sanction, that

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pertain to criminal law, the legislation of contravention being related to the penal one. About the carrying on a process through the court, in order to challenge an official report related to a sanction that was applied, this one is completed with elements from civil procedural law.

Not coincidentally, *The Government Ordinance 2/2001 regarding juridical regime of contraventions*[2], with subsequent changes and additions, provides, at article 47, that the stipulations of the normative act have to be completed with the dispositions of *Penal Code* and *Civil Procedural Code*, as the case. It is relatively simple: the ordinance mentioned above, although it is the seat of the matter, it does not comprise more than fifty articles and even these ones are not very voluminous. In fact, they are insufficient to exhaustively cover the regulated domain. Extremely eloquent for the justification of the resemblance of law of contravention with the penal law is the very content of the first thesis from article 1 of the ordinance – **law of contravention defends the social values not protected by criminal law**.

A controversial definition, which does not follow the rules of the legislative technique, as we have noticed before[3], but convenient, efficient and pragmatic, the legislator avoiding the trap of becoming confusing, or too intricate and the risk to generate perplexity, controversy, questions to disturb the expected meaning of the text, to produce chaos and ambiguity.

To make a long story short, we must retain, in order to understand the difference between the criminal law and the law of contravention, as follows: the peril created by the contraventions is smaller than those belonging to criminal sphere. The facts categorized as crimes cannot be considered as being contraventions at the same time. Antisocial deeds are either crimes or contraventions.

What is essential in this difference is that, in the law of contravention, an official report prepared by the one authorized by the law to ascertain (record) the contravention is a proof. A statement that, for those initiated in this field, could cause, rightfully, we say, litigation, disproof or, at least, heated debates.

The dispute starts from the fact that even if almost all our colleagues and countrymen believe that the presumption of innocence principle has to be respected with strictness and holiness, being stipulated in the very fundamental law at article 23 – Individual liberty item (11) – **A person is considered innocent until the final pronouncement of the sentence**, and also in paragraph 2 of the article 6 from *The European Convention on Human Rights*, which protects the right to a fair trial – **Everyone charged with a criminal offence shall be presumed innocent until proven guilty according to law**, in the law of contravention, the recording agent fills in a form (official report), according to

[2] Monitorul Oficial 410 /2001

[3] Maciu 2019

his/her conscience, and this piece of paper becomes a very important document in the offender's file, and the task of the last one is to overturn the content of the official report with other proves. Normally, we say, it would have been correctly that this completed form to trigger an inquiry regarding the committed facts and, only during the investigation, they start gathering proves. Should this official report, written, maybe, in the street, by a sole person who is not highly educated, be presumed a serios proof that weights significantly in justice?

Fortunately (or not), the dispute has found itself a juridical and unquestionable answer and stopped the polemics diligently built by inconvenient, grumbling or plainly and simple inquisitive persons, like these who signed this paper. Thus, on the 7-th of October 1988, the European Court of Human Rights (ECHR) established, in 1051/83 case[4] – *Salabiaku v France*[5], especially in the thesis from the item 28, that any law system contains presumptions in order to determine if somebody is guilty, and this fact does not affect the famous hypothesis of innocence. Presumptions are admitted if they are reasonable and they can be overturned by the interested person. They must not exceed some limits and cannot be used in excess, because otherwise the power of the judge to estimate would be emptied of content[6].

Many[7] regret that, once the official report is signed by the authorized person, the so-called trespasser must prove that is not guilty for the facts described in the document, these ones being presumed as genuine. The presumption of innocence, a fundamental principle in law, that should function in the benefit of the offender fades significantly under the heat of the presumption of veracity of what is written in the official report. The innocent trespasser has to act as a skilled and vigorous duelist fighting, by legal means, the content of the official report, after a complaint is submitted. This objection has to comprise

[4] CASE OF SALABIAKU v. FRANCE no year

[5] In 1979, on the 28th of July, Salabiaku presented at the Roissy Airport to take a package about he was informed that arrived with a flight of the company Air Zaïre. He declared that he was expecting to receive samples of African food sent by a relative who worked for Air Zaïre. He asked an official person who oriented him to a locked box, unclaimed, labeled Air Zaïre, but did not have written any name. The official person, at the advice of a policeman, suggested him to not take it because it was possible to contain forbidden goods.
Salabiaku decided, still, to pick it and passed the customs with no difficulties, through the corridor of those who have nothing to declare.
The employes of the customs stopped Amosi Salabiaku at the exit. The lock was forced and they discovered under a double bottom cannabis (10 kilos), herbs and seeds. The subject declared that he took the baggage by mistake and he did not know anything about cannabis. However, he was condemned. Not for the simple possession of banned merchandize, fraudulently imported, but for smuggling such goods. In the Code of customs, there was a legal presumption of liability resulted from prohibited materials possession that was leading to the finding of guilt.

[6] LegeAZ, fără an

[7] Andronic n.d.

elements necessary to ram down the almighty document. Otherwise, this document will be still considered as prepared legally and the guilt established by an administrative act will be confirmed by the court of justice[8].

Others (also many) are more relaxed and explain to us the easy way you can combat successfully in the court the solidity of an official report[9]. We thank them, but keep on growling and to be circumspect: the offender from their example was an illustrious person in the justice world, the statements of the recording agent were seriously stumbling, and the first term of the process was established seven months later. The only sound conclusion to us from that case was that, if you were lucky, you could obtain a Pyrrhic victory, meaning that you can show your friends that you were not guilty, but you have to omit intentionally to mention about your health jaded by the stress generated by a trial that lasted more than a year.

But, let us not finish our introduction in a negativist and pessimistic state of spirit. An administrative sanction does not mean criminal record and, in this case, it is not necessary to be rehabilitated.

Some delimitations and clarifications. This article has nothing in common with the famous book, published in 1968, written by Erich von Däniken[10], entitled in English – *Memories of the Future: Unsolved Mysteries of the Past*[11], which, by its sensational and inciting nature, gave birth, besides many fierce controversies that have gone on even today, to many sequels and influenced ideas from reputed science and fiction novels and movies, cleverly built, as well as interesting and mysterious series done for TV.

The modest work does not intend to make some amazing predictions either, like those pertaining to the celebrated animated serial *The Simpsons*[12], from which we only mention the winning of the elections for USA President by Donald Trump, prophecy done fifteen years earlier[13] or the disaster of a submersible – a story described in 2006 and happened in reality in 2023. No, we are neither time travelers nor Nostradamus relatives.

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[8] On one hand, The Constitutional Court established without doubt, in some cases, the fact that the presumption of official report veracity cannot be situated above the presumption of innocence in a process, when the proves to be based on lack, so that this presumption cannot have an absolute probative value. On the other hand, the European Court did not offer an explicit remedy to reconcile the presumptions, resuming to an interpretative solution, according to which the presumption of innocence being relative could co-exist with other relative presumptions, on condition that the use of the last ones to not be incompatible with right of defense guaranties, and the reasonable limits and the principle of proportionality to be analyzed from case to case.

[9] LJ 2011

[10] Wikipedia, no year

[11] Wikipedia, no year

[12] Wikipedia, no year

[13] JONES 2022

More than that: we do not want to criticize, to ironize and, much less, to blame somebody regarding some failures, deficiencies, inadvertences or malfunctions regarding the enactment or the application in a wrong way of any norm belonging to the law of contravention in the military. We only signal, without causing a storm, that some situations related to the area of contravention could benefit from a better regulation, and then, when this better regulation exists, from a more efficient application. All we intend is a better functioning of the military system or, in other cases, a useful and necessary timely training to face some events which are undesirable to us, but that are possible to happen, as the reality shows us even if we hope that nobody would hear about them in this century. We promise, in this respect, a strict self-censorship.

1 The first establishment of an exceptional state in Romania

1A Facts

Let us go to the subject. 1999. Far away from my country, gone to study a year before, I was the only stranger among more than 100 American students, JAG[14] officers from the Army and Marine Corps. The rapid means of communication, like cellular telephones or e-mail, lacked. I had no information about what happens home and I was busy with profoundly studding elements of American law, tackled at master level. Everything was different and, obviously, new and demanding, and the teachers and colleagues were not thinking to be more tolerant to me than to theirs. They were respecting strictly the ethics and, at my turn, I did not have any claim of indulgence. I have had no leisure moments, week-ends, holydays, not even some free hours for Christmas. I was learning even during the breaks between the classes, I was sleeping shortly and drawing up the homework and training for the difficult and dense exams. Anything else was not my concern but retaining the new knowledge. My emotions were built on a credible foundation, and the prove was the fact that some mates did not receive the graduation diploma, this situation meaning the impossibility to be promoted and, implicitly, the ending of the career of military legal adviser in the Army.

In this conjuncture, I remember that two or three students approached me with a local daily paper and invited me to read a column placed at the margin of a page. It was about Romania. The first thought was that they tried to be kind to me by showing that Romanians are present in the pages of American journals. Being sure that I would waist some precious minutes with news with no value for me, I politely started reading quickly. Gradually, I slowed down, I read again once time, and the third time I stopped for a moment, looking at my comrades. *All's well that ends well*, they said, thinking of Shakespeare, with their faces

[14] The Judge Advocate General's Corps, also known as JAG or JAG Corps, is a branch of military justice in US Army, USAir Force, US Navy etc

inspiring hope and trust. I understood the seriousness of the situation only at their try of encouragement: terrible, violent, dreadful events had shaken Romania at the threshold of the third millennium.

I talked a little more, trying to hide the consternation, the fear for an atrocious future, the lack of trust in the power of my country to achieve something, since, during the past nine years, we did not see anything relevant. The paper was telling about a march to Bucharest, forces concentrated, battle, negotiations and a peace obtained at Cozia. Even if there were exaggerations, all was dangerous and alarming. Later I discovered that the authors of the article did not amplify and deform anything. People there had protected me and revealed to me only the happy ending. Romania passed a crisis as those described in manuals.

1B Legislation

Back, together with my family, in my country, at my job, I found out something about *The Government Emergency Ordinance 1/the 21st of January 1999, regarding the regime of the state of siege and the state of emergency*, published in the Official Gazette 22/ the 21st January 1999. In our opinion, that normative act, in its first form, reflected entirely the respective period characterized by a catastrophic situation in social plan, desperate authorities, forces belonging to the state in turmoil, circumstances totally out of state control, precipitation and lack of principles in decision making process. From a pile of errors in regulating, we present only a few, which could be noticed by any person who paid attention to our fundamental law and has juridical common sense:

In an article, they stipulated that, during this kind of state, the exercise of some rights and liberties can be restricted, *with the agreement of the minister of justice*.

A bit simplistic, we would say, but we do not develop because we promised to not use cutting or contusion making phrases. There is a whole branch of law that treats human rights and liberties. The readers can comment.

In another article, it was provided that they can deviate from the general rules of using force, although the legislation had comprised, in our opinion and not only, exceptions for special situations. It was established that the unique warning before opening of fire was an order of a prosecutor meant to notice that a situation is not legal. More, this order was considered sent if it was published in a daily paper.

Thrilling, but sinister, maybe adequate to 1989 Tiananmen Square[15]. But our purpose is not to indispose, not even the Chinese. We go further.

Another article was regulating that some expenditure related to the measures taken in these states were not passed through the financial preventive check filter, even in a short manner.

[15] Wikipedia, no year

No? We were speaking about a crisis, the financial measures had to be taken instantaneously, and the good faith of those involved had to be indisputable, like an axiom. How comes to get rich on at the expense of your country, which is in impasse?

Important is that the text of the normative act was amended and harmonized with the fundamental law, reviewed (in the meantime) in 2003, with *The Government Ordinance 2/2001*, and with the rest of legislation and, especially, with all the principles of a democracy, even an incipient one. The enactment process lasted almost six years, a real performance at those times, including debates in commissions and plenary chambers, reports and supplemental reports, extensions of terms, referrals back, procrastination of the debates and final vote, commission of mediation between chambers, re-examination request and re-examination, promulgation and, finally, publication[16]. In this way, the first act of legislative history of *The Government Emergency Ordinance 1/1999* was finished.

The great majority of the proposals for parliamentarians regarding amendments to this normative act was worked out by a small collective, including two members of the Ministry of National Defense (from now on MoND) and two experts of the Ministry of Justice. The representatives of the armed forces participated in the Parliament debates, each time they were invited[17].

We reminded those things only to underline the fact that always the Minister of National Defense can participate with prepared persons in discussions on some modifications of the legal provisions, when it becomes evident that the respective regulations need to be improved or even substituted. This fact, in our opinion, should be organized and undertaken early, thus when we need to apply these provisions, in spite of our hopes and optimistic expectations, to not mess around. Otherwise, we will be forced to arrange the project of the necessary new regulation under stress, without a previous study and a cold analysis, strongly influenced by those who will make much noise or will find more (powerful) adepts, to the detriment of democratic solid principles that are the foundation of the state of law.

2 The second act of an exceptional state in Romania and the legislative support

2A Facts

We move to the second act. The outbreak of a new virus identified for the first time in Wuhan province, China, in December 2019, could not be localized, in spite of the harsh measures taken by authorities. On the contrary, it spread in other zones of this country, and, further, all over the world. World Health Organization indicates initially an emergency state and, subsequently, in March

[16] PL nr. 7/1999, no year

[17] Comisia pentru apărare ordine publică și siguranță națională 2003

2020, declares that people confront a pandemic. In the same month, the number of cases grows in our country, also, and the fear is felt in Romania. They take timid measures and the popular gathering, some flights and activity in some schools are suspended… The soccer games are postponed. People Advocate asks the state of emergency to be instituted. The known cases of contamination multiply, the scenario is changed, tents in the courtyards of the hospitals appear, people are isolated in their domiciles, and, on the 16th of March, the decree to institute the state of emergency is issued. Explanations related the justification of such a decree were presented by the President of Romania[18].

The news on TV were daily reporting, extremely dense, the huge known number of infestations, the terrific dimensions of the demises and other dreadful incidents about the pandemic. Many suffered from depression. Some of us remembered that, until yesterday, we enjoyed horror, sci-fi or thriller movies like Train to Busan (a south Corean production) or World War Z which is more popular, where the civilization disappears or has already vanished on Earth. We had read books with similar topics like The Eyes of Darkness by Dean Koonz or the series written by partners of the deceased Robert Ludlum, entitled Covert-One. Nobody associated such things to reality. We knew, more or less, about the Spanish flu, which virus made several tens of millions of victims, during 1918-1919. The world was hoping that kind of misfortune to not happen anymore. So, we were unprepared…

2B The legislative support

There was, still, the normative act about we were discussing above and, thus, it was possible to institute the state of emergency. The lack of expertise in such kind of crisis management, to not say something else to deviate from our aim, was, however, substantial[19].

The Constitutional Court, by *Decision 152/2020*[20], decided that the presidential Decree to institute the state of emergency exceeded more his tasks and the status of an administrative act, subordinated to the law. This normative act was not allowed to derogate, to substitute or to add to law, so it was not permitted to contain norms of primary regulation. We do not comment more.

The Government, with the wish to have a remarkable legislative contribution to stop the pandemic, adopted *The Emergency Ordinance 34/2020 to modify and complete the Emergency Ordinance 1/1999*. Lamentable. We stop here with the epithets. Our desire – to not make waves.

Among other things, they increased the maxim threshold for natural persons from 5000 RON to 20000 RON. The Police were imposing, on a daily average, 3500 fines, but somedays they reached over 5500. The trespassing of the

[18] Gândul 2020
[19] A. Maciu 2021
[20] Monitorul Oficial 387 /2020

restrictions was punished with hundreds of thousands of fines, meaning hundreds of millions RON. The offenders said that they have never seen such a big amount of money and they are not able to pay. Anyway, these facts placed well Romania in an international top of fines.

According to *The Decision* mentioned above, The People Advocate that notified this situation was established to be right and they noticed that *The Government Emergency Ordinance 34/2020* is not in accordance to the fundamental law, entirely. As a result, the police exuberance has become temperate.

The first reaction of the issuers was to criticize The Constitutional Court and The People Advocate, and recommend to citizens to act *responsible* and to ignore the decision. In one of the rare public comments, the president of Constitutional Court responded that the errors of The Ordinance were obvious, and the conformity with The Constitution was mandatory[21]. The fencing of the exercise of fundamental human rights and liberties can be done only by law[22]. Later, after approximately a year, the Parliament rejected *The Ordinance*. Anyway, its effect ceased due to the mentioned decision[23].

We go on. It is no need to support the Constitutional Court. However, it is possible that we could learn from some ideas established by the Court. They draw our attention because of having significant relevance for our purpose. Those interested are advised to read the paragraphs in their original form.

First, a lapidary mention regarding the **proportionality and individualization principle**, a fundamental theory in the law of contravention. The People Advocate underlines that, according to that concept, the sanctions, either main or complementary, must be enforced, regarding their severity, in concordance with the danger to the society created by the facts. In this respect, the reader can study, especially, items 82, 118, 122, 133 from *The Decision*.

Extremely laconic, we remind only some ideas. The Court indicates, beside the constitutional basis, the subsidiary one, from where we have to start the analysis. It

[21] Marina 2020

[22] Constitution of Romania article 53 (1) The exercise of certain rights or freedoms may be restricted only by law…; and article 115 (6) Emergency ordinances may not be adopted in the field of constitutional laws; they may not affect the status of fundamental institutions of the state, the rights, freedoms and duties stipulated in the Constitution, and the voting rights, and may not envisage measures for the forcible transfer of certain assets into public property.

[23] Constitution of Romania article 147 (1) The provisions of the laws and ordinances in force, as well as those of the
regulations which are found to be unconstitutional shall cease to be legally effective 45 days after the publication of the decision of the Constitutional Court if Parliament or the Government do not bring the unconstitutional provisions into conformity with the Constitution before the end of this period. During this period the application of the provisions found to be unconstitutional shall be suspended by law [de jure].

is stressed that the restrictions must be done by law and the adequate actions have to harmonized with the real situation that generated the exceptional state. The proportionality of the sanctions depends on the content and the seriousness of the facts, so The Court enumerates (we do not) the elements established by law, which must be taken into account when the punishment is decided.

Another concise mention, although it is very important. The Court shows that a norm must cumulate some features: accessibility, clarity, precision and predictability. This observation brings us in attention another principle. This one is essential to the correct enactment and the enforcement of the law of contravention and was let especially as a final mention to be much easier to be memorized: **the legality principle**. Those interested can read items 130 and 132 from *The Decision*.

The reader of the norm must understand the aim of adopting and the consequences of its violation. Any element that leads to confusion, ambiguities, multiple meanings or a vague one has to be eliminated. The language must be proper to not generate doubts or uncertainty.

The impediment for the one who has to follow the law is that this one does not understand which way to behave in certain circumstances and what is the consequence. Further, the recording agent is not wholly clarified how to enforce the legal provisions because he/she needs concrete criteria and is obliged to use personal imagination and opinions. More, the judge does not have the necessary instruments to measure if the recording agent reasons correctly or not when a sanction is imposed. All the involved persons grope, with the hope that they act correctly.

The Court established that there were not concrete facts incriminated, but only references to the general manner regarding the way of trespassing the social coexistence rules. Because the rules enunciated above were not respected, the ordinance was found unconstitutional.

Among other aspects which draw our attention, we selected some, which are signaled, as we said before, with the idea that is better to remedy some deficiencies timely. Our practice and the history demonstrate that, otherwise, we will be surprised and this situation will lead to superficiality, distrust and botch.

Partial conclusions

1 *The Government Emergency Ordinance 1/1999* is a normative act that seriously pertain to the sphere of the armed forces responsibility. During the state of emergency, the armed forces support the forces of the Ministry of Interior, by request. The approval is given by The Supreme Council of Defense. When the state of siege is instituted, the co-ordination of the actions goes to MoND.

2 The Constitutional Court, identifies, through a decision published in the Official Gazette, some deficiencies regarding this ordinance that block the enforcement of the fines in this field. Even if, afterwards, the effects of the last

emergency ordinance that should have modified the provisions of *The Government Emergency Ordinance 1/1999* were annihilated, **there still are some deficiencies revealed by The Constitutional Court that make it unusable when necessary**. **The quintessence: there is a general obligation to respect the provisions of the ordinance and the subsequent orders without the possibility to individualize and to materialize, and this situation does not fit the actual period of evolution. The principles of legality and proportionality are not implemented.** It means that we have to admit that the European Union bound us to the democratic exigencies that evolved. The law principles that defend the fundamental human rights and liberties are, we believe, in a continuous optimization.

3 There still are some normative acts susceptible of being in the same situation and of containing provisions related to the application placed in the responsibility of MoND. We limit to the example of *The Law 355/2009 regarding the regime of the state of mobilization and the state of war*, which has a similar structure to the studied ordinance.

It is evident, we say, that a review of the whole legislation of the military domain, in this subbranch of the law of contravention, is mandatory, in order to harmonize it with the argumentation of The Constitutional Court. Just as obvious is the fact that some people do not want to hear such things, due to the reasons which we could identify and describe, but we will go around those reasons, with the wish to not bounce since we promised to walk stealthily.

3 Another little comments on regulating and enforcing norms belonging to the law of contravention

We turn back to elements and notions of the law of contravention and the way it is applied in the military.

3 A Regulations

According to *The Government Ordinance 2/2001*, MoND has the obligation to adopt subsequent internal regulations, in order to apply this normative act, when some contraventions are committed under some circumstances. In December 2002, scrupulously, the ministry has issued an order and, when it considered necessary, the order was amended. The order is neither classified, nor published (as appears), because, at that time, there was not the obligation to be published. We think that, even this matter should be reconsidered by an internal group of specialists.

We highlight some aspects resulting from a superficial reading of this document, where we believe that the text should be re-examined and, if and when necessary, the experts to intervene with some proposed corrections:

- the approach of the main sanctions together with those complementary could generate the wrong idea that a complementary sanction can be applied in absence of a main one. They could deduce, erroneously, that, for the same deed,

more main sanctions can be applied. It should be regulated clearly that a complementary sanction can be applied only if provided in the norm which regulates the respective contravention. Also, it is needed to describe more precisely the routes to be followed by the official report when the recording agent completes the form (official report) but other persons with superior positions are entitled to decide on main and complementary sanctions;

- a distinct rubric destined to the objections of the offender should be reserved;
- the way the fact of the offender is described in the official report should be regulated in detail;
- the list from the Anex 1 should be reviewed;
- a clear distinction between the notions *witness* and *assistant witness* it is necessary to be made.

It is very possible that an analysis of the old regulation to reveal more defects and, also, to infirm a part of our observation.

According to *The Law 223/2015 regarding military pensions of the state*[24], the armed forces have, also, to fulfil some tasks belonging to the law of contravention sphere.

By *The Law 379/2003 regarding the regime of the tombs and of the commemorative works related to the war*[25], it was established, again, obligations in the law of contravention field, for certain bodies of the armed forces.

The same happens with more laws which have application in the military domain starting with *The Law 45/1994 of national defense of Romania*[26]. They contain provisions which should be re-checked regarding the respect to the law of contravention principles.

The basic idea is that this correction operated on the legal text must be done soon. Here, in the security zone, the concept *time solves all* does not work properly. We reiterate, with other words, that the procrastination of this desideratum will lead to an analysis under stress factors, and will be characterized by narrow reasoning or, maybe, irrational, diminished attention, disorganized tackle of matters, unclear motivation of the intentions, faulty communication and the lack of ability to make the difference between major and minor matters of the state.

3 B The enforcement

And now, some words on the application of these regulation regarding contraventions in the armed forces.

The resume on this theme, in our opinion, would be that, in the armed forces, they do not concentrate on this particular area of activity, with the possible exception of guarding and extinguishing fire field. Taking into account that our

[24] Monitorul Oficial 556 /2015
[25] Monitorul Oficial 700 /2003
[26] Monitorul Oficial 172 /1994

article was intended to be a theoretical basis to initiate a review of some legal norms, from laws downwards to orders of the minister, and not a trigger of unpleasant consequences, we calculate our phrases with prudence and vigilance.

The Romanian likes the poetry, Vasile Alecsandri said. Perhaps it is difficult for ones to be born poets and to become good administrators, at maturity. Sometimes, to the good of society, we need harsher laws, and more, people to enforce them. We do not like tyrant, strop or executioner habits either. Nevertheless, we have to reconcile them all and to prove efficiency in our positions for which we are paid. We run away from the lyrical part and present some practical things:

Many times, the punishment for a violation of the law can be materialized through a warning which can be oral or written. According to the seat of the matter, the warning can be applied anytime, even if the legislator omitted to mention that. Nobody cannot complain for receiving a warning, if he/she was guilty. They can, instead, to thank for understanding and, afterwards, to start working for the remedy of the shortcomings. If the offender is unpleased and believes that it was mistreated, then there is a way to be satisfied by going to the law. We talk here also, about the contravention common sense of the recording agent.

Pay attention! Basically, the oral warning has the same force as the written one, the first being applied to the offender who is present when the contravention is recorded, and the last one to the absent offender. It is logical, but ones confound and overlap some disciplinary law rules with provisions from the law of contravention, drawing false conclusions.

Likewise, due to some confusions, some people think that a critical discussion, as a satire, admonishment or scolding to the offender (trespasser) equals an oral warning. As well, ones think that a letter to criticize or to condemn a kind of behavior is the same as a written warning. Wrong!

A sanction belonging to the law of contravention, either oral warning or written, neither can be enforced nor proved to exist if there is not an official report of contravention recording. As a result, for an oral warning as well as for a written one they must draw up an official report, in spite of what some people deduce only from literary interpretation. No official report, no enforcement! The warning as a sanction is written in fiscal record[27]. The recording is done only if an official report is drawn up and the text of it remained definitive[28].

To those responsible, we convey with all our gentleness and love: do not be amazed that some persons with whom you had discussions or sent to them letters,

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[27] The Government Ordinance 75/2001 regarding the organization ad functioning of the fiscal record article 1, re-published in Monitorul Oficial 90 / 2004, with subsequent changes and additions

[28] The Decision 6/2015 of the High Court of Cassation and Justice published in Monitorul Oficial 297/2015

instead of sanctioning them (fining maybe), did not react properly. For the beginning of an institutional relationship, better act legally, at the inferior limit, in lieu of inventing a false code of elegant manners, which works against the fulfilment of our job tasks and could be used against us.

As **Partial conclusions** we will say only that it is not a smart idea to improvise in this field and it seems that a lot of people are doing that. For how long? We have written the answer, and, afterwards, we decided to erase it. You know it or, at least, you can guess.

General conclusions

1 *The Decision 152/2020 of the Constitutional Court*, mentioned above, should be exploited by verifying and harmonizing with the principles established there the whole normative acts incident to the activity of the military, starting with those of high juridical force downwards to orders and disposals. In present, although we can affirm that we have laws which can be applied in situations when military must act, *de facto* but also *de jure*, it would be possible to notice that we have only some unusable texts of law, because they are not consistent with the constitution. The access to justice is an absolute fundamental law, which cannot be restricted, and the lawyers know how to use the debated decision to ridicule the sanctions applied on the basis of some provisions that rise serios question marks regarding the constitutionality and does not function, for those who want to see them through the lens of the specified decision.

2 The review operation should take place now, not later. The delay will generate, as shown above and as it happened sometimes before, a tackling under stress of the matter and an inadequate solving. Let us not forget that this process involves co-operation with specialists from other ministries, as well as respecting the rules of decisional transparency, which need time, to not speak about the debates in the Parliament.

3 Parallel to working out some proposals to amend normative acts, the specialists from the armed forces must prepare themselves to the transposition into practice of the notions, concepts and principles regarding the law of contravention, if needed, and to start, with courage, but still with tolerance, clemency and benevolence in the beginning, enforcing the provisions on where it is necessary. The elegance, delicateness, grace and tenderness have their place but not everywhere. Let us make sure that we will not reach the situation that some phenomena noxious to the society could be stopped, but, at the proper time, nobody took measures. Even if there are places where you cannot demand the impossible, you still can find solutions in other branches of the law. For instance, where it is obvious that a village do not have enough income to take care of a memorial cemetery, together, we can find reasonable solutions to transfer the administration to another subject.

We are waiting for reactions.

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E-Governance and E-Justice in the Space of Freedom, Security and Justice of the European Union, Fourth Edition -Bucharest, 24th -25th November 2022. Scan your life in digital era

Roxana-Daniela PAUN [1]

Abstract

"Distance doesn't separate people, silence does!" Artificial intelligence is a reality and it evolves every day, it simplifies life where it is used in the human's interest, being already applied in many fields. Is there any risk of moving away from the noble goal of being at the service of the collective good and of being used against people to limit fundamental rights and freedoms? Is there any risk that the totalitarian society will re-establish itself, this time on a global level? The current study presents, in summary, a first analysis of the latest developments in this field, starting from the Chinese experience, as far as it is known and popularized regarding facial recognition made by artificial intelligence for monitoring citizens for the social credit system.

Keywords: *database, artificial intelligence, digital life, facial recognition, citizen monitoring for the social credit system*

Motto: The truly good man is only
the one who could have been bad and wasn't – Nicole Iorga

Introduction

Conficius[2] identifies three methods of acquiring wisdom: the first is reflection, which is the highest, the second is imitation, the easiest, the third is experience, which is the most bitter.

In this study, I invite the reader to reflect, knowing that already in history the ancestral generations have repeatedly experienced totalitarian, dictatorial societies, confirming the third way identified by the great philosopher, experience, which is the most bitter. Rightly follows the question of what is the connection between artificial intelligence, modern technologies and the totalitarian, dictatorial society.

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[2] Chinese philosopher- 551 BC- 479 BC

What could be dangerous for the fundamental human rights and freedoms[3], and these acquired over time, with generations of sacrifice. Unfortunately, we recently experienced the pandemic that literally shut down the entire planet, limiting fundamental human rights and freedoms for medical reasons[4]. History will record the evidence that is now beginning to emerge, like oil on water, restoring the truth. Manipulation and disinformation techniques used by the leaders of the world according to the manual[5] cannot keep all the nations of the world away from the truth, sooner or later, those who really want to know the truth, will do it!

The current generation is at a crossroads, as were our predecessors during the previous industrial revolutions: 1700 – the invention of the steam engine which led to the emergence and development of factories and the textile industry; 1800- when manufacturing production was replaced by mass production, along with the development of steel production and electricity; 1900 – the invention of the computer and the Internet, 2000, the beginnings of research in the field of artificial intelligence, 2010 the launch by the Rockefeller foundation of the document ”Scenarios for the future of technology and international development”, 2020 the emergence of Artificial Intelligence (AI).

Using the Internet, the source of digital information, where you can find real information but also a lot of manipulation, from the apocalyptic scenarios of the disappearance of the planet, of alien invasion, which by the way, now their existence is recognized in the galactic space in which Earth is a planet like any other; we can easily realize that the manipulation through fear and the denial of some truths that are later confirmed, represents the way to sleep the consciousness of the planet's populations![6]

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[3] Magna Charta Libertatum – June 15, 1215, liberties / customary customs, Bill of Rights, 1689 – freedom of expression, no punishment / excessive / inhumane treatment, Bill of Rights, 1781 – development liberties, Declaration of the Rights of Man and Citizen, 1789 – individual rights / collective; women's rights; equal rights

[4] See Roxana-Daniela Paun, "Victims of the new forms of discrimination, reality of our contemporary modern society”, page 140-156, Volume of the Landmarks Conference on victimology, victimization and victims in/from Romania, first edition, made within the COST project CA18121: Culture of Victimology: understanding processes of victimization across Europe. "Remarks regarding victimology, victimization and victims in/from Romania” – Sitech publishing house, Craiova, 2021, ISBN 978-606-11-7920-6

[5] See Disinformation Treaty – From the Trojan Horse to the Internet VLADIMIR VOLKOFF

[6] See Roxana-Daniela Paun, "Victims of new forms of discrimination, reality of our contemporary modern society. Brief considerations regarding some legal, psychological, sociological implications of the health crisis on the victimization process generated by real discrimination between vaccinated/non-vaccinated” – pages 137-154, Volume of the Landmark Conference on victimology, victimization and victims in/from Romania, second edition, realized within the project COST CA18121: Culture of Victimology: understanding processes of victimization across Europe. – Landmarks regarding victimology, victimization and victims in/from Romania – Sitech publishing house, Craiova, 2022 – ISBN 978-606-11-8202-5

Artificial intelligence and manipulation of the masses through permanent monitoring through facial scanning

Starting from sci-fi books and movies, we find that technology has evolved almost identically to what was written and played in the movies: Jules Verne's submarine already seems like history, the flight to other planets is a reality, the use of the laser from Star Wars is now a reality in delicate and difficult medical procedures, teleportation and time travel will be confirmed for the public as soon as possible, being already scientific evidence of the phenomena that take place in the Bermuda triangle, the Philadelphia phenomenon, etc.

The publication by the New York Times of a book by the Chinese president of Google and Microsoft's research division, named after Kai Fu Lee, book entitled: ”The Superpowers of Artificial Intelligence, China, Silicon Valley and the New World Order". ("AI super power, China, Silicon Valley and the New World Power"), speaks for itself about preparing nations for the future. Do you remember the very appropriate period, of the medical dictatorship, when FB and Twitter accounts were closed, blogs with uncomfortable guests, whose opinions could not be censored in a live broadcast, online newspaper pages, information from the virtual environment regarding the pandemic, regarding the doctors who were dismissed from their positions if they had a different opinion than the orders given by the center, televisions were closed that tried to enlighten the population that had no other source of information, at that time, than the Internet!

"And in a society where everyone is digitally connected, the state can instantly turn someone into an outcast when algorithms make them radioactive, even to their own family members.”[7]

In China, artificial intelligence uses facial recognition to monitor citizens for the social credit system – is an article published on September 26, 2020![8]

The article details excerpts from the book Live Not By Lies ("Don't live by lies") and warns the reader of author Rod Dreher's belief that: the ”velvet totalitarianism” that is coming our way will be based on a social credit system similar to that used by Chinese to control the masses and compel them to conform without having to resort to ”hard” methods.

It is interesting that, although the facts presented in the article, as quoted in the book, are real, being also taken over by the American journalist John Lanchester[9], nevertheless, there are reactions at the end of the article that tend to

[7] https://reactionarii.home.blog/2020/09/26/sistemul-de-credit-social-care-se-apropie/

[8] Idem 7

[9] „China is about to become something new: a totalitarian state empowered by artificial intelligence,” writes journalist John Lanchester. "The project aims not only to create a new kind of state, but also a new kind of human being who has fully internalized the demands of the state and the completeness of its supervision and control. Internalization with reason is actually the goal: state agencies won't even need to step in to correct the citizen's behavior because the citizen himself has already done it.”

discredit and ridicule these events that take place spend in China, a doctor's point of view.[10]

All those who throughout history managed to make revelations that, with all the opposition of those in power, crossed history and remained to be revealed to posterity, and proved to be real, in the times in which they lived, they were considered crazy, discredited, removed from their professions and even hospitalized in mental institutions, etc.

Do you think that by chance the archives of the American security services are secret for 50 years? It is the age of the contemporary generation with the events that should or should not be revealed as truth. For the rest, libraries can burn, we have enough examples in history, and now, when information is stored in servers, in the digital age we have entered and which is only at the beginning, it is all the easier . With a simple click on the computer key, or with a virus, the information disappears, the digital identity of the person disappears, and without it the person no longer exists.

Social credit, the road to the digital era and the disappearance of money in physical format.

For a totalitarian state like China, it is not a shocking thing, but for the rest of the planet, can anyone guarantee, at this time, that this system cannot be generalized?

A concrete argument, we can also find it in the indicated article, states that: ”we have evidence that the American industry is preparing for the implementation of a social credit system here in the USA. A reader who is an engineer sends me a briefing on this, and says that the central takeaway would be that the American high-tech industry is ready and willing to do it here.”[11]

A screenshot with the title of the material explains how the social credit market will work in America:

The company that sells this report is indicated in the article, and a selection of this report can be found in the appendix to this study. If you study carefully, including the content of the annex regarding the book ”Social Credit Systems are becoming Adjunct Health Protection Solutions”, does anyone doubt that the pandemic was part of the plan to forcefully introduce this plan to introduce social credit at the planetary level through the use of databases using AI, which will control EVERYTHING that moves on the planet?

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[10] Aaron Kheriaty, MD: Dispatch from the Front: In our psychiatric clinic I now see people of all political stripes who honestly believe the Apocalypse is coming. Literally. And I don't mean psychotic or manic individuals. Otherwise completely healthy people are terrified.- https://reactionarii.home.blog/2020/09/26/sistemul-de-credit-social-care-se-apropie/

[11] https://reactionarii.home.blog/2020/09/26/sistemul-de-credit-social-care-se-apropie/

Social Credit Market by Physical and Cyber Infrastructure (Sensors, Cameras, Biometrics, Computer Vision), Software (Machine Learning, Data Analytics, APIs), Use Cases, Applications, Industry Verticals, and Regions 2020 - 2025

ID: 5134311 | Report | July 2020 | Region: Global | 119 Pages | Mind Commerce

(Social Credit Market by Physical and Cyber Infrastructure (Sensors, Video Cameras, Biometrics, Computer Vision), Software (Machine Learning, Data Analytics, APIs), Use Cases, Applications, Vertical Integration and Regions 2020-2025)

Is it, in this context, justified to alarm world public opinion?

It is also interesting, how long will the material exist on the net? Why hasn't it been deleted or banned yet, as happened in many other situations during the pandemic, with information that was not approved, especially when it was proven scientific that things were not as the authorities presented them?

Beyond all these aspects, the fundamental problem remains, when the population will wake up that has the necessary training to enlighten others as well, the many, who currently allow themselves to be drawn into the mirage of convenience and comfort in which you expect someone else to work and you to receive social assistance, because that's all the state is for...?!?

Why did no one make a connection between the pandemic and the plantar lock-down as the first step towards giving up the current money and creating the digital currency, which is already a reality and the stages are advanced?

However, what is the connection between giving up cash and money in physical form in favor of a digital tool that is much easier to use, but also to monitor, a progressive element... but... does anyone still realize that ”the road to hell is paved with good intentions???”

Why China? A totalitarian state, where fundamental human rights and freedoms DO NOT EXIST!, from where it is difficult to find real information about what is happening, and precisely because, it seems hallucinatory,...no one takes seriously that a system is being experimented there of life, of slavery, which can then be generalized.

Respect for fundamental rights and freedoms is a wish in totalitarian states and still a reality in EU member states. Artificial intelligence is a reality and it evolves every day, it simplifies life where it is used in the interest of man, being already applied in many fields.[12]

[12] See the study “The role of blockchain technology in the universal metaverse from the perspective of competitive business relations. Challenges and uncertainties”, "The role of blockchain Technology in the universal metaverse from the perspective of competitive relations in business. Challenges and uncertainties”, presented at the CEN 2022 National Economic

It is undeniable the evolution of society and many fields of research that use modern technologies and AI in the discovery of new treatments for the cure of so far incurable diseases, this to consider only the medical field. However, who guarantees that the generalization of AI in the monitoring of every individual on the planet does not reduce to the point of cancellation fundamental human rights and freedoms recognized and applied by so many generations? It is a rhetorical question, to which we still do not have an answer, except only from the post-pandemic reality where, through the successive lock-downs, ALL fundamental human rights and freedoms have been violated, but the future and the way in which they react or not each individual will generate the fulfillment or not of the prophecies and/or forecasts of specialists for or against AI.

One thing is certain, that the entire society at the global level is obliged to adapt first to the experiments, which are then generalized and become, through their imposition by law, mandatory, depending on how those who are imposed react or not new rules that forcefully change their lives. Which of these forecasts, prophecies, forecasts, or whatever they are called according to their authors, will be confirmed as such or will be modified in the future, no one can know, however, in the post-pandemic period, many of the ”conspiracy theories” from that period they proved true.

There remains another question that awaits an answer: to what extent should we accept AI in our lives? The exclusive use of technology brings you to the stage of dependence, which also affects the ability of the brain to think without the support of technology. The human's natural ability to adapt is affected. A simple experiment can be an exercise in adapting and orienting a person without a mobile phone, without location applications (waze, google – share location, etc.) for example in a crowded city, behind the wheel of a car. The explanation: the brain is waiting for the application to give it the route to follow and then distributive attention is no longer used, panic sets in, especially if you also have horns that stress you, or around you there are streets with prohibited access. The whole brain is blocked and it is demonstrated by the specialists of other disciplines that in a state of fear, of maximum stress, the person remains paralyzed by fear, without reacting, or with prohibited reaction times.

At that moment, after years in a row someone else decided in your place, offering you comfort[13], i.e. ”civilized, pleasant existence, and above all the lack of care”, you become indifferent if you still have the rights and freedoms you once had, with which you were born, but which belong to you only because you were born in this century!

Conference, Challenges and trends regarding the implementation of blockchain and Big Data in company management, May 16-17, 2022,

[13] According to the dictionary definition, comfort: The totality of material conditions that ensure a civilized, pleasant, comfortable and hygienic existence.

The role of the pandemic in the implementation of population control through AI

After the end of the pandemic, information from a Rockefeller Foundation report, published by the president of Ghana[14], began to appear in an interview that went around the world in the online environment and where it is read from the depopulation agenda of the planet financed by Bill Gates, Fauci and the respective foundation.

Summarizing, the vulnerability of the immune system, through the lack of contact between people, with bacteria and viruses that activate the immune system of each person to fight as it has done since the beginning of man's existence on earth, has generated an increase in the risk of illness, through the lack of movement in the air free.

The effects of the world lock-down by keeping in quarantine for as long as possible led to the destruction of the economies of those countries/regions. The destruction of economies in turn generated social disturbances, unemployment, the drastic reduction of jobs with the disappearance of economic activities, service provision, the breaking of the food chain caused the beginning of a lack of food, which continues with the creation of the food crisis at the level globally, to accept new food resources made in laboratories, etc.

Non-compliance with the rules of the lock-down was manipulated to blame the populations that went to get their hair cut and walked outdoors (we also remember the closure of parks and outdoor recreation places) for the manifestation of freedoms that had consequences unlucky. The new and tougher quarantine, experienced and applied differently in Europe, the USA, Australia, Canada, but also in other countries of the world, is the optimal solution for maintaining the state of fear, which will paralyze the attitudes of people who have complied, to some extent measure, willingly renouncing their rights and liberties, being lied to that they are doing it for the common good, knowing that the mass media did not report the uprisings of citizens in the various states during this entire period.

Despite the medical opinions of some immunologists, who began to react and explain that the medical measures and procedures adopted by governments at the recommendation of the WHO, which later became mandatory, are not effective, and are even dangerous in the medium and long term for people's health divided every country, region, continent and even the whole planet into pro and anti-vaccinists. However, social networks were invaded by images, photos, live or recorded films, with the uprisings of free citizens from democratic states who demanded their rights and freedoms back, information that could not be stopped, even if accounts were closed of FB, televisions, etc.

[14] former lawyer specialized in human rights

Extrapolating, gradually, the modern man of the contemporaneity accepted out of fear, with great ease, through manipulation, the harsh experiments during the pandemic, which were different, for example in the European states[15], turning the entire planet into an experimental laboratory. The attached photo is an example of an experiment: what protection do you have in a closed pool from those panels??? As if the air only circulates near the panel.

However, the hilarious measures, scientifically unjustified, the plan revealed by the president of Ghana by reading the report[16] of the mentioned foundation which foresees the stages of the planned global pandemic, after the creation of a contagious virus but with a low mortality rate, detailed steps by phases, with the general diagram and predicted results, compulsory vaccination and certification plan for everyone, with vaccination verification/certification protocols (digital ID); they generated and fed fear in the entire population of the world, and this changed the behavior in the medium and long term at the individual level.

At the psychological level, everyone's behavior has changed, loneliness even generating mental illnesses, treated of course with drugs for the enrichment of Big Pharma. If vaccines are no longer sold, drugs for mental illnesses developed post-pandemic are sold.

In the same document cited in the interview of the president of Ghana[17], the new economy model Microsoft Patent 060606 is explicitly mentioned, the cryptocurrency system that uses data of bodily activity, based on human behavior and the disposition to obey. Version of the technology seen in the

[15] Different lockdowns in the EU states, experiments in the theater half of the hall with a mask, half without, then testing all the spectators if they got infected or not?!?

[16] Rockefeller – Lockstep 2010

[17] Nana Akufo Addo, President of Ghana, former lawyer specializing in human rights Nana Akufo-Addo was inaugurated as the President of Ghana in 2017

episode ”15 million merits” from the TV series ”Black Mirror"[18], in which water, food, shelter and other essential elements are used as a weapon to force the implementation of the New Economic System based on earned credit points to -ensures you the necessities of life, to survive, if you comply with the system and do not oppose it, that is exactly the system applied in China, the subject of our analysis. In a dictatorship like the one in China, whoever does not obey is sanctioned, loses credit points and can no longer secure the things necessary for survival. Goodbye rights and freedoms! And this foreseen since 2010, at the time when the whole planet was quietly dealing with development, progress, not realizing what it was going to ”experience”, according to the report, which until now is proven by what was revealed by the president of Ghana, and not only that they realize gradually, step by step, according to the scenario considered until recently a conspiracy, in order to be discredited and not attract the attention of humanity, except at a moment when things are so advanced, that nothing can frustrate their diabolical plan!

An example where AI is already being used is the car of the future, the autonomous car, without a driver. Advantage, you will have time to do something else on the way to work, long-term effect, assured urban transport, the disappearance of personal cars, currently used argument, the reduction of carbon emissions. And again, sci-fi films from the 1990s-2000s produced by Hollywood are becoming reality. The movie ”Equilibrum” is another example of our future that is getting closer! (I recommend watching it for those who haven't seen it yet!)

Another material made by HBO on 12 Dec 2018 about China's ”Social Credit System” Has Caused More Than Just Public Shaming is edifying to understand how AI is introduced in the life of the common man.[19]

„China is testing a new plan to urge its citizens to do more good and be more trustworthy – the Social Credit System. It’s kind of like the American credit score, except it tracks far more than financial transactions. It tracks good — and bad — deeds. Part of the system is a neighbor watch program that's being piloted across the country where designated watchers are paid to record people's behaviors that factor into their social credit score. A high score could bring you lower interest loans and discounted rent and utility bills, but if your score is low, you can be subjected to public shaming or even banned from certain kinds of travel, life gets hard. China's economy has exploded over the past decades, economic reforms required banks to be able to evaluate individuals looking to borrow money to buy houses or start new businesses. Fraud and excess

[18] See min. 12.30 of the interview of the president of Ghana regarding the plan to depopulate the plant recorded in a report of the Rockefeller foundation from 2010

[19] https://www.youtube.com/watch?v=Dkw15LkZ_Kw- China’s "Social Credit System” Has Caused More Than Just Public Shaming (HBO) 12 dec. 2018 DONG HUO TANG ZHAI, RONGCHENG

borrowing were rampant because most people didn't really have much of a credit history. To measure its citizens' trustworthiness, in 2014, The State Council laid out a plan that aims to build a centralized database to evaluate individuals and organizations based on their financial and social behaviors. The program is scheduled to be nationwide by 2020, which means every Chinese citizen will be tracked, scored, and receive perks and restrictions accordingly.”[20]

Conclusions:

Is there any risk that the totalitarian society will re-establish itself, this time on a global level? At the World Economic Forum in Davos, 2020, the historian, philosopher, author Yural Noah Harari, speaks from the podium of the forum about the dangers of AI: ”rise of the data colonialism and digital dictatorship.”

Listen to everyone, but think with your mind, because you will walk with your feet. In a virtual environment where there are many fake news, but where there are also credible sources, but which are eliminated from the virtual space because they do not fit into the ideological line of the moment, ”He who learns, but does not think, is lost, but also that who thinks, but does not learn, is in great danger. (one of the 10 laws of Conficius)

Corroborating what Nicola Iorga said: ”As those who do not learn from the mistakes of history, they are condemned to repeat them”, we note that just as the Spanish flu pandemic of 1918-1919 wreaked havoc in the USA, then it expanded and in France, Belgium and Germany, after 100 years, the Covid pandemic is repeating history.

In the sphere of economic crises, after the crisis of 1929-1933, after 85 years, the liquidity crisis of 2018, again repeated the template of the crisis of 1933, another proof that human history repeats itself, and people from different generations and paradoxically from highly evolved and developed societies, repeats the mistakes of previous crises, proving that it is for nothing that they have specialists from all fields, including historians, who are not heard by those who have to manage the fate of the peoples of the world in different eras!

Digital life in the digital age that is still at the beginning, that is, our entire life, including commercial transactions, is monitored automatically, in the databases in the servers that use AI, and the credit-based society begins to take shape when money in the form physics disappear, and this moment is very close. The financial world is already used to cryptocurrencies and their fluctuations on the monetary markets, and the return to the gold standard, at the beginning of monetarism, seems like a chimera, and by no means a saving solution that could get the world out of the crisis.

[20] Idem 19, prezentarea filmului

Which crisis? Here appears the ever-increasing sphere of crises with which we are threatened as if to confirm the ”so-called conspiracy theories”, which part of them are already confirmed by everyday realities! Health crisis, liquidity crisis, economic crisis, energy crisis, renewable resources crisis, ecological crisis, water crisis, etc....

Concluding on the Chinese social credit system, Chinese with high social credit scores earn privileges. Those with a more modest score find that everything is more difficult for them in everyday life. They are not allowed to buy high-speed train tickets or plane tickets. The doors of certain restaurants are closed to them. Their children risk not being allowed to pursue higher education. He may lose his job and find another one with great difficulty. And a social credit violator will find himself isolated, because the algorithmic system also relegates those connected to him.

Could this be the model that wants to be generalized at the planetary level? It remains to be seen, and the future will confirm or deny what is currently already a reality in Chinese society.

However, Europe should learn from what is constructive and generates positive results in the short and long term in society, for example in the way adults treat the baccalaureate in Asian countries.

South Korea, Japan and China, the centers of intelligence, respect the exam period in a way that demonstrates care and concern for the training of the young generation, ensuring equal conditions for all young people who appear for their maturity exam!

Thus, all activities that produce noise are stopped completely on exam days, so as not to disturb the students' concentration; in South Korea taxi drivers transport students to high schools without payment; there are companies that give all employees time off to ease traffic on the days when the national baccalaureate is scheduled.

The baccalaureate in China, the financial center of the world, where in June there are three exams per day of two and a half hours each, is treated with great seriousness by the authorities, who have regulated pecuniary sanctions for those who make noise (constructions, urban transport, etc.) during the national exams. Education in the mentioned countries is placed in the first place, even if it is unanimously recognized that it puts a lot of pressure on young people who later develop mental disorders generated by stress and the belief that this exam is decisive for their future and that of their family. (This pressure has a legal explanation, because in these countries, the labor legislation does not provide for the European pension. Thus, parents who have reached the age at which they can no longer work, remain in the responsibility of the children, receiving only a compensation at the last salary, considered as a fund of retirement. Hence the tradition of the three generations raising the same roof, Grandparents raise

grandchildren and extend their lives by remaining active, parents work and support children at schools and universities, and children learn. When they create their own family, it is also the exchange of generations, according to the same model.)

There are cases in South Korea where young people who were not at the top of the ranking in the regular exams, including the baccalaureate and admissions to top universities, committed suicide as a result of social, parental, family pressures, etc.

The use of AI in neurotechnology, for the development of the implant that will connect the human brain, therefore the man of the future, to the computer, directly by thinking

Confirming as if once again the speed with which AI is progressing, on December 1, 2022, Elon Musk, the head of Tesla, SpaceX and other start-ups, during a presentation of the progress of Neuralink, the company that belongs to him, confidently declared that ”in in six months, his neurotechnology start-up Neuralink will be able to implant its first connected device in a human brain, to communicate with computers directly through thought”, informs AFP, quoted by hotnews.ro[21]

Confident in his own investments in people and technology, Musk confirms that he ”submitted all the documents to the FDA” (the agency responsible for public health in the United States)[22], in order to receive approval from the competent American structures, and estimates that ”within six months he will could have the first implant in a human". This statement comes after as early as 2018, Musk declared, in a public presentation at Neuralink, that he aims to obtain the approvals by the end of 2020. Then, he declared, at a another conference, that they hope to begin human testing by the end of 2021, after receiving FDA approval.(20/08/2022)[23]

So things are not working as Elon Musk wants, the proof is in the investigation launched after 1500 monkeys, pigs and sheep died in the experiments to implant wireless chips in the brain. The news published on Dec 6, 2022 by New York Post and picked up in Europe[24], confirms that the realm of human connection through AI, practically robotizing the human being, a divine creation, is far from being realized, as the supporters and executors of the New World Order want, which they no longer shy away from talking about, as

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[21] https://economie.hotnews.ro/stiri-it-25936291-elon-musk-spune-conecta-creierul-uman-computer-prin-dizpozitivul-neuralink-sase-luni.htm- 1 dec 2022

[22] FDA= Administrația americană pentru Alimente și Medicamente

[23] https://www.digi24.ro/stiri/externe/elon-musk-incearca-sa-obtina-un-acord-cu-dezvoltatorul-de-cipuri-cerebrale-synchron-dupa-ce-neuralink-compania-sa-a-ramas-in-urma-2054215-

[24] https://www.activenews.ro/stiri/Cipurile-implantate-in-creier-de-Elon-Musk-s-ar-putea-sa-mai-astepte.-Compania-Neuralink-este-anchetata-dupa-ce-1500-de-maimute-porci-si-oi-au-murit-in-experimentele-de-implantat-cipuri-wireless-in-creier-177999- 6 dec 2022

happened a few years ago, when this topic was also considered to be the fruit of some people's conspiracy theories! The hijacking of the initial humanitarian intentions, to save people with serious illnesses and disabilities, is and remains a mechanism that has also been carried out on the occasion of other military experiments, which were then used on civilians as well.

"Elon Musk's Neuralink, a medical device company, is under federal investigation for potential animal welfare violations amid internal employee complaints that its animal tests are being rushed, causing unnecessary suffering and death, according to filings reviewed by Reuters and sources familiar with the investigation and the company's operations, the NewYorkPost reports."

In May 2022, Synchron, Elon Musk's Neuralink rival, begins testing the implant on the human brain.[25] ”Human trials on six severely paralyzed patients in the United States enrolled in the company's new clinical trial in New York and Pittsburgh to enable them to control digital devices hands-free using only their thoughts have begun,” as the firm is the only company that received US Food and Drug Administration (FDA) approval to conduct “clinical studies of a permanently implanted BCI. The company's innovative BCI technology uses blood vessels as natural highways to the brain. The paperclip-sized device called the Stentrode is implanted into the brain's motor cortex via the jugular vein in a minimally invasive procedure, (...) to translate brain activity into a standardized digital language, allowing patients to perform everyday tasks daily, such as texting, emailing, online shopping and accessing telehealth services without using their hands.”

“The company's new clinical trial, Command, is being conducted under the FDA's first Investigational Device Exemption (IDE). An IDE authorizes the use of a device in a clinical trial to collect data about its safety and effectiveness. ”The Command study advances the development of Synchron's technology through the feasibility stage as we prepare for our pivotal trial,” said Tom Oxley, CEO and founder of Synchron. Instead of piercing the skull, the Stentrod is fed through the patient's vein until it reaches the brain.” [26]

We see quite tough competition in this field, especially after Bill Gates, the founder of Microsoft, and Jeff Bezos, the founder of Amazon, invested in the start-up called Synchron. This is also confirmed by reality, Synchron being one step ahead of Neuralink,[27]

At the very end of the article, the result of the Pew Research Center survey, published in March 2022, showed that only 13% of Americans believed that

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[25] https://evz.ro/synchron-rivalul-neuralink-al-lui-elon-musk-incepe-testarea-implantului-pe-creier-uman.html 15 mai 2022

[26] Conform https://evz.ro/synchron-rivalul-neuralink-al-lui-elon-musk-incepe-testarea-implantului-pe-creier-uman.html- 15 mai 2022

[27] https://evz.ro/jeff-bezos-si-bill-gates-fondeaza-o-companie-care-concureaza-cu-neuralink.html- 10 ian 2023

technologies like Neuralink would be a good idea for society. About 78 percent of the 10,260 adults surveyed said they would not want a brain implant. In conclusion, Americans are hesitant about such technologies.”

The authors of the article state that ”our awareness of the potential abuse of any technology is the power to create a society that ensures that our natural rights are protected, according to the Conservative Daily News. ”[28]

The conclusion of what the digital world offers us can also be represented by the fact that using a computer, with an intelligent programmer, a specially created software, based on AI, can also result in the image of an impressive house in Bucharest, made by a photographer in the Art Nouveau style, and became viral on social networks, but.... which does not exist in reality! This brings up the dangers of replacing reality with artificial intelligence.[29]

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[28] Idem 27, Citat de https://evz.ro/jeff-bezos-si-bill-gates-fondeaza-o-companie-care-concureaza-cu-neuralink.html- 10 ian 2023

[29] Citește mai mult la: https://www.digi24.ro/stiri/sci-tech/lumea-digitala/foto-imaginea-virala-cu-o-casa-impresionanta-din-bucuresti-dar-care-nu-exista-2239733- 4 febr 2023

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https://reactionarii.home.blog/2020/09/26/sistemul-de-credit-social-care-se-apropie/

Includes evidence that American industry is preparing to implement a social credit system here in the US, according to the author's opinion.

Social Credit Market by Physical and Cyber Infrastructure (Sensors, Video Cameras, Biometrics, Computer Vision), Software (Machine Learning, Data Analytics, APIs), Use Cases, Applications, Vertical Integration and by Regions 2020 -2025) July 2020.[30]

"The honest jargon of bureaucrats masks a sinister reality:

Initially a trend largely perpendicular to public safety and internal security concerns, the market for social credit system infrastructure will eventually become an established component with a leading role in both public and business policies. This means that the systems will eventually be used for a variety of issues related to commerce and lifestyles, from risk assessment (access to credit, financing fees, insurance, etc.) to accessibility within public spaces, such as at concerts, sporting events and other places where the public gathers. Individuals with a high social score in the social credit market will benefit from preferential access to both real and digital assets.

The social credit system infrastructure includes analog and digital means of surveillance, Internet-connected devices such as smartphones and personally worn accessories, sensor-enabled physical objects in security systems, and surveillance devices that use biometrics and computer vision. Technologies include wireless broadband (WiFi, LTE, 5G), IoT, artificial intelligence (AI) algorithms, and big data analytics platforms, including related processes and procedures. Even though each of these systems has market value individually and can be used separately for various purposes, it is the convergence of these otherwise disparate technologies that will facilitate value within the social credit market. For example, combined AI and IoT systems will be used to identify important events that require immediate intervention, as opposed to those that will simply be archived.

An important thing to note here is the tremendous potential for overlap between the technologies used for social credit systems and other solutions such as public safety, homeland security, and many types of smart city management applications, including smart transportation (roads and streets, parking lots, autonomous vehicles, etc.), smart buildings, environmental monitoring (light, temperature, pressure, etc.). Many of these infrastructure elements are already included in smart city implementation projects, so they will be multifunctionalized to support the social credit market as well."

The link of the company that sells:

https://www.researchandmarkets.com/reports/5134311/socialcredit-market-by-physical-and-cyber

Presentation of the book: Social Credit Systems are becoming Adjunct Health Protection Solutions

This is the only report of its type to assess market opportunities for infrastructure support of the social credit market. The report evaluates market drivers, use cases, and

[30] https://www.researchandmarkets.com/reports/5134311/socialcredit-market-by-physical-and-cyber

consequential impacts/implications (anticipated and likely unanticipated) for social credit market implementation and operation.

The report also evaluates some of the leading companies that are anticipated to drive social credit market evolution. This report includes detailed quantitative analysis driven by market needs with forecasting for all major infrastructure elements from 2021 to 2026.

Select Report Findings:

- The COVID-19 pandemic has facilitated substantial interest in citizen monitoring solutions
- Infrastructure to support social credit systems represents a $16.1B global opportunity by 2026
- Cameras and other optical equipment for social credit systems will reach $723M globally by 2026
- Advanced computing will be used in conjunction with AI to provide nearly flawless identification and tracking
- Various forms of biometrics will be used for identity verification as well as verifying the presence/location of people
- Starting as tangential to public safety and homeland security, the social credit market becomes mainstream by 2026
- Social credit systems represent the ability to identify (mostly people but also some “things”) and track activities for purposes of grading behaviors and applying “social credit” scoring. A given grading/scoring methodology depends largely on social credit system objectives and metrics.

However, most systems will have socially acceptable behaviour at their core. This presents both a challenge and an opportunity as a combination of government, companies, and society as a whole must determine “good”, “bad”, and “marginal” behavior within the social credit market.

Beginning as a trend largely orthogonal to public safety and homeland security concerns, the market for social credit system infrastructure will ultimately become a mainstream component of both business and public policy.

This means that systems will ultimately be used for a variety of commerce and lifestyle-related issues ranging from risk assessment (access to credit, financing fees, insurance, etc.) to accessibility within public places such as concerts, sporting events, and other assemblies. High social scoring individuals within the social credit market will be granted preferred access to both real and digital assets.

Social credit system infrastructure includes analogue and digital surveillance, Internet-enabled devices like smartphones, wearable devices, security systems, sensor-enabled physical objects, and surveillance devices that use biometrics and computer vision. Technologies include broadband wireless (WiFi, LTE, and 5G), IoT, AI algorithms, and big data analytics platforms, processes, and procedures.

While each of these systems has market value individually, and are deployed separately for various purposes, it is the convergence of these otherwise disparate technologies that will facilitate value within the social credit market. For example, combined AI and IoT systems will be leveraged to identify important events that require immediate action versus those that are merely archived.

It is important to note that there is great overlap between the technologies used for social credit systems and other solutions such as public safety, homeland security, and smart cities applications of many types including smart transportation (highways and surface streets, parking, autonomous vehicles, etc.), intelligent buildings, environmental monitoring (light, temperature, pressure, etc.). Many of these infrastructure elements are already planned for smart city implementations and will, therefore, be multi-purposed including support of the social credit market.

In terms of physical infrastructure, social credit systems will rely upon various forms of equipment and platforms including sensors, biometrics, cameras, and other optical devices, computer vision systems, and other advanced computing platforms.

Cyberinfrastructure includes platforms, devices, and software to support data processing and correlation with identity information, which shall leverage AI, IoT, and advanced data analytics. The main purpose for all the aforementioned infrastructure elements is to capture data, which must be stored and acted upon as appropriate.

At the heart of social credit, systems are large-scale data repositories that may store virtually any type of data that may be correlated to or associated with citizens and businesses in terms of both identity and behaviors.

This includes raw observational data as well as listings (white, grey, red, and black) and meta-data to tie together data elements and allow for ease of information queries. Without the use of AI and big data technology, it would be problematic to implement social credit market systems in a meaningful way as massive amounts of disparate data must be correlated.

With the purchase of this report at the **Multi-user License or greater level**, you will have access to **one hour** with an **expert analyst** who will help you link key findings in the report to the business issues you're addressing. This will need to be used within three months of purchase.

This report also includes a **complimentary Excel file** with data from the report for purchasers at the **Site License or greater leve**l.

Legal Aspects and Legal Considerations Regarding the Application of the Correct Relevant Legal Provisions Regarding the Length of Service and the Period of Contribution to be Taken into Account in the Case of Individual Part-Time Work Contracts

Dan RAICIU[*],
Anca RAICIU[**]

Abstract
The present approach addresses the legal provisions regarding seniority and the contribution period that are taken into account, in the case of employees under individual employment contracts with part-time, for the stipulation of salary rights in the budgetary sector, respectively the contribution period in the public person system.

Keywords: *individual part-time work contract, seniority in work, contribution stage, social insurance system, employee rights, salary rights.*

The analysis we propose presents a theoretical and practical importance, at least from the point of view of age in work and the contribution stage that are taken into consideration, in the case of **employees under individual labor contracts of part-time work**, *for the establishment of salary rights, in the budgetary sector, in relation to their work age*, **respectively** *of the contribution stage that are taken into account in the public pension system.*

I. *The first* aspect on which we stop, refers to the length of work that is taken into account, **in the case of employees under individual labor contracts with part-time,** *for the establishment of wage rights in the budgetary sector.*

Taking into consideration that according to the previsions in art. 104 paragraph (1) in the Law no. 53/2003 – The Labor code[1] : "*The employer may hire employees with a fraction of norm through individual employment contracts for an indefinite or determined duration, called individual contracts of part-time*

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[1] Published in Romania's Official Journal, Part 1, no. 852 from December 20, 2010, further changed and completed

work”. According to the previsions of art. 106 paragraph (2) in the same normative act: “*The salary rights are granted in proportion to the actual time worked, in relation to the rights established for the normal working hours”*.

According to the previsions of art. 10 paragraph (1) of the framework Law no. 153/2017 on the remuneration of the personnel paid from public funds[2] : “*the basic salaries are differentiated by functions, grades/steps”, and gradations*”, and grades and gradations in paragraphs 4-6 of the same article, are provided for the seniority paths in work depending on which the 5 graduations are granted, provided by law no. 153/2017,within each degree/ professional steps, aiming for the next graduation to be granted with the ate of the first day in the month following the one when the conditions for granting have been fulfilled, and in the case of new staff, the graduation is granted corresponding to the seniority held in the work.

Taking into account the legal previsions presented, **two possible ways of applying them are separated,** in the case of employees who have worked with individual contracts of part-time**, for granting a higher grade, in relation to their seniority**, *during the execution of the individual labor contract* **or** at the hiring as new staff:

a). an interpretation/ method of application is that when calculating the seniority periods stipulate by the law for grating the graduation, the period worked on the basis of the individual labor contract with part-time, to be taken into account **in proportion to the actual time worked, relative to the normal working hours** (full-time);

b). another interpretation/ application method is that when calculating the seniority periods stipulated by the law for granting the graduation, the period worked on the basis of the individual labor contract with the basis of the individual labor contract with part-time, **to be taken into account in full.**

We appreciate as correct the second way of applying the law, from the following legal considerations:

- according to the previsions of art. 16 paragraph (5) of the Labor code **“the work performed under an individual labor contract constitutes seniority in work”.** Therefore, by applying the argument of legal logic according to which where the law does not distinguish even the one applying it is not allowed to distinguish, the work performed under an individual labor contract constitutes seniority in work, regardless of the type of contract (full-time or part-time);
- according to the previsions in art. 106 paragraph (1) in the labor code “*The employee with a part-time individual labor contract* **enjoys the rights of full-time employee, under the conditions provided by the law and the**

[2] Published in Romania’s Official Journal, Part1, no. 688, from September 10,2015, further changed and completed

applicable collective labor contracts ". Therefore, *all rights* (**seniority in work,** rest leave, sick leaves, etc.). From this rule, **by way of exception**, in paragraph (2) of the same article, it is stipulated that the salary rights are granted in proportion to the actual working time related to the salary rights established by the normal work program. Since the exception is a structural interpretation, this prevision cannot be extended, for example, by analogy, to other rights, such as the calculation of seniority in work.

We conclude, showing that the legal dispositions invoked establish that the employee with a part-time individual employment contract enjoys the same rights as a full-time employee from the same unit, who performs the same or similar activity, with the same professional qualification, **in terms of length of work**.

II. The second aspect concerns the way to take into account the period worked under an individual employment contract with part-time when determining the contribution period in the public social security system – in whole or in proportion to the actual time worked?

According to the previsions in art. 6 paragraph (1) n the Law no. 263/2010 concerning the unitary *public pension system*[3,] in the public pension system, **the persons who carry out activities on an individual labor contract** are necessarily insured. We note that even in this case, it does not distinguish in relation to the type of individual labor contract (full-time or part-time). Consequently, it is due and withheld, according to the previsions mentioned in Law no. 263/2010 and Law no. 227/2015 – The tax code[4], the contribution of social insurances from all persons working under an individual labor contract, throughout the period during which the contract is in performance, regardless of the type of contract – full-time or part-time.

According to the previsions in art. 3, paragraph (1) letter p in the Law no.263/2010, *the contribution period represents the period for which the social security contributions in the public pension system were due.*

Therefore, since the employees with individual labor contract with part-time necessarily contribute to the public pension system, during the period of the contract, **this period constitutes a full contribution stage**, regardless of the amount of the contribution.

The contribution of the European Court of Justiceto the European Integration

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Abstract

The key institutions created since the founding Treaties of the European Communities have played a crucial role in moving the European project forward during the integration process. Among these institutions, the European Court of Justice (ECJ) is an important institution in the European Union (EU) that has significantly influenced the EU policy for decades. The aim of the present article is to give an analysis of the Court's evolution, function and main decisions, as well as its role as a political player capable of advancing European integration. The Court, according to the article, has advanced the integration process in some significant ways by clarifying and extending EU law. The Court, on the other hand, is principally a legal institution of the European Union, which is an intergovernmental organization. As a result, its polictical power and role are constrained by the rules of the Treaties, and Member States continue to be the primary decision-makers in the EU.

Keywords: *European Court of Justice, European Union, European Integration, case law, EU Law*

1. Introduction.

The European Court of Justice (ECJ) is an important institution of the European Union (EU). It is one of the oldest legal institutions that facilitated the formation and development of the European Union. It is an independent institution that evaluates European Union law and verifies that important decisions made for the EU are compliant with the law. This paper seeks to explore and examine the ECJ's role in the European integration beyond its judicial function; it aims to determine if the ECJ's role has an active or passive effect on European integration over the years.

The ECJ's historical background will be discussed in the first chapter of the article. It will briefly cover the Court's origins and significance in the EU's evolution.

The ECJ's role and structure will be discussed in the second chapter, including how it functions, the actors involved, and the important sub-levels that make up the ECJ.

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The third chapter of the paper is dedicated to a study of the European Integration, which includes a historical context as well as the current situation. It will also include a debate of different perspectives on the future of the European Integration as it faces modern difficulties in the 21st century.

Finally, the conclusions will summarize the main points raised in the study. This will briefly bring up an essential element in the ECJ debate.

2. The European Court of Justice – Origins and Significance in the EU's evolution

The concept of settling conflicts through a series of court hearings, as well as the justification of a due process were historically ingrained in European decision-making practice. ”The Court of Justice rests on a strong European tradition.”[1] Europe's democratic norms and principles are deeply institutionalizing in its approach to conflict resolution, as seen by the founding of the European Court of Justice (ECJ). The European Court of Justice (ECJ) is one of the most important and oldest founding institutions of the European Union.

The ECJ acts as a supranational court and as an independent unit; it may have functions similar to those of national and constitutional courts, but it is not one, and it cannot be considered as an international court.[2] It is a unique court that evolved from a very European model. The ECJ's function was to create an ever-increasingly integrated union of European nations. The ECJ lives by the statement *une certaine idée de l'Europe*, an affirmative notion that Europe joins together with a common or a 'certain idea of law' after the Second World War. According to Article 164, ”The Court of Justice shall ensure that in the interpretation and application of this Treaty the law is observed.” This is a key statement by which the Court lives, either directly or indirectly. The concept of the Law is viewed as the supreme 'telos' that guides the Court. Also, ”The Court acts as the conscience of the peoples of Europe.”[3]

As opposed to other European institutions, ”the visibility of the ECJ, compared to other EU institutions, is surprisingly high"[4], and the European Parliament is often seen as having greater importance than the European Court of Justice, which is considered by the majority of Europeans as equitable and subject to high expectations regarding efficiency. As a result of the

[1] Ditlev Tamm, *The History of the Court of Justice of the European Union Since its Origin* (The Hague: Asser Press, 2013), 10.
[2] Ditlev Tamm, *The History of the Court of Justice of the European Union Since its Origin*, 14.
[3] Harm Schepel and Erhrd Blankenburg, *“Mobilizing the European Court of Justice”* in The European Court of Justice, ed. Gráinne de Búrca and J.H.H. Weller (Oxford: Oxford University Press, 2001), 10-11.
[4] Schepel and Blankenburg, *“Mobilizing the European Court of Justice,”* 11.

constitutionalization process, the ECJ was also put under even greater ”spotlight,” as it is unavoidable for the court to stay out of political disputes.

The European Court of Human Rights (ECHR) was established for independent and specific purposes, and other international courts such as the Nuremberg Court for the trial of war crimes and the Court of the ECSC for transitional justice[5] were also established after the Second World War. In the past, the evolution of the ECJ was mostly influenced by earlier legal systems. Intensive discussions between the German Constitutional Court (Bundesverfassungsgericht) and the Italian Supreme Court (Corte Constituzionale) developed the current model of the European Court of Justice (ECJ) by incorporating common principles, duties, and practices from both national supreme courts. Throughout time, the Bundesverfassungsgericht and Corte Constituzionale came to recognize the supremacy of the ECJ in the European legal field.[6]

The European Court of Justice (ECJ) was established in 1951 with the specific purpose of interpreting the European Coal and Steel Community (ECSC) Treaty. But the ECJ's authority was extended beyond merely interpreting the law; it also had the power to conduct trials and appeals, impose the necessary sanctions, and, in certain cases, to overrule the actions of other institutions. The Court's mandate was extended in 1957 by the Treaty of Rome, which also required the ECJ to meet with lower courts and ensure that Community Law was implemented constantly. Additionally, the Court it was the Treaty of Rome which formally institutionalized the Court.[7]

A supporting institution was established in response to the continually increasing volume of cases. In September 1989, the Court of First Instance (CFI) was founded to support the main Court's operations. The CFI was requested by the main Court, ”to maintain the efficiency and quality of judicial scrutiny in the Community legal system.”[8]

The European Court of Justice was given additional authority and was reorganized in 1993 by the Treaty of the European Union. According to the Treaty, the ECJ may ”impose a lump sum or penalty payment if member states fail to comply with a judgment.”[9] The Court would need to monitor the actions of the European Central Bank and examine the laws passed by the European

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[5] Ditlev Tamm, *The History of the Court of Justice of the European Union Since its Origin,* 15.

[6] Ditlev Tamm, *The History of the Court of Justice of the European Union Since its Origin,* 12.

[7] Susanne Svensson, *“European Integration and the ECJ”* (Lund University, 2008): 1, http://lup.lub.lu.se/student-papers/record/1316466

[8] E. Van Ginderachter, *“The Court of First Instance of the European Communities – an infant prodigy,”* 2.

[9] European Sources Online, *“Information Guide: Court of Justice of the European Union”* (Cardiff University, 2013): 2, aei.pitt.edu/74891/1/Court_of_Justice.pdf.

Parliament in addition to its regular responsibilities.[10] The following tasks were specified in the Treaty of Amsterdam regarding the jurisdiction of the European Court of Justice: fundamental rights, immigration, asylum, free movement of persons, judicial cooperation in civil cases, and police and judicial cooperation in criminal matters.[11]

The European Court of Justice (ECJ) has made decisions that have influenced EU law and the Court since its founding. A few of the important decisions in history are the Francovich case verdict from 1991, the Van Gend en Loos rule from 1963, and the Costa v. ENEL decision from 1964.[12] The 1963 Van Gend en Loos ruling focused on the rights of individuals that EU Law and the member states need to acknowledge and also consider, ”established the principle of 'direct effect', by stating that: 'independently of the legislation of Member States, Community law ... not only imposes obligations on individuals, but is also intended to confer upon them rights which become part of their legal heritage."[13]

The Costa v. ENEL case from 1964, which held that ”the law stemming from the treaty... could not, because of its special and original nature, be overridden by domestic legal provisions ... without being deprived of its character as Community law and without the legal basis of the Community itself being called into question,” significantly established the superiority of Community law over national law.[14] Individual rights „ to claim compensation for injury suffered where the State fails to implement EC Directives punctually and properly” were implemented on a case-by-case basis by the Francovich verdict of 1991.[15]

The 2007 Lisbon Treaty pushed for significant changes to the Court of Justice's function. First, the legal system was reorganized, and the Court of Justice of the European Union was established. This court is made up of the three main courts in the system: the Civil

Service Tribunal, the General Court, and the Court of Justice.[16] Second, because the Maastricht Treaty rendered the previous pillar structure ineffective, the ECJ's jurisdiction has expanded to include EU law. The area of freedom, security, and justice under Articles 35 and 68 of the Treaty of Lisbon was included in the scope of the ECJ's preliminary opinion due to the extent of the

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[10] European Sources Online, *“Information Guide: Court of Justice of the European Union,”* (Cardiff University, 2013): 3.
[11] Ibid
[12] Ibid
[13] Ibid
[14] Ibid
[15] Ibid
[16] European Commission, *“The Treaty of Lisbon and the Court of Justice of the European Union,”* European Commission Press Release No 104/09, November 30, 2009, http://europa.eu/rapid/press-release_CJE-09-104_en.htm?locale=en.

Court's reformed role. This necessarily and explicitly emphasized the Court's jurisdictional limitations.

The ECJ's preliminary verdict was considered binding and superseded the national courts of European member states in the part on police and judicial cooperation in criminal matters. The police and criminal justice departments will be recognized by the General Law as part of the reform, and the courts and tribunals will have the ability to request a preliminary ruling from the ECJ.[17] According to a press release from the European Commission, ”any national court or tribunal – no longer just the higher courts – will now be able to request preliminary rulings, and the Court will have jurisdiction to rule on measures taken on grounds of public policy in connection with cross-border controls.”[18] This means that the court will have jurisdiction over cases involving immigration, asylum, visas and human mobility.

3. The Role and Structure of the European Court of Justice

Articles 220 - 245 of the Treaty of Rome defined the ECJ's scope and said that its main objectives were to ensure that EU law was interpreted clearly and that EU member states and institutions complied with it.[19] The ECJ’s duties include ”references for preliminary rulings from national courts on interpretation of EU law; actions brought by an EU country or the Commission against an EU country for infringing EU law; some actions brought by an EU country for annulment of a measure adopted by an EU institution; actions against an EU institution for failure to act; appeals on points of law against judgments of the General Court.”[20]

Eleven advocates general and one judge from each of the EU's member states compose the ECJ, which has its seat in Luxembourg. The 47 judges that now make up the General Court will be increased to 56 judges in 2019. Judges and advocates general are appointed to a six-year term.[21] The judges in each member state are chosen based on their qualifications, which include having an outstanding professional work experience in the legal field and meeting the requirements to represent their respective member states in the highest court.[22]

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[17] European Commission, *“The Treaty of Lisbon and the Court of Justice of the European Union.”*
[18] European Commission, *“The Treaty of Lisbon and the Court of Justice of the European Union.”*
[19] EUR-Lex: Access to European Union Law, *“Glossary of Summaries on Court of Justice”,* http://eur-lex.europa.eu/summary/glossary/court_of_justice.html.
[20] Ibid
[21] *“Court of Justice of the European Union (CJEU),”* European Union, last modified April 29, 2018, https://europa.eu/european-union/about-eu/institutions-bodies/court-justice_en#composition
[22] Selin Ece Güner, *“The Role of the European Court of Justice in the Integration Process of the European Union”* (Masters Diss., Middle East Technical University), 21.

To ensure equal representation, judges are chosen from among all EU member states; however, each member state has a different selection procedure for its representing judges. A number of national selection procedures are carried out by uniformed judicial appointment boards, while some members elect the judges who represent them through the legislature or legislative chamber.[23]

The qualifications and selection procedure for Advocates General are similar to those of judges. The Court may also ask for an increase in the number of Advocates General who have been appointed. The remaining member states choose their Advocates General on a rotating system, with the five largest member states appointing permanent candidates. The Advocate General's task is to offer a first opinion on issues and cases that the Court must decide. The Advocate General's opinion has no effect on the Court, even if the first opinion is favorable.[24]

As underlined in the Treaty of Lisbon, the European Court of Justice, also called the Court of Justice of the European Union, was divided into two courts: the Court of Justice and the General Court. The main body for national courts to appeal the preliminary rulings is the Court of Justice. It deals with undertakings related to appeals and the annulment of certain EU laws that are thought to violate EU Treaties or fundamental rights. On the other hand, the General Court decides on actions for annulment filed by private companies, individuals and EU offices. State aid, agriculture, trade-related issues and competition law are all handled collectively by the General Court.[25]

Three to five judges each compose a chamber in the Court of Justice. A President may be re-elected once throughout their three-year term of office in each of the chambers. In addition, there is the Grand Chamber, which is presided over by the President of the Court and has 15 judges. ”The Court shall sit as a full Court where cases are brought before it pursuant to Article 228(2), Article 245(2), Article 247 or Article 286(6) of the Treaty on the functioning of the European Union.”[26] The official working language of the Court is in French.

4. European Integration – Historical context and current situation

For the past sixty years, European Integration has been seen as a positive and successful development in European history. There are several eurosceptic theories that have emerged in recent years, some of which include theoretical

[23] Ibid

[24] Ibid

[25] *“Court of Justice of the European Union (CJEU),”* European Union, last modified April 29, 2018, https://europa.eu/european-union/about-eu/institutions-bodies/court-justice_en#composition.

[26] *“Statute of the Court of Justice of the European Union,”* Consolidated version, https://curia.europa.eu/jcms/upload/docs/application/pdf/2016-08/tra-doc-en-div-c-0000-2016-201606984-05_00.pdf.

arguments about how the current global challenges have shifted political agendas and interests. Nevertheless, there is no denying that integration has brought about peace, stability, cooperation, and continuous development – achievements never made by the European leadership before in modern history.

Since the early 1950s, there has been significant progress in European integration, with numerous treaties adopted to strengthen, improve, and develop Europe. The establishment of a common market, currency, and foreign policy was, for example, initiated and pioneered by the 1957 Treaty of Rome.[27] Germany, Italy, France, the Netherlands, Belgium and Luxembourg were the six founding countries of Europe. From those six, 27 cooperative European states have since developed.

The EU's historic expansion is a proof of its efficiency and the advantages it offers its members. For example, the year 2004 marked the largest enlargement of the European Union when ten countries were able to accede to the Maastricht criteria and become members of the EU. The ten countries are as follows: Poland, Czech Republic, Estonia, Cyprus, Latvia, Lithuania, Hungary, Malta, Slovakia and Slovenia. The EU now has a much promising and stronger future as a result of the enlargement.

The European Union is the main institution responsible for efficiently communicating and delivering the collective opinions and concerns of its member states. It is a global power with an exemplary institutional model. The EU functions under regulations and is legally limited by its treaties; decisions made in the EU institutions are made by or through its member states. The values of the EU – the rule of law, democracy, protection of human rights, freedom, and equality – should also be emphasized. The EU's leaders and institutions are expected to act in accordance with these fundamental values, which are established by the treaties.

"At the heart of its contribution lie the benefits of economic integration."[28] Europe was able to recover from World War II and establish a durable, long-term solution for peace and stability thanks to the idea of uniting the continent into a single market. The idea of removing obstacles to allow for the movement of people, goods, services, trade and commerce allowed for development and improvement beyond the economic sphere. Today, the EU has one of the biggest economies in the world, that includes rich sources and centers for investment.

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[27] Nasos Mihalakas and Frances Karas, *"The Future of the European Union: After 60 Years of European-Style Integration, Time to Learn from Others,"* Diplomatic Courier, June 6, 2017, https://www.diplomaticourier.com/2017/06/06/future-european-union-60-years-european-style-integration-time-learn-others/.

[28] John McCormick, *"The European Union: Success or Failure,"* in *Key Controversies in European Integration*, ed. Hubert Zimmerman and Andreas Dür (UK: Palgrave macmillan, 2012), 14.

Despite being relatively recent, the Euro is currently the second most traded and exchanged currency in the world. According to reports, the EU's GDP growth in 2016 was 1/7% higher than that of the US and the combined GDP, which was $17 trillion.[29]

The EU has to face a number of contemporary challenges as integration grows. These difficulties have led to conflicts, tensions and inefficiency at the negotiating table. The EU is currently dealing with a number of real geopolitical crises, including the migrant issue. Millions of displaced people, most of whom are from the Middle East, are escaping nations devastated by war. The EU's leaders and member states have different opinions regarding the immigration crisis. While the fact that some member states have more tolerant laws and policies towards refugees and immigrants gives some hope, it is obvious that xenophobia still exists in some regions, especially in those countries that have suffered atrocious terrorist attacks and are blaming the high immigration flow for increasing rates of crime and violence.

The EU has made significant improvements to its policies and procedures in order to handle the migrant crisis in a more systematic way. The European Agenda on Migration, which the EC created in 2015, served as the basis for the EU's migration policy development in previous years.[30] The purpose of the created migration strategy was to save lives by

establishing a safer route through legal channels, which will also be able to eliminate smugglers and human traffickers. Also, the policy aims to control and reduce irregular migratory flow crossings.

5. Conclusions

The role of the European Court of Justice to the European integration can be argued as active, and more importantly, extremely important for the future. The European Union has developed not only in its political, social, and economic pillars, but also in its legal field thanks to the integrational work the European Court of Justice has committed to delivering. Since its founding as a pioneer EU institution that provided legal interpretation for the European Community, the ECJ has gone through multiple changes and reforms. With the support of the Court of First Instance, the ECJ's role and organizational structure have evolved to comply with various legal responsibilities.

The ECJ is a strong, independent institution that functions with an outstanding degree of autonomy. It has also shown itself to be an efficient

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[29] Mihalakas, Naso and Karas, *"The Future of the European Union: After 60 Years of European-Style Integration, Time to Learn from Others."*

[30] European Commission, *"The EU and the Migration Crisis,"* July 2017, accessed on April 25, 2018, http://publications.europa.eu/webpub/com/factsheets/migration-crisis/en/#what-is-refugee-crisis

institution despite a number of political challenges. The Cassis case, in which the European Commission, the European Parliament and the member states collaborated to harmonize policies, is an excellent example of how the work of the ECJ has influenced cooperation and coordination among the EU institutions to improve their functions. If it continued to carry out its main responsibilities with integrity, the European Court of Justice (ECJ) would continue to be a strong and influential institution in advancing European integration in the years to come.

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Some Unconstitutional Aspects of Law no. 282/2023 Regarding the Amendment and Completion of Certain Rules in the Field of Employment Pensions and Law no. 227/2015 Regarding the Tax Code

*Constantin ZANFIR**

Abstract

The provisions of art. XVIII of Law no. 282/2023, which amend the provisions of art. 101 of the Fiscal Code, violate the provisions of art. 1 para. (5), art. 16 para. (1), art. 56, para. (2) and art. 139, paragraph (3) of the Romanian Constitution. The violation of these constitutional provisions is generated by the identical legal treatment of taxation established by the criticized legal provisions for the public pension system and the state military pension system. The state military pension system is not integrated into the public pension system, it has an autonomous character, based on independent organization, management and administration. According to the regulations of the special law, the state military pension system is a taxpayer, the individual contribution to the state budget of the military is identical in value and purpose to the individual contribution from the public pension system. As a consequence, for identical legal situations, an equal legal treatment of taxation is required.

Keywords: *progressive tax, discrimination, unconstitutionality, military pensioners, public pension system, military pension system.*

Law no. 282/2023 was adopted by the Romanian Parliament after its text was brought into line with the criticisms of unconstitutionality formulated by the Constitutional Court, through *Decision no. 467/02.08.2023*.

In this context, the above-mentioned law should have passed the test of a new constitutionality analysis, unfortunately, this is not the case.

We will analyze from this perspective only the provisions of art. XVIII of *Law no. 282/2023*, which amends the provisions of art. 101 of the *Fiscal Code*, although there are many other articles that, in our opinion, are unconstitutional.

The text of the provisions of art. XVIII, which we consider to be unconstitutional, is as follows:

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„Article 101 of, published in the Official Gazette of Romania, Part I, no. 688 of September 10, 2015, with subsequent amendments and additions, is amended and will have the following content:

Article 101

Pension income tax calculation and payment term

(1) Any payer of pension income has the obligation to calculate the tax monthly, according to the provisions of this article, on the date the pension is paid, to withhold it and pay it to the state budget by the 25th inclusive of the month following the month for which the pension is paid. Withholding tax is final tax.

(2) The monthly tax is determined by each pension income payer, as follows:

a) for the monthly income from pensions determined as a result of the application of the contribution principle, regardless of its level, from which the monthly non-taxable income ceiling of 2,000 lei is deducted, a 10% tax rate is applied;

b) for the monthly income from pensions that has both a contributory and a non-contributory component, from which the non-taxable monthly income ceiling of 2,000 lei is deducted, for the contributory part the provisions of letter a), respectively a tax rate of 10%, and for the non-contributory part the following tax rates are applied progressively:

(i) 10%, for the part lower than or equal to the average net salary;

(ii) 15%, for the part between the level of the average net salary and the level of the average gross salary used to base the state social insurance budget or equal to it;

(iii) 20%, for the part that exceeds the level of the gross average salary used to base the state social insurance budget;

c) for the monthly income from pensions that only has a non-contributory component, from which the non-taxable monthly income ceiling of 2,000 lei is deducted, the following tax rates are progressively applied:

(i) 10%, for the part lower than or equal to the average net salary;

(ii) 15%, for the part between the level of the average net salary and the level of the average gross salary used to base the state social insurance budget or equal to it;

(iii) 20%, for the part that exceeds the level of the average gross salary used to base the state social insurance budget.

The aforementioned provisions are unconstitutional for the reasons set forth below.

The amendment of art. 101 of the Fiscal Code in the form provided by art. XVIII of *Law 282/2003* violates the provisions of art. 1 paragraph (5), art. 16

paragraph (1), art. 56 paragraph (2) and art. .139 paragraph (3) of the *Romanian Constitution.*

1.Through *Decision no. 467/02.08.2023*, paragraph no. 165, the Constitutional Court of Romania observed that ”*taxation cannot have a punitive nature because it practically leads to a rethinking and an indirect restructuring of the calculation base itself of the service pension*".

However, referring to the state military pension system, regulated by *Law no. 223/2015*, progressive taxation violates the very principles of organization and operation of the system as a whole.

The basis for calculating the state military pension is the result of the application of the principles of uniqueness, equality and gratitude towards the loyalty, sacrifices and privations of the military service, principles provided by art. 2 of *Law no. 223/2015*.

The military system is an institution structured in a pyramidal way and functionally based on military discipline, a fact that allows it to fulfill the missions provided by art. 118 of the *Romanian Constitution*.

As a consequence, the state military pension system is a pyramidal one, generated by the status of the military and its own principles of organization and operation provided by *Law no. 223/2015*.

The rank and position held within the military hierarchy at the time of transfer to the reserve fundamentally determines the basis for calculating the state military pension. Different ranks and positions obviously result in a different military pension. However, progressive taxation practically cancels the military hierarchy and fundamentally changes the principles of organization and operation of the military pension system. A double income tax compared to that of military retirees whose pension is lower than the average net salary (20%) is unfair and leads to situations such as the military pension of an officer being lower than that of a non-commissioned officer. Although the tax base of an officer (calculated according to the rank and position held at the time of the transfer to the reserve) is higher than that of a non-commissioned officer, through progressive taxation it is possible to end up in the situation of changing the ratio in favor of the non-commissioned officer.

Under these conditions, the criticized text of the law sanctions, practically, by reducing, the pensions of soldiers who, at the time of their transfer to the reserve, had higher positions and ranks in relation to their subordinates.

Moreover, the sanctioning purpose of the law is stipulated in the Explanatory Memorandum of *Law no. 282/2023*. We quote in this regard, paragraph 2.3, paragraph 8, ”*The resizing of the amount of pensions....follows the fact that, in the amount of the public obligation to which the state budget is committed, the pension rights should decrease compared to this moment*„.

The objective is not ”*a fair settlement of fiscal burdens*”, as provided for in article 56 paragraph (2) of the Constitution, but the reduction of budget expenditures in violation of the constitutional provisions.

2. In addition to the punitive nature, the fiscal burdens imposed by the provisions of art. XVIII of *Law no. 282/2023* are discriminatory, introducing criteria that affect the equality of rights of citizens.

Under this aspect, the Constitutional Court of Romania also ruled through *Decision no. 467/2023*, paragraphs 166, 167 and 168, the criticisms formulated also being maintained in the current form of the law text. We quote:

"*The establishment of a tax by law must comply with at least four criteria: equity, proportionality, reasonableness and non-discrimination. The cumulative meeting of these four criteria legitimizes the establishment of a tax from a constitutional point of view. Through such conduct, the legislator fully respects the provisions of art. 56 and 139 of the Constitution, without affecting other fundamental rights and freedoms. On the other hand, non-compliance with these criteria with constitutional value implicitly leads to the violation of the fundamental right applicable in the case. With regard to the reasonableness and fairness of the tax, the Court finds that the legislator has the right to establish taxes to constantly and rhythmically feed the state budget, but must show particular care when establishing the taxable matter [Decision no. 940 of July 6 2010, published in the Official Gazette of Romania, Part I, no. 524 of July 28, 2010]. 168. As such, the legislator must show special care when determining,,* (paragraph 167 of *Decision C.C.R. no. 467/2023*).

3. Although, according to art. 64, paragraph (1), letter e of the Fiscal Code, the tax rate that applies to income is a single percentage of 10%, the calculation of tax on income from pensions, provided by art. 101, modified by art. XVIII of *Law 282/2023*, it is done in a discriminatory way and contrary to the above-mentioned principle, retaining a progressive tax rate of 10%, 15% and 20% respectively.

In this context, citizens in the same legal situation – income tax payers – are treated in a discriminatory way, the social category of pensioners, regardless of the pension system, imposing much higher fiscal burdens compared to other citizens.

The progressive tax rate of 10%, 15% and 20% is fundamentally different from that of other taxpayers and double the taxed value, aspects that violate the provisions of art. 16 para. (1) and art. 56 paragraph (2) of the Constitution, regarding the equal rights of citizens and the fair settlement of fiscal burdens.

4. Analyzing the provisions of art. XVIII of *Law 282/2023* related only to the system of military pensions, regulated by *Law no. 223/2015*, the progressive taxation of state military pensions has specific aspects of unconstitutionality,

violating the provisions of art. 16 para. (1) and art.56, paragraph (2) of the *Constitution*.

The state military pension system is an autonomous system, not integrated into the public pension system, based on independent organization, management and administration (art. 2 letter e) of *Law no. 223/2015*). It is governed by three fundamental principles:

- *the principle of uniqueness, according to which the state organizes and guarantees the state military pension system based on the same legal norms, for all its participants (art. 2 letter a);*

- *the principle of equality, which ensures all participants in the state military pension system a non-discriminatory treatment between persons in the same legal situation, in terms of the rights and obligations provided for by law (art. 2 letter b);*

- *the principle of gratitude towards the loyalty, sacrifices and privations suffered by soldiers, policemen and civil servants with special status from the penitentiary administration system and their families during their careers (art. 2 letter f).*

Under the rule of these principles and the State Military Pensions *Law, no. 223/2015*, a specific pension system was created for those who were in the service of the Romanian state.

However, the provisions of art. XVIII of *Law 282/2023* disrupt the entire system of state military pensions, so that military pensioners in the same legal situation are subject to discriminatory and punitive taxation. The higher the ranks and positions held when moving to the reserve, the higher the tax burdens, although the individual contribution to the state budget, percentage, is identical, 25%. Equal in rights and obligations, military pensioners should have been subject to equal tax burdens.

However, the criticized legal provisions violate the principles of the state military pension system and those of art. 16 para. (1) and 56 paragraph (2) of the Constitution.

5. By *Decision no. 467/02.08.2023*, the Constitutional Court of Romania retained the unconstitutionality of former article XV regarding the amendment of article 101 of *Law no. 227/2015* on the Fiscal Code, considering paragraph no. 164 as the basis of taxation, related concomitantly to a so-called non-contributory part of the service pension and to the level of the net average salary, is not clearly determined, having a confusing character and not meeting the quality requirements, which determined the conclusion of the violation of art. 1 para. (5) from the *Constitution*.

We appreciate that the new legislative form maintains and accentuates the above-mentioned reason for unconstitutionality, the violation of Article 1

paragraph (5) of the Constitution, by introducing the progressive tax for the military pension system, a reason that is added to the previously presented ones.

a) *The legislator does not establish a way of determining the pension according to the principle of contribution, which makes the rule deeply unclear and imprecise.*

Although the principle of contribution is enshrined in the public pension system, both by *Law no. 263/2010* and by *Law no. 127/2019*, in reality the concrete way of applying it depends on a lot of factors and, moreover, the differences are fundamental, even between the two laws.

b) *The confusion introduced by the provisions of art. XVIII of Law 282/2023 is even greater by applying the principle of contribution, a principle specific only to the public pension system and the state military pension system.*

„ *I previously emphasized that the state military pension system is not integrated into the public system, so that the principle of contribution defined and applicable only to the public system is not specific to military pensions.*

So legally there is no possibility of calculating state military pensions based on a principle that does not apply to them, a principle defined by the legislation of the public pension system.

According to *Law no. 263/2010*, art. 2 letter c), the principle of contribution, assumes that social insurance funds are established on the basis of the contributions owed by natural and legal persons participating in the public pension system, social insurance rights being on the basis of social security contributions paid.

Contrary to the above-mentioned principle, state military pensions are paid by the Romanian state, in whose service the soldiers were (Military cadres are in the service of the nation, art.1/*Law 80/1999*).

The source of funding for state military pensions is obviously the state budget.

From the perspective of the funding source, the state military pension system appears to be a non-contributory one, if we refer to the definition given to this principle by the public pension system legislation. However, from the point of view of *Law no. 223/2213/2015* on state military pensions, the military pay to the state budget, which is the source of payment of military pensions, the individual contribution rate equal to the individual social insurance contribution rate, currently 25%.

The individual contribution to the state budget of the military is a parafiscal task established by *Law no. 223/2015* (and not by the Fiscal Code) which, once fulfilled, creates the obligation for the state budget to ensure the payment of military pensions and other social benefits established by law. It is a constitutional obligation, provided by art. 139 paragraph (3) of the Constitution, we quote:

(3) The sums representing the contributions to the establishment of some funds are used, according to the law, only according to their destination.

The destination of the individual contribution to the state budget of the military is explicitly provided by the relevant legislation:

a) Law no. 164/2001, art. 78, introduces the individual contribution of the military to the state budget, we quote:

(2) From the date of entry into force of this law, the contribution for the additional pension will become an individual contribution to the state budget, for the benefits provided for in art. 4 (i.e. for the provision of state military pensions and social security rights provided for by law)

(3) The individual contribution rate is 5%. The monthly calculation base for which the individual contribution will be determined is the gross monthly salary.

b) According to art. 31 paragraph (1) of Law 223/2015,

(1) The individual contribution rate to the state budget is equal to the individual social insurance contribution rate.

In conclusion to the mentioned, from the point of view of the state military pension system, the military pension is contributory, during the military activity they performed a parafiscal task, and the fund thus created must be used only for the destination for which it was created, i.e. the payment military pensions and other social rights and obligations provided for by law.

As a consequence, the individual contribution of the military to the state budget is found in the state military pension, even if this, according to the specific principles that govern the system, is not highlighted by the method of calculating the amount of the pension.

Otherwise, in the hypothesis in which the individual contribution of the military to the state budget is not considered to be a contribution to the budget of the military pension system, part of the state budget, this would be unconstitutional, being violated the provisions of art. 139 paragraph (3) of the *Romanian Constitution*.

Under these conditions, the above-mentioned analysis highlights even more the confusing nature of the provisions of art. XVIII of *Law no. 282/2023*, so that they do not meet the quality requirements, violating the provisions of art. 1 paragraph (5) from the Constitution.

6. The progressive taxation of state military pensions, starting from the assumption provided by *Law no. 282/2023* that they only have a non-contributory component, under the conditions that the military pay an individual contribution rate to the state budget equal to the individual contribution rate of social insurance violates the provisions of art. 16 par. (1) but also those of art. 56, par. (2) and art. 139, par. (3) from the *Constitution*, from two perspectives:

a) ***in relation to retirees from the public pension system***, *military retirees are discriminated against by the fact that, although they pay an individual contribution to the state budget, equal in value to the individual contribution quota to the social insurance budget and identical in destination to the latter (payment of pensions and other social rights provided by law) military pensions are fully taxed with a progressive tax rate of 10%, 15%, 20%.*

Just as the individual contribution rate to the social security budget guarantees a pension calculated according to a formula provided by the law of the public pension system, so the military contribution rate to the state budget guarantees a state military pension calculated according to the principles that govern it.

Consequently, from the point of view of contribution, both types of pensions must be taxed identically. In identical legal situations-payment of an account of individual contributions equal in value and identical in purpose, equal legal treatment must be applied.

b) ***In relation to service pension beneficiaries from the public pension system***, *retirees from the state military pension system are discriminated against by the fact that for the part of the pensions paid from the state budget (which represents the integrated pension) they pay an individual contribution, in the conditions in which pensioners of the public system do not contribute to the state budget. As the legal situations are different, a different tax regime must be applied*. But, the provisions of art. XVIII from *Law no. 282/2023* introduce a progressive tax rate for the part of pensions financed from the identical state budget, without any distinction between pensioners who pay a contribution to the state budget (military pensioners) and those who do not pay this contribution (beneficiaries of pensions service from the public system).

In our opinion, the provisions of art. 16 paragraph (1), as well as those of art. 56, paragraph (2) and art. 139 paragraph (3) of the *Constitution*.

Reflections on the Non-Execution `of Court Decisions Issued by Administrative Litigation Courts

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Abstract

The legal sanctions provided by Article 24 of the Administrative Litigation Law No. 554/2004 are based on the premise of culpable non-execution of the court decision within the legal term. The presumption of fault is not absolute, as the head of the authority has the opportunity to provide evidence of substantial reasons for which the obligation was not executed, in whole or in part, within the legal term.

Key words: *Administrative Litigation, premise of culpable non-execution, Law No. 554/2004.*

The procedure for the forced execution of administrative litigation decisions, whereby the public authority is obliged to conclude, replace, or modify the administrative act, issue another document, or perform certain administrative operations (obligations to act that involve the personal conduct of the debtor), as regulated by Article 24 of Law No. 554/2004, before the entry into force of Law No. 84/2023, involves two stages:

a) In the first stage, according to Article 24, paragraph (3) of Law No. 554/2004, at the creditor's request, the enforcement court imposes a fine of 20% of the gross minimum wage per day of delay on the head of the public authority or, where applicable, on the obligated person, which is paid to the state budget. Additionally, the claimant is awarded penalties under the conditions of Article 905 of the Code of Civil Procedure (Article 906 following the renumbering after the republication).
b) In the second stage, the provisions of paragraph (4) of Article 24 of Law No. 554/2004, which partly overlap with the provisions of Article 906, paragraph (4) of the Code of Civil Procedure, stipulate that "If within 3 months from the date of communication of the order imposing the fine

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and awarding the penalties, the debtor does not fulfill the obligation specified in the enforceable title, the enforcement court, at the creditor's request, will set the final amount owed to the state and the amount owed to the creditor as penalties, by a decision given with the summoning of the parties."

During the stage of verifying the execution of the court decision, the court must analyze the period within which the public authority was required to enforce the court decision, the manner in which it was enforced, the fault of non-execution both of the head of the institution and the public authority, as well as the determination of the period of responsibility for which the sanction is imposed on the head and the public authority.

By decision No. 12/2018, the Panel for Resolving Legal Issues, in interpreting the provisions of Article 24, paragraph 4 of the Administrative Litigation Law No. 554/2004, with subsequent amendments and completions, established that:

- The term within which the creditor can request the determination of the amount owed by the debtor as penalties is 3 years statute of limitations for forced execution, regulated by Article 706 of the Code of Civil Procedure. This term starts from the date of obligation execution or, in case of non-execution, from the expiration date of the three-month period within which the debtor had the possibility to fulfill the obligation in kind.
- The penalties calculated as a percentage per day of delay are calculated from the moment indicated in the order issued within the procedure regulated by Article 24, paragraph 3 of Law No. 554/2004, with subsequent amendments and completions, until the obligation is executed, but no later than the expiration of the three-month period within which the debtor had the possibility to fulfill the obligation in kind, in case of non-execution.

According to Decision No. 12/2018, the Panel for Resolving Legal Issues, *from the analysis of paragraph (4) of Article 24, it results that after the expiration of the three-month period, it is considered that the coercive measures used have not been effective, and forced execution is not possible. This is why, after the expiration of this period, final amounts are determined both regarding the fines applied in favor of the state and the penalties awarded to the creditor. Moreover, through the same order, compensation for non-execution of the obligation is also awarded, under the conditions of Article 892 of the Code of Civil Procedure. The granting of these compensations for non-execution further confirms that, in the legislator's view, execution of the sentence after the expiration of the three-month period from the imposition of fines and penalties is no longer foreseeable. Considering this interpretation, the phrase "until the execution of the obligation*

specified in the enforceable title" should be understood to mean that at the latest, until the expiration of the three-month period regulated by Article 24, paragraph (4) of Law No. 554/2004, since after this period, an execution in kind of the obligation is no longer possible.

Regarding the period within which the administrative authority was required to enforce the enforceable title, it is specified that this must be within 3 months from the moment the fines and penalties were imposed. In this respect, it is considered that only after the judgment is communicated the authority can enforce the court decision as ordered by the court. There are numerous instances where the administrative authority enforces a decision without having its reasoning, which can sometimes lead to non-compliant enforcement of the decision, linking to non-execution of the enforceable title.

From the jurisprudence of the Bucharest Tribunal, Administrative Litigation Section, we observed a lack of uniformity. The court often assessed that the period within which the authority was required to enforce the court decision starts from the moment the decision is pronounced, not from the three-month interval from the moment the sanction was applied. This results in a significant confusion between establishing the period for sanctioning the non-execution of the court decision and determining the period within which it must be verified whether both the public authority and the head of the institution have enforced the court decision.

On the other hand, the Bucharest Court of Appeal has noted in numerous judicial decisions that the three-month period starts from the date the obligation is executed, or in case of non-execution, from the date of expiration of the three-month period within which the debtor could have executed the obligation in kind. This is the moment from which the creditor has the opportunity to file a request under the conditions of Article 24, paragraph (4) of Law No. 554/2004[1].

The court must prioritize verifying whether the decision is executed as stipulated in Article 24 (4) of the Administrative Litigation Law No. 554/2004. *If, within 3 months from the date of communication of the order imposing the fine and awarding the penalties, the debtor culpably fails to execute the obligation specified in the enforceable title, the enforcement court, at the creditor's request, will determine the amount owed to the state and the amount owed to the creditor as penalties, by a decision given with the summoning of the parties.*

Considering these legal provisions, it follows that the court is obliged to verify within 3 months from the communication of the order imposing the fine and awarding the penalties whether the debtor has executed the obligation specified in the enforceable title. If the court finds that the decision has not been

[1] Decision no. 2903/2023, pronounced in file no. 8619/2/2022.

executed within 3 months from the communication, it will establish both penalties and fines as ordered by the court.

The second aspect that the court must verify is the manner in which the institution has enforced the enforceable title. In this regard, it is noted that the creditor's unhappiness cannot be considered as non-execution of the court decision.

Regarding the creditor's unhappiness with the non-execution of the decision, judicial practice[2] has found that *the interpretation of the responses communicated to the petitioner does not lead to the conclusion that the obligations imposed on the public institution by the enforceable title have not been fulfilled. This is because the obligation to provide information, as defined in the enforceable title, was limited to the communication of public interest information actually held by the targeted public authority. There was no evidence presented that such information existed and was unjustifiably refused, despite being in the authority's records.*

The legal sanctions provided by Article 24 of the Administrative Litigation Law No. 554/2004 are based on the premise of culpable non-execution of the court decision within the legal term. The presumption of fault is not absolute, as the head of the authority has the opportunity to provide evidence of substantial reasons for which the obligation was not executed, in whole or in part, within the legal term.

At the same time, the legal mechanism regulated in Article 24 of the Administrative Litigation Law No. 554/2004 is based on the premise of culpable non-execution of the court decision within the prescribed term. The presumption of fault is not absolute, and the head of the authority can prove the existence of valid reasons for which the obligation imposed by the final court decision was not executed, wholly or partially, within the legal term. CEDO jurisprudence does not exclude, a priori, the consideration of circumstances that might justify the non-execution in kind or the delayed execution of a decision.

Another aspect that must be considered by the enforcement court is the period for which penalties are calculated under the procedure regulated by Article 24, paragraph 4 of Law No. 554/2004. Resolving this question involves determining, on one hand, the date from which penalties are calculated and, on the other hand, the date until which they continue to accumulate. As a principle, it should be noted that the application of penalties is carried out in the procedure regulated by Article 24, paragraph 3 of Law No. 554/2004, the court entrusted under this provision being obligated to establish the period for which penalties are calculated.

[2] Decision no. 924/2023, pronounced by the Bucharest Court of Appeal in file 6253/3/2022.

Regarding the date from which penalties are applied, the decision of the court entrusted under Article 24, paragraph 3 of Law No. 554/2004 has the authority of res judicata. The court entrusted with a creditor's request under Article 24, paragraph 4 of Law No. 554/2004 only has the competence to calculate the penalties according to the criteria established by the previous decision.

However, concerning the date until which penalties are established, Article 906, paragraph 3 of the Code of Civil Procedure, referred to by Article 24 of Law No. 554/2004, provides that penalties are established until the execution of the obligation specified in the enforceable title.

This phrase must be interpreted in the context of the entire Article 24 of Law No. 554/2004. A combined analysis leads to the conclusion that these penalties cannot mount up beyond the expiration of the three-month period within which the debtor should have executed the obligation.