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Content

Purchasing Power in a Single-Player Market Monopsony

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"*From all the bussines, none is greater than competition*"
Henry Clay

Abstract

Monopsony, an anomaly of the free market, breeds a realm of despair where a single player dictates the rules of the game. Sellers, under the tyranny of imposed prices and dwindling profits, struggle for survival. A thorough analysis is crucial to identify solutions that balance the scales and creates equitable, efficient markets where prosperity is not a privilege but a right for all participants.

Keywords: *monopsony, competition, prices, sellers, consumers, economy*

Introduction

In the modern economy, considering the continuous changes in the global economic landscape, addressing the matter of monopsony represents an important step toward understanding the complex dynamics that govern contemporary markets. Monopsony is a situation where there is a single major buyer in a market, which can lead to significant distortions in economic equilibrium. This distortion can affect both suppliers and consumers, influencing prices, quantities, and the quality of goods and services.

When a single player controls the majority of purchases in a market, it can dictate the terms of trade, determining the prices and quantities at which goods or services are willing to be sold or bought. This control over purchasing power can lead to anti-competitive behaviors, such as the exploitation of suppliers through the imposition of disadvantageous prices or conditions.

Furthermore, monopsony can also affect the dynamics of the labor market, limiting options for workers and exerting pressure on wages and working conditions. By analyzing and understanding the phenomenon of monopsony, we

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can identify associated risks and develop policies and regulations that protect competition and ensure a fair distribution of economic power among various stakeholders.

Defining and characteristics of a monopsony

I.1 Clarification of the Term "Monopsony" and the Distinction from Monopoly and Perfect Competition

To discuss monopsony, it is essential to have a clear understanding of the phenomenon of competition. The term "competition" comes from the Latin word "concurrere," which means "to compete." From an economic perspective, it can be defined as "a complex of specific regulations designed to ensure, in internal and international market relations, the existence and normal exercise of competition among economic agents, in the struggle to gain, expand, and retain clientele"[1].

In Romania, within the domain of competition, among the national legal regulations in the sphere of competition, the following can be mentioned: Law no. 15/1990 (with subsequent amendments and completions) regarding the reorganization of state economic units as autonomous administrations and commercial companies; Law no. 31/1990 regarding commercial companies, amended and republished; Law no. 11/1991 regarding combating unfair competition; and Law no. 21/1996 (republished) regarding the competition regime.

The provisions included in special laws are complemented by common law regulations provided in the Civil Code, the Penal Code, the Code of Civil Procedure, and the Code of Criminal Procedure.

From a legal perspective, Article 135, paragraph (1) of the Romanian Constitution offers us a general vision of the legal framework in which our market economy must develop: "The economy of Romania is a market economy, based on free initiative and competition"[2].

At the European Level the principles of competition policy at the European level have been established through the European Association Agreements. The European Agreement establishing an association between Romania, on the one hand, and the European Communities and their member states, on the other hand, establish the provisions related to competition policy in Chapter II – "Competition and other economic provisions."

[1] O Căpățână, Dreptul concurenței comerciale Concurența onestă, ed. Lumina Lex, București, 1992, p16

[2] Art. 135 din *Constituția României*

Regarding competition, it takes several forms, namely:

a) Perfect competition – a hypothetical and ideal form to which all market players should aspire, more precisely, a market in which no producer or consumer can influence prices.

b) Imperfect competition – occurs when the conditions for the existence of perfect competition are not met.

Monopsony, along with oligopoly and oligopsony, is a form of imperfect competition represented by the situation where there is a single buyer of an economic good. The etymology of the term monopsony comes from the Greek "monos", meaning single, and "opsonein", meaning to purchase, through the French "monopsone"[3].

Monopsony is a specific market situation where a single buyer controls the demand and price, exerting power over all sellers. A monopsony can be indetified, when certain companies or individuals position themselves as the sole purchasers of particular products. Although this market structure does not include competition among buyers, it can incite competition among sellers. These sellers may compete for the price offered by the monopsonist.

A monopsony allows a buyer to obtain benefits. For example, a sole employer wields power over the labor force. In this situation, employees act as suppliers who must agree to the lower wages and regulations set by the monopsonist. As a result, a buyer can save on wage costs and achieve higher profits.

Regarding monopoly, the term originates from the Greek words "monos" – one, single and "polein" or "polist" – seller.

A monopoly is a situation of imperfect competition, characterized by the existence of a single producer who dominates the market, imposing not only the price and quality but also the quantity of products on a large number of buyers. Thus, a monopoly eliminates any competition and is considered the main enemy of competition.

Both market structures combine characteristics of imperfect competition. They differ because a monopsony controls the demand for items, while a monopoly controls the supply of products.

I.2 Classification of monopsony

In an attempt to better understand the phenomenon, although there is no universally accepted classification, monopsony can be classified based on the following criteria:

a) by the number of monopsonists:

- single monopsony – a single buyer dominates the market. For example, the state-owned company "Electrica" holds a dominant position in the

[3] Roxana Paun, Formele concurenței, note de curs, https://ush.blackboard.com

electricity market in Romania, being the sole electricity provider for the majority of the population.

- multiple monopsony – several buyers hold significant power in the market, influencing prices and purchasing conditions. For example, the automotive industry in Romania has several car manufacturers such as Ford (Otosan) Craiova and Renault (Dacia Mioveni), but these manufacturers face a limited number of auto component suppliers, thus creating a situation of multiple monopsony for certain components

b) level of market control

- strong monopsony – there is significant control over the market, with a high market share and considerable bargaining power. An example of this is the company "Medtronic", a leader in the medical devices market, which holds a significant market share for certain types of cardiac implants (Micra pacemaker), giving it substantial bargaining power with hospital units.
- weak monopsony – the monopsonist has less control over the market, being limited by the presence of other buyers or the possibility that sellers may turn to other markets. An example would be the supermarket chain "Kaufland," which holds a dominant position in certain regions of Romania but faces competition from other supermarket chains (Auchan, Carrefour), limiting its market control.

c) kind's of goods or services:

- monopsony for goods – the monopsonist purchases specific goods, such as raw materials or components. For example, the petroleum company "OMV Petrom" purchases large quantities of crude oil from local producers, holding a dominant position in the crude oil market in Romania.
- monopsony for services – the monopsonist purchases specific services, such as labor or consultancy. An example is the airline company Wizz Air, which has a significant market share on routes in Central and Eastern Europe, holding a monopsony position at certain airports in the region. This has led to intense negotiations with the airports, with Wizz Air demanding significant fee reductions to maintain its profitability.

d) type of buyer:

- public monopsony – the government or a governmental agency acts as the monopsonist, purchasing specific goods or services. For example, the Ministry of National Defense purchases weapons and military equipment from a limited number of producers, holding a dominant position in the arms market in Romania.
- private monopsony – a private company holds a dominant market position, acting as a monopsonist. For instance, the company "Amazon"

holds a dominant position in the e-commerce market, with a significant market share and considerable bargaining power with suppliers.

In addition to these main criteria, monopsony can also be classified based on other aspects, such as the nature of the market, price dynamics, and strategies adopted by the monopsonist.

It is important to note that classifying monopsony is complex, and a single classification cannot capture all the nuances and varieties of this type of market structure.

I.3 Characteristics of a monopsony market, including influence on prices and quantities

As mentioned above, a monopsony market is defined by the existence of a single dominant buyer who possesses significant power to influence prices and market conditions. Unlike a competitive market, where numerous buyers dictate prices through their individual demand, a monopsony market offers sellers few options.

If we were to establish essential characteristics of the monopsony market these would be:

- a single dominant buyer, basically there is only one economic entity that controls the majority of demand;
- bargaining power, the monopsonist has significant bargaining power over sellers, being able to dictate lower prices and more favourable terms for purchases.
- control of sales, in which the monopsonist, due to its purchasing power, gets to dictate to a significant extent the market conditions, including setting prices and contract terms, which sellers are forced to accept in order to sell their services or products.
- lack of competition, characterised by the absence of other significant buyers who can create competition and offer advantageous prices to sellers.

These significant characteristics implicitly influence prices, leading to:

- lower prices for the monopsonist – this occurs because the monopsonist can exploit the lack of competition to negotiate lower prices with sellers.
- prices lower than in a competitive market for goods – sellers are forced to accept lower prices than they would in a competitive market because they lack viable selling alternatives.

Monopsony can thus lead to lower prices for the buyer, but also to lower than market prices for sellers, limiting competition and reducing economic efficiency.

I.4. Advantages and disadvantages of monopsony

A monopsony market is characterized by the presence of a single dominant buyer who wields significant power to influence prices and market conditions. In contrast to a competitive market, where numerous buyers dictate prices through their individual demand, a monopsony offers sellers limited alternatives.

This market structure presents both advantages and disadvantages, impacting both the monopsonists and the sellers.

a) Advantages of monopsony:

- bargaining power – the monopsonist holds significant bargaining power over sellers, allowing them to dictate lower prices and more favorable purchasing conditions. This can lead to substantial cost savings for the monopsonist, thereby increasing their profit.
- market control – the monopsonist controls a major share of the demand, granting them significant influence over prices and production. This control can be beneficial for the monopsonist as it allows for more efficient planning of operations and risk minimization.
- access to resources – the monopsonist may have privileged access to certain resources, such as raw materials or labor, due to their dominant market position. This can provide the monopsonist with a significant competitive advantage.

b) Disadvantages of monopsony:

- lower prices for sellers – sellers are forced to accept lower prices than they would in a competitive market because they lack viable alternatives. This can lead to reduced profits or even losses for sellers.
- decline in quality – a monopsony can lead to a decline in the quality of products or services, as sellers are forced to accept lower prices and may be tempted to cut costs by sacrificing quality.
- limitation of innovation – a monopsony can stifle innovation, as sellers have less incentive to invest in research and development, knowing that the monopsonist has the power to dictate prices.
- lack of competition – a monopsony limits competition in the market, which can reduce the diversity of options available to consumers and potentially increase prices in the long term.
- inequality -a monopsony can favor the monopsonist at the expense of sellers, leading to an inequitable distribution of income.
- exploitation of labor – a monopsony can facilitate the exploitation of workers, as they have few employment options and may be forced to accept unfavorable working conditions.

The monopsony market has both significant advantages and disadvantages. The monopsonist can benefit from lower prices and increased market control, but this can lead to negative consequences for sellers, such as lower prices, poorer product quality, and lack of innovation. Additionally, monopsony can limit

competition, favor inequality, and facilitate the exploitation of workers. It is important for regulatory authorities to be aware of the potential negative effects of monopsony and to take measures to protect consumer interests and ensure fair competition in the market.

Case study – Alcohol commercialization in Sweden

Sweden, a Nordic country located in Scandinavia, has a population of approximately 10.4 million inhabitants. It is a constitutional monarchy led by King Carl XVI Gustaf and a parliamentary democracy with a prime minister as the head of government. Sweden largely enjoys a temperate maritime climate, with cool summers and cold winters.

During World War I, alcohol consumption was strictly rationed. Beginning in 1914, a system of individual alcohol consumption rationing was introduced at the local level in various regions, known as the "Bratt System" (after Ivan Bratt, a Swedish doctor and politician), using a "motbok" (a rationing book or register). In 1919, the system was adopted nationally and was used until 1955 when "Systembolaget" was established.

In 1922, by a referendum they attempted to introduce a total restriction on alcohol consumption, known as "Rusdrycksförbud." The vote took place in 1922, resulting in the rejection of total prohibition (49% of participants were in favor, while 51% were against)[4].

In 1955, Systembolaget was established nationally as the sole legal retailer allowed to sell alcoholic beverages with an alcohol content higher than 3.5%. This replaced the previous local rationing systems (the system using the "motbok" was abolished, and the rules were simplified and clarified).

Alcohol consumption was negatively affected, increasing by 25% in the first year after the establishment of Systembolaget. This situation forced the Swedish legislature to impose an age limit and increase the taxation level on alcoholic beverages. The age limit was set at 21 years until 1969, when it was reduced to 20 years. Sales are allowed only with a valid identification proving the buyer's age.

The production, commercialization, and consumption of alcohol in Sweden are regulated by the "Alcohol Act" – Alkohollag (1994:1738), which was replaced in 2010 by Alkohollag (2010:1622) and later amended in 2023 by SFS 2023:427. The Alcohol Act is issued by the Ministry of Health and Social Affairs and is structured into 13 distinct chapters, namely:

- Chapter 1: Introductory Provisions
- Chapter 2: Manufacturing, etc.
- Chapter 3: General Provisions on Sales
- Chapter 4: Wholesale Trade, etc.

[4] https://historia.ro/sectiune/general/prohibitia-in-europa-571598.html#google_vignette

- Chapter 5: Retail Trade
- Chapter 6: Trade in Technical Spirits and Alcoholic Preparations
- Chapter 7: Commercialization of Alcoholic Beverages and Alcohol-like Preparations
- Chapter 8: Serving Alcoholic Beverages and Alcohol-like Preparations
- Chapter 9: Supervision, etc.
- Chapter 10: Appeals
- Chapter 11: Sanction Provisions
- Chapter 12: Confiscation
- Chapter 13: Registers

The law regulates both the production, commercialization, and serving of alcoholic beverages as well as sanctions for deviations from its provisions.

From the perspective of the monopsony concept, Chapter 5 of the Alcohol Act, Retail Trade, mentions: "For the retail sale of spirits, wine, strong beer, and other fermented alcoholic beverages and preparations similar to alcoholic beverages, there must be a limited liability company established specifically for this purpose (the retail company). The company is state-owned.[5]" Thus, it is quite clear that the state holds a monopsony position, being the only entity that buys alcohol wholesale and sells it at the retail level.

As i mentioned, Systembolaget Aktiebolag (commonly referred to as Systemet or Bolaget) is a state-owned company that holds a statutory monopoly in Sweden regarding the retail trade of spirits, wine, and beer with an alcohol content exceeding 3.5% by volume. The purpose of Systembolaget is to contribute to better public health by limiting the harm caused by alcohol. The mission of Systembolaget, as presented on their official website, is to sell alcoholic beverages with exclusive rights and with responsibility and good service, as well as to inform about the harmful effects of alcohol.

Currently, in Sweden, there are 452 Systembolaget stores, plus approximately 470 small representatives of Systembolaget from where beverages can be ordered and then picked up later[6].

Analyzing the alcohol sales system in Sweden, through this totalitarian form of competition known as monopsony, we can say that there are both advantages and disadvantages, namely:

a) Advantages

- reduction in alcohol consumption – according to available studies, it has been demonstrated that the sale of alcohol through Systembolaget has contributed to a significant reduction in per capita alcohol consumption.

[5] Idem 5

[6] https://www.omsystembolaget.se/foretagsfakta/systembolaget-i-siffror/butiker-och-ombud/

- decrease in social problems – one of the biggest issues was the suicide rate of individuals due to the climate in combination with alcohol consumption. Other social problems such as crime, traffic accidents, and domestic violence have significantly decreased.
- control over marketing campaigns – the state, through Systembolaget, strictly controls alcohol marketing, limiting the public's exposure to promotional messages.
- variety of products – the system allows the commercialization of a wide range of products, thus satisfying the diverse preferences of consumers.
- responsible consumption – the system promotes and encourages responsible alcohol consumption through education campaigns and support programs.

b) Disadvantages

- prohibitive prices – alcohol prices are very high compared to other European countries. However, this disadvantage can also be an advantage as it financially discourages alcohol consumption.
- limited access – the limited number of stores, along with reduced operating hours, creates discomfort for consumers due to queues and lost time.
- lack of competition – this inevitably leads to poor quality of services offered by Systembolaget.
- control system – this state mechanism for selling alcohol is viewed by critics as a social control tool that limits consumer freedom.

Systembolaget has demonstrated effectiveness in reducing alcohol consumption and the associated social problems. However, high prices, limited access, and lack of competition remain areas for improvement.

It is important for Swedish authorities to continue evaluating the system and implementing measures that balance the benefits with the disadvantages. A well-regulated system can contribute to responsible alcohol consumption and a healthier society.

Although the issue of this system of selling alcohol has been raised, see Klas Rosengren and others v Riksåklagaren[7], Sweden manages to maintain its stance on the sale of alcohol (Systembolaget) despite strict EU regulations on free trade by invoking specific exceptions in EU law.

[7] https://curia.europa.eu/juris/document/document_print.jsf;jsessionid=F7443C2D8C604EC3B67EC7BC3E2D7B00?docid=57874&text=&dir=&doclang=RO&part=1&occ=first&mode=DOC&pageIndex=0&cid=2874342

Thus, Sweden invoked two exceptions:

- public health exception – Article 36 of the Treaty on the Functioning of the European Union (TFEU)[8] allows member states to maintain restrictions on the free movement of goods justified by reasons of public health protection. Sweden successfully argued that Systembolaget plays an important role in reducing alcohol consumption and its negative consequences, thereby contributing to public health protection.
- public order and safety exception – Article 36 of the TFEU[9] also allows member states to maintain restrictions on the free movement of goods justified by reasons of public order, public security, or environmental protection. Sweden argued that Systembolaget helps maintain public order by reducing access to alcohol and promoting responsible consumption.

In addition to these exceptions, Sweden maintains Systembolaget due to other factors such as social control. Systembolaget, being owned and operated by the Swedish state, provides the government with significant control over alcohol sales. This control has allowed Sweden to implement specific social policies through Systembolaget, such as promoting responsible alcohol consumption and supporting local alcohol producers.

Another factor is public support. Despite criticisms regarding Systembolaget, public opinion in Sweden generally remains favorable toward this alcohol commercialization system. Many Swedes believe that Systembolaget contributes to reducing alcohol consumption, promoting social order, and protecting the Swedish drinking culture.

It should be noted that maintaining the Systembolaget system has generated controversy. Some critics believe that this system limits consumer choices and increases prices. There have also been concerns regarding the transparency and accountability of Systembolaget. Nevertheless, Sweden has managed to maintain its system by invoking EU exceptions, demonstrating its effectiveness in public health and social control, and benefiting from significant public support.

Conclusions

Monopsony is a serious economic issue that can have significant negative consequences for sellers, consumers, and the economy as a whole.

On one hand, monopsony can lead to lower prices for the buyer, but it negatively impacts sellers, forcing them to accept lower prices and unfavorable purchasing conditions. This situation can lead to reduced profits or even losses for sellers, limiting competition and affecting economic efficiency.

[8] https://eur-lex.europa.eu/resource.html?uri=cellar:2bf140bf-a3f8-4ab2-b506-fd71826e6da6.0001.02/DOC_2&format=PDF

[9] idem 9

On the other hand, monopsony can limit the options available to consumers, leading to less product and service diversity (inevitably poor quality of services offered by Systembolaget) and higher prices in the long run. Additionally, monopsony can facilitate the exploitation of labor and contribute to an unfair distribution of income.

Addressing monopsony requires multifaceted thinking. Governments can adopt antitrust laws that prohibit or regulate monopsonies, promote competition by subsidizing small sellers, or facilitate the entry of new competitors into the market. Furthermore, governments and non-governmental organizations can raise awareness about the negative effects of monopsony and educate consumers about their options.

Specific solutions may vary depending on the market context and the specific characteristics of the monopsony. However, by implementing effective policies and promoting competition, it is possible to combat monopsony and create a more equitable and efficient market.

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The Managerial Investment Decision in the Improvement of Civil Servants in the Field of Accessing Structural Funds – the Key to Success. Theoretical and Practical Aspects

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Abstract

The implementation process of non-reimbursable European funds and national structural funds is incumbent on the civil servants involved, in addition to the obligation to comply with national legal provisions; the principles underlying the exercise of the public function and the provisions of the European Union regulations in this regard, which will have the purpose of implementing the allocated financial resources through appropriate management, the correct and transparent use of development funds. They are obliged to respect the moral and deontological values of the profession which are highlighted by a behavior appropriate to this profession – satisfying the needs of the citizen and by the efficiency with which the administrative act is completed. Within the central and local public administration there is a direction, a compartment or a delegated person who deals with attracting and implementing European or structural funds. The result of its activity is determined by the financial resources attracted through various operational programs and implemented punctually. In order to achieve maximum efficiency, the civil servant, in addition to the ability to efficiently organize the administrative activity, must have a high degree of conscientiousness towards the service he provides, doubled by professionalism and continuous professional training, 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 and involvement will generate excellent results for the community, for the benefit of the citizens of the city, be it city or village/community. Attracting European funds by local public authorities is a challenge, due to the fact that the excessive bureaucracy required to complete the process of approving the funding requests required by the specialized structures in Brussels is arduous and cumbersome. Continuous professional training, courses, debates and individual deepening of the knowledge of each civil servant create an appropriate climate for maximizing the results obtained and contribute to the development of the administrative structure that ultimately benefits from the respective funding.

Keywords: *Structural founds / civil servants / continuous professional training*

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Research motivation and methodology

"*If you want success in life, make perseverance your best friend, experience your wise counselor, caution your elder brother, and hope your guardian genius." (Joseph Addison)*[1]

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, we will have as our main goal the economic development of the communities and creating appropriate living conditions.

The leaders of the central or local public authorities want, during the time period in which they carry out their activity, to exploit the potential of the officials to the maximum. The financing opportunities, all the possibilities of economic and social development and implicitly the creation of a stimulating and competitive business environment, will result in new, well-paid jobs and implicitly an increase in the standard of living.

In order to achieve the above, the authorities must create their own operating mechanism of the compartment specialized in accessing European funds, from the procedure of identifying the funding source, request, application, signing, acquisition, implementation, monitoring and completion of the access procedures both of the structural funds applicable at the national level, and of the European funds. The ability to attract funds differs from one institution to another, due to the number of officials and especially the degree of professionalism and professional training. Here comes the ability of the management of the territorial administrative structure to understand the importance and practical efficiency of creating a body of specialized and efficient civil servants!

98% of the civil servants who directly deal with the implementation of the projects are graduates of higher education who must be very well prepared for the performance of their duties, because the results of the execution of their duties can be observed throughout Romania, from projects from large infrastructure (highways, viaducts, railway modernization) to small infrastructure projects (rehabilitation of cultural homes, human dispensaries, streets, parks, etc.). The implementation of these projects in different segments (education, culture, health, economy, etc.) has the direct effect of increasing the quality of human life as a whole. The implementation of the projects has a positive impact on the state, county, local budgets and especially on the private environment.

In this sense, for the desired positive results, the professional training, professionalism and involvement of the official must be at a high level.

The general objective of this research paper is to contribute to clarifying the importance of continuous professional training of civil servants in the process

[1] https://www.brainyquote.com/quotes/joseph_addison_400057- *Joseph Addison* – english essayist, poet and politician (1672-1719)

of attracting European, structural and other funds for central and local public authorities, based on funding standards and procedures.

The specific objective of this research paper is:

• Continuous professional training 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 "*The managerial investment decision in the improvement of civil servants in the field of accessing structural funds – the key to success. Theoretical and practical aspects."* it is 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

"*Vocational training is a learning process (training) through which people acquire new theoretical and practical knowledge, as well as skills and techniques to make their work more effective."*[2]

The human resources market in Romania has started to experience, in recent years, essential changes. If until 1990 the essential role for recruiting a job was played by the diploma and possibly the "recommendation" of an influential person, today some changes are felt in the procedures and reasoning used, an increasingly important emphasis on professional value, competence and creativity. Although it is stated that people are at the center of the organization, it is found that few owners/managers/leaders of institutions really pay attention to this fact.

In order to have competent and creative staff, organizations must prioritize investments in human resources, investments that materialize in ensuring optimal working conditions, designing a job description that ensures work efficiency, hiring a number of staff that corresponds to strategic objectives of the organization, designing and applying an employee motivation system and continuous training programs.

In the analyzed situation, respectively, the continuous training of the civil servant is characterized by the allocation of adequate financial resources to reach his maximum potential level to satisfy the needs of the citizen in whose interest the public office is exercised and the achievement of the effectiveness of the

[2] Robert L Mathis, John H. Jackson – Human Resource Management, Twelfth Edition 1994, publishing house South-Western College Pub, pag.39

public service through the gradual increase of public interest results generic. The effectiveness of the civil servant varies according to his personal capacity, memory, personality and thinking.

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 potential. [3]. 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 the citizens, and in the event that they find their deficiencies, to order corrective measures by deepening their knowledge.

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[4].

Training and professional development of civil servants is both a right and an obligation. We are talking here about the right of civil servants to periodically participate in training courses, for improvement in order to continuously improve their skills and professional training. In this sense, it is provided for in the national legislation, respectively in the Administrative Code. "*Public authorities and institutions have the obligation to ensure the participation of every civil servant in at least one professional training and improvement program once every two years, organized by the National Institute of Administration or other professional training providers, under the conditions of the law."*[5] For all this, the public authorities must allocate sums necessary to fully cover the estimated costs of these programs, and if these courses are held outside the town, the expenses related to transport, accommodation and meals. University studies cannot be financed from the state or local budget.

"*Public authorities and institutions have the obligation to draw up annually the plan for the professional development of civil servants, the estimation and the distinct highlighting of all the sums provided for in art. 458 para. (4)."*[6] At the

[3] Sorina Dana Veiss – "Efficiency and effectiveness of the public service", publishing home Recent, Vol.13 no.3(36), page 375

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

[5] Emergency Ordinance 57/2019 – Administrative Code – Statute of civil servants – Rights and duties Art. 458 Paragraph (2)

[6] Emergency Ordinance 57/2019 – Administrative Code – Statute of civil servants – Rights and duties Art. 459 Paragraph (1)

level of Vâlcele commune, by Local Council Decision no. 56 of 2021, the Professional Development Plan for civil servants from the specialized apparatus of the Mayor of Vâlcele commune was approved.

The local public administration represents a distinct part of the public administration in Romania, which represents one third of the employees paid from public funds. It is directly related to the citizen whose general interests it primarily serves, and both the investments and the decisions taken have a direct impact on the quality of life and living conditions.

In the content of this paper, we will focus on the Vâlcele Administrative-Territorial Unit from Covasna County. On September 1, 2024, it had 6,195 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 23 employees, dignitaries, civil servants, contractual staff and other types of public personnel. Out of the total of 23 employees, only 4 people have duties in the field of funds and project implementation, namely the mayor, the deputy mayor, the mayor's advisor and an advisor from the office of public procurement and project implementation.

Speaking about these 4 people, we will research these people with duties 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.

The main question of scientific research

Considering the fact that the purpose of this scientific research is the professional training and the place of research, we ask ourselves the question: Is the staff that deals with the implementation of European funds within the Vâlcele commune's Town Hall well professionally trained?

Developing the topic, other questions follow, to which I will try to formulate the answers in the current research: with the first question...For who is this research important?, What will be the positive implications following the realization of this research?

The scientific and practical consequences of the research

Following this research carried out on this segment of civil servants, in the next period the research can be extended to other similar localities, respectively municipalities, or it can be expanded vertically to the level of cities, municipalities, counties, to the level of sectors and even to the level 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, the introduction of new courses, workshops and implicitly the modification of work procedures, with mandatory provision of feed-backs to ensure the necessary efficiency from a practical point of view, both for the organization, but especially for the beneficiaries from outside the community.

The scientific research used in this project is **applied research – empirical**, original, with the main purpose of accumulating new information; research that is oriented towards the specific practical objective.

To carry out this research, I decided to use the Interview as a research technique. Through this method, I wanted to make direct contact with people from other institutions who have direct contact with these officials, 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 municipality of Vâlcele responsible for the implementation of European funds. Thus, I interviewed the 4 (four) persons targeted by the scientific research, I randomly chose 16 (sixteen) civil servants from advisory institutions such as (Agency for Environmental Protection – Covasna, Covasna Forest Guard, Covasna County Council, Heritage Directorate and Culture Covasna, Agricultural Directorate Covasna, Agency for Financing Rural Investments – Covasna, Romanian Waters – Covasna Branch, National Land Improvement Agency – Covasna) who were kind enough to answer my questions under the protection of anonymity.

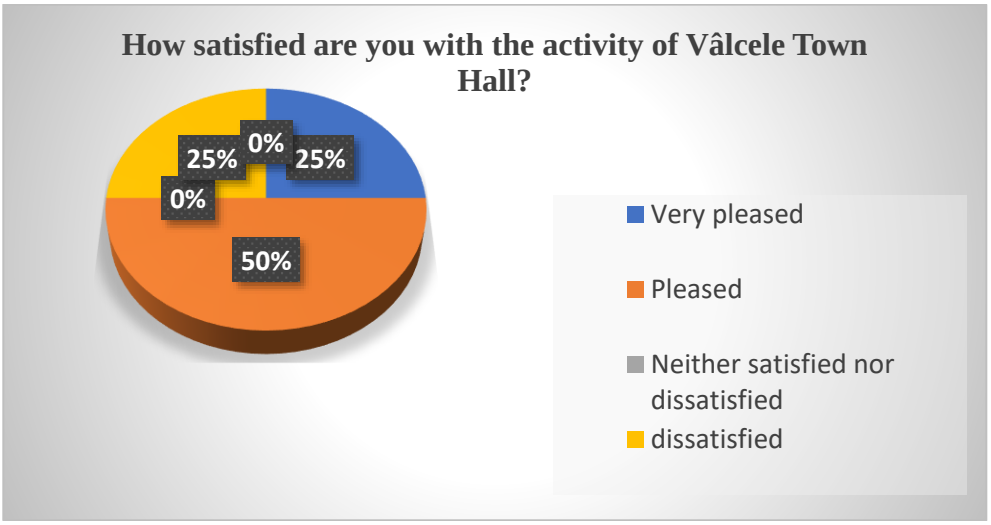
The random interview took place both at the institution's headquarters in Araci Village, Vâlcele commune, no. 464, Covasna County, as well as at the headquarters of the aforementioned institutions during the period 02.09.2024 – 06.09.2024.

The questions used

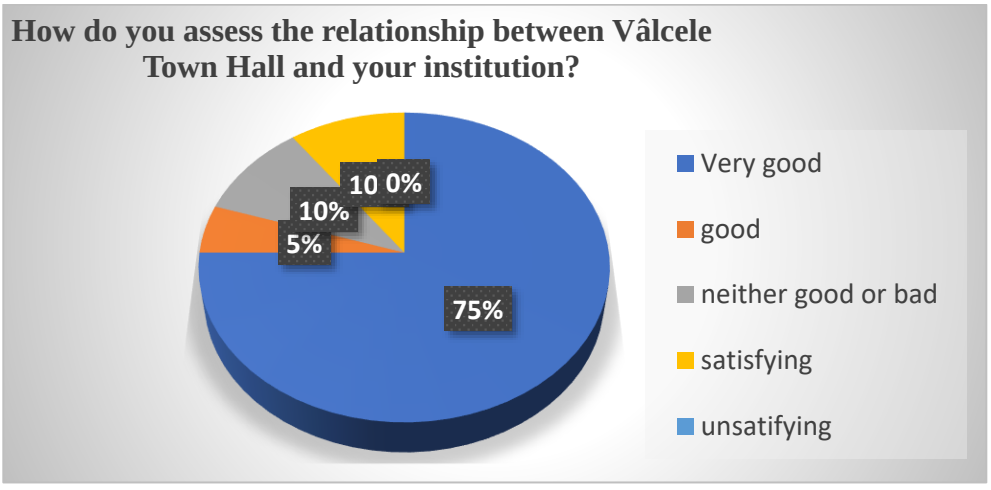
1. How satisfied are you with the activity of Vâlcele Town Hall?
2. How do you assess the relationship between Vâlcele Town Hall and your institution?
3. How do you assess the way in which projects are submitted to obtain funding from different sources?
4. Appreciate the way the City Hall responded to your requests for clarification?
5. Does the municipality of Vâlcele effectively monitor and implement the ongoing projects?
6. Are civil servants responsible for structural funds professionals?

7. Is there a need for continous professional training within the European funds department?

8. Annually, the management of the Vâlcele municipality allocates considerable amounts (50,000 Ron) for the training of civil servants in the field of European funds, although there are many areas where these sums can be invested. Is it the right decision?

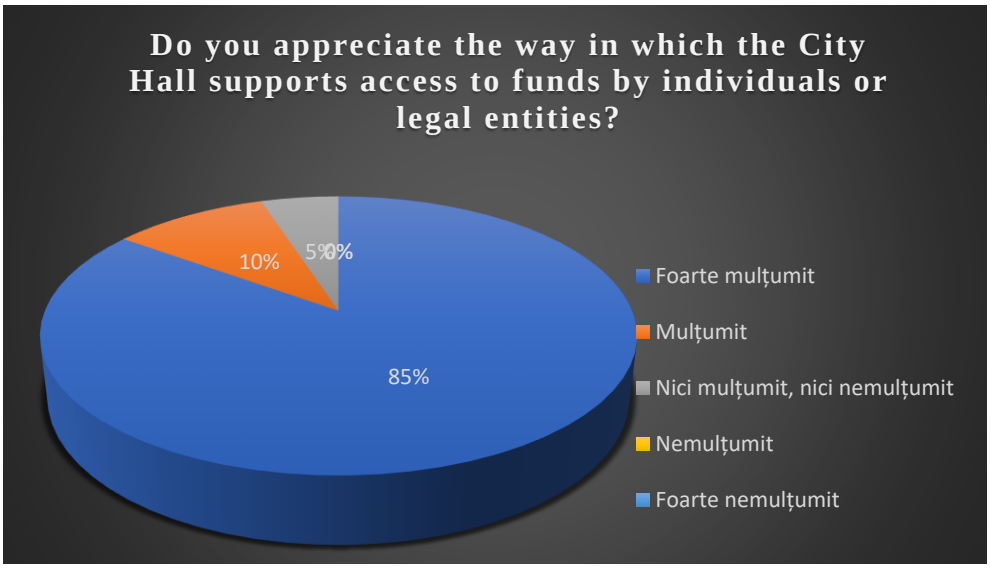


To this question, half of the people interviewed declared themselves satisfied with the institution's activity, a quarter even very satisfied, and a quarter declared themselves dissatisfied.

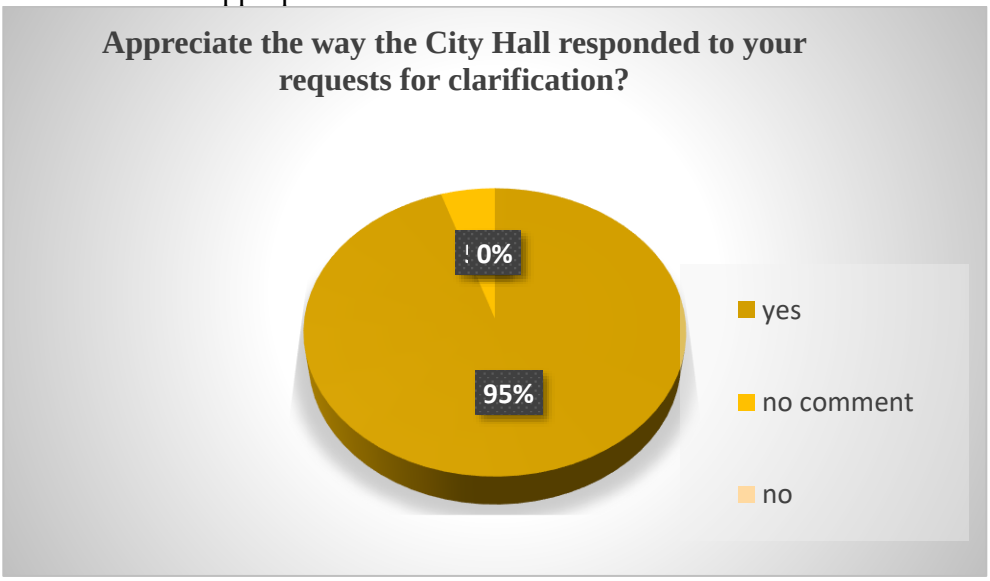


Question number 2 was aimed at ascertaining the relationship between the civil servants of the Vâlcele town hall – the European funds department and the

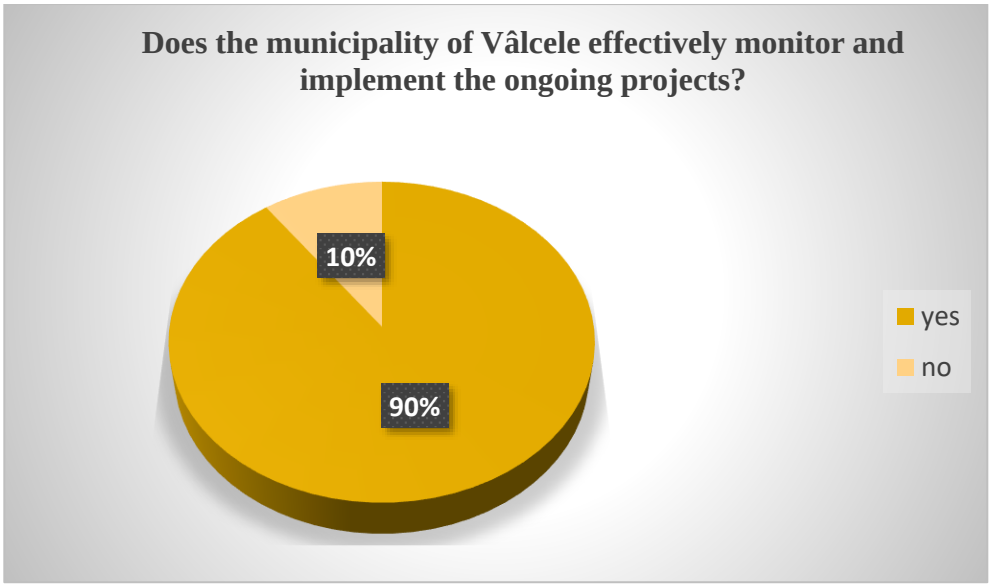
advisory institutions, most of the answers were conclusive, and the satisfaction with the officials with whom they interacted is visible.



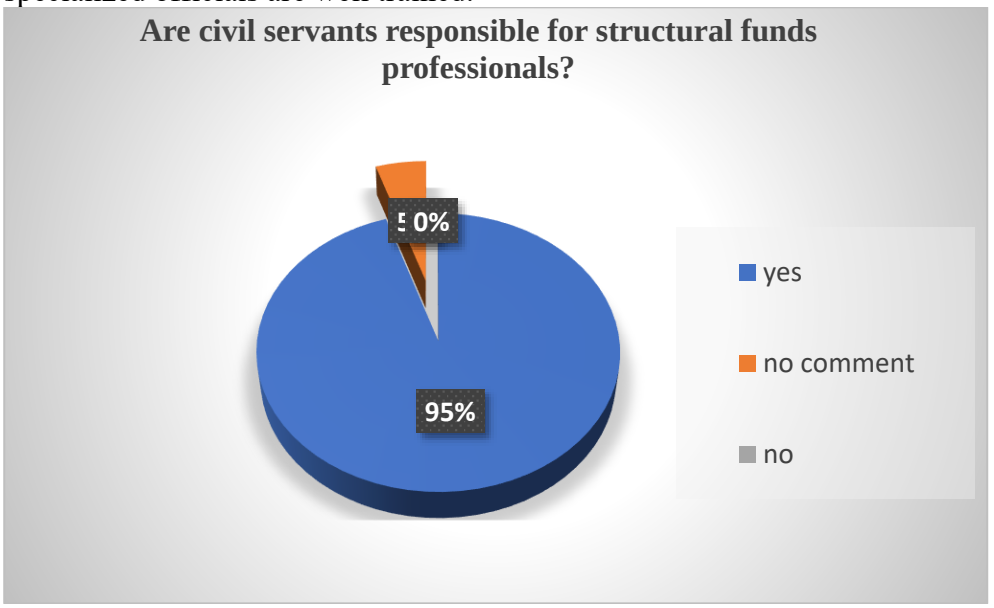
To this question, the method of submitting the projects is very satisfactory from the point of view of half of the people interviewed. The relationship between the institutions is appropriate.



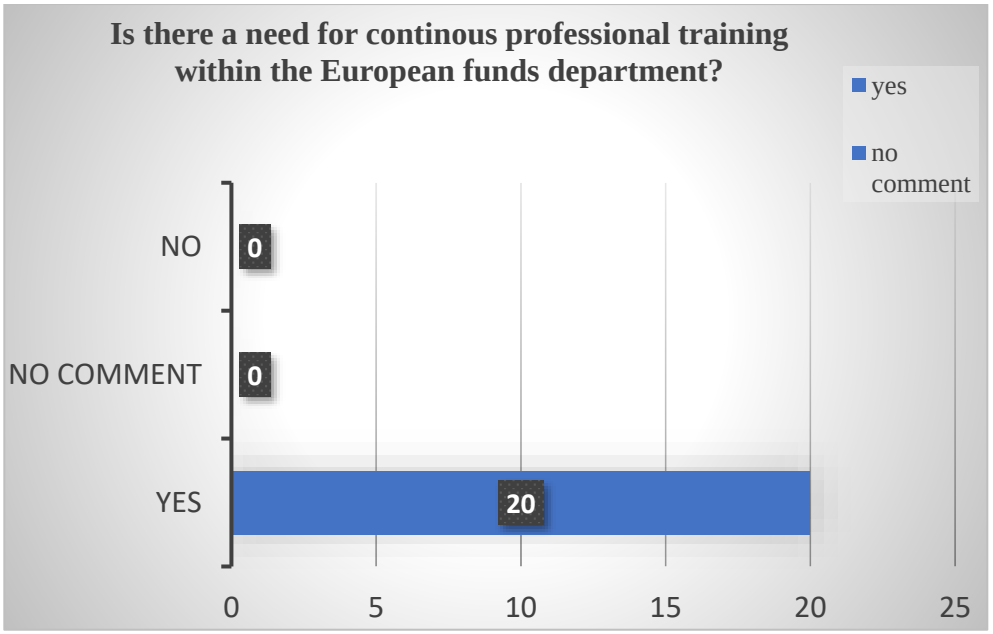
We conclude from this question that the Town Hall of Vâlcele municipality, through the designated officials, responded to the requests of the advisory institutions on time and according to the clarifications.



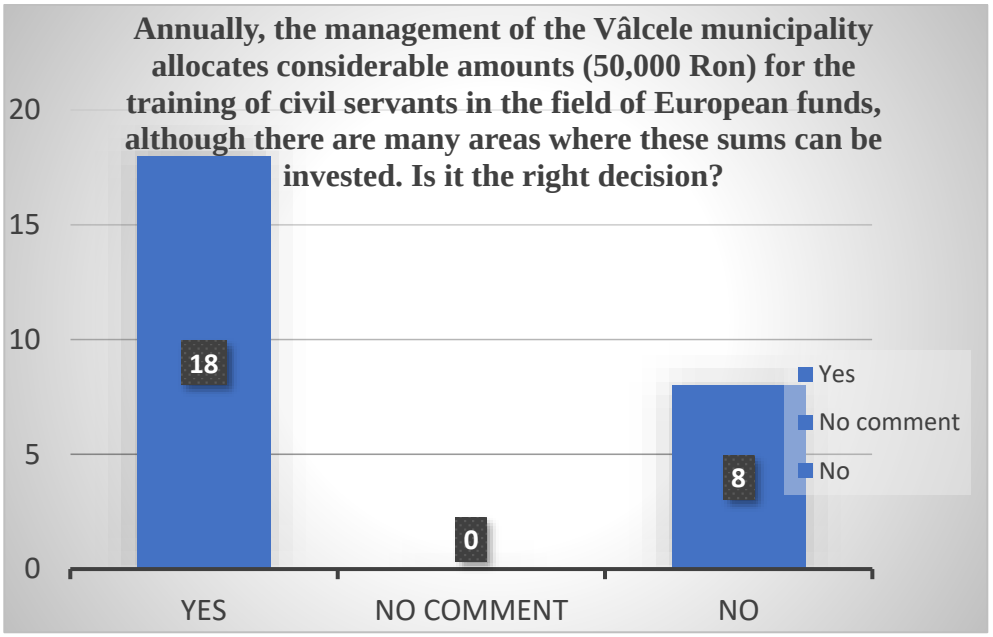
From these answers it is obvious that the Vâlcele commune's Town Hall properly executes its duties related to the projects, and in conclusion the specialized officials are well trained.



Although at the level of Vâlcele commune there are many ongoing projects, still in the eyes of the advisory institutions, the local public administration through the designated civil servants creates a state of responsibility based on professionalism.



Considering the fact that civil servants responsible for the implementation of structural funds participate in continuous training programs in this field, all the interviewed persons considered impetuously necessary continuous professional training.



Following the analysis carried out, it is found with a majority that the management's decision to invest substantial amounts in continuous training is a correct one.

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 European funds and especially the civil servants who deal with attracting and implementing them.

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 general objective of this research work was to show the importance of investment in subordinate human resources, especially for civil servants who manage structural funds, and as a specific objective the continuous professional training of civil servants responsible for the implementation of projects at the level of the authorities local case study – Vâlcele town hall, Covasna county.

The questionnaire was addressed both to the officials directly involved and to the civil servants from other institutions directly involved with them and aimed to answer the question Are the staff dealing with the implementation of European funds within the Vâlcele commune Town Hall well professionally trained?

The logic of this research in the overall plan of the evaluation is to follow to what extent the civil servants involved in the management of European funds are well trained.

Following the interviews used, it was concluded that the aforementioned persons are well prepared in this regard. Although both legislative procedures are constantly changing, continuous preparation helps the specialized apparatus to brilliantly manage the implementation of projects.

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, from the perspective of the practical role it has, in the development of local communities but also of the country.

Thus, I consider that the approach of this topic by professional researchers has a positive impact: on the one hand, the creation of a correct perception of these officials by civil society, and on the other hand, the institutions / management authorities that manage these structural funds.

The purpose of the development of towns with a smaller population is to provide the inhabitants with an environment developed at the evolved level of cities, to ensure the growth and education of young people in their native towns, and then to keep them in attractive jobs, which allow them to stay close to their families, and even establish their own family in the same hometown developed at the European level, with decent living conditions, corresponding to the aspirations of the younger generation.

Considering the objective of this stage and taking into account the above data, we consider that our goal has been achieved and the local public authority has carried out all the steps to have people who are ready, with work force and willing to achieve objectives necessary for the community, at the level of European standards, to generate added value for residents.

The importance of the managerial decision to ensure the continuous improvement of civil servants involved in the process of accessing European and structural funds, both in our case, the Town Hall of Vâlcele commune, and in the case of other institutions, from the perspective of efficiency and optimization of the work done, represents an aspect very important, since this ensures a finality in the service and interest of the citizen, for the development of the entire community.

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4. https://www.brainyquote.com/quotes/joseph_addison_400057- *Joseph Addison* – english essayist, poet and politician (1672-1719)
5. https://reform-support.ec.europa.eu/what-we-do/public-administration-and-governance_ro

Again About the Preliminary Room

George COCA[*]

Abstract

One of the newly institutions in the Code of Criminal Procedure is the preliminary chamber. Among the fundamental principles of the criminal process of separation of judicial functions, and among these functios we also find function of verifying the legality of sens or not send to court. The fulfilment of this judicial function of verifyng legality of non-referral to court rests with the preliminary chamber. The new Cod of Criminal Procedure established a verification of the case through this procedure located before the actual judgmant regarding the legal aspects, so that function of judgment is carried out only regarding the substantive aspects of the case.

Keywords: *Law, criminal procedure cod, preiminary chamber, preliminary chamber judge, indictment, lawyer, right to defense, crime.*

1.Summary of introductory elements. One of the essential duties of the chamber judge

preliminary when considering the regularity of the indictment is the verification of the cumulative meeting of its formal and substantive conditions.

The formal conditions refer to the content or content of the indictment, that is, to the verification of Article 328[1] of the Criminal Procedure Code, marginal

[*] Final lawyer - Baroul Bucharest, Associate Professor PhD, Spiru Haret University

[1] Contents of the indictment

(1) The requisition is limited to the act and person for which the criminal investigation was carried out and includes properly the mentions provided in Article 286 (2), the data concerning the act withheld by the defendant and its legal classification, the evidence and the evidence, the judicial expenses, the mentions provided for in Articles 330 and 331, the order for the arraignment, the order for the arraignment, as well as other mentions necessary for solving the case. The indictment is verified in terms of legality and thoroughness by the first prosecutor of the prosecutor's office or, as the case may be, by the prosecutor general of the prosecutor's office attached to the court of appeal, and when it was drawn up by him, it, the verification is done by the hierarchically superior prosecutor. When it was drawn up by a prosecutor from the Prosecutor's Office attached to the High Court of Cassation and Justice, the indictment is verified by the chief prosecutor of the department, and when it was drawn up by him, it is, the verification is done by the attorney general of this parquet. In cases involving detainees, the verification shall be carried out as a matter of urgency and before the expiry of the duration of the preventive arrest. (as at 01-feb-2014 Art. 328, paragraph (1) in part 2, title I, chapter V amended by Art. 102, paragraph 213. of title III of Law 255/2013)

title The content of the indictment. The notion of regularity grammatically raises some question marks.

According to DEX[2] , regularity is the appropriation or state of what is regular, regular, according to a rule or order fixed in advance or the property of a system or the evolution of phenomena to obey a rule from a certain point of view or symmetry, proportion, proportion, uniformity from the French Regularite. We believe that, rather, even if the old regulation used the same expression, the notion of the legality of the indictment should be used, which verifies in fact according to art. 328 Criminal procedure code and first prosecutor.

2.**Assessment of substantive conditions**.

We appreciate that in assessing the substantive conditions of the act of referral the preliminary chamber judge analyzes:

a) the clarity of the accusation

b) the place and date of the commission of the facts. Any human activity that translates into an external manifestation, through this very exteriorization, is placed in space and unfolds over time. The concrete crime is also a fact, that is, an externalized human activity, naturally and inevitably has a ”allocate’’ in space and a ”duration” in time.[3] That is why in relation to any crime, we can ask ourselves, ”where” and ”when” was committed. Because we do not report in this approach only from the perspective of practical aspects regarding the preliminary chamber procedure for deepening we recommend also the Treaty of law and criminal procedure vol. I Ioan Tanoviceau[4] on the extent of the criminal law in time (page 259-264) and the extent of the criminal law in space (page 305 et seq.). Not infrequently in the referral documents we encounter expressions such as:, starting with the year..”, ”in the second half of the month...”, ”towards the end of the year.....”, ”probably at the beginning of the month.” The implications are

(2) The indictment shall state the name and surname of the persons to be summoned in court, indicating their quality in the trial, and the place where they are to be summoned.

(3) The prosecutor draws up a single indictment even if the criminal investigation proceedings concern several facts or several suspects and defendants and even if they are given different resolutions, according to art. 327.

[2] Dex –The explanatory dictionary of the Romanian language - Univers Encyclopedic Edition II of Bucharest 1998, p. 910

[3]Vintila Dongoroz-Criminal Law (Reditation of the 1939 edition), Romanian Association of Criminal Sciences Bucharest 2000, p. 169

[4] Ioan Tanoviceanu - Treaties of law and criminal procedure vol. I Curierul Judiciar Publishing House, Bucharest 5 Art Street, near the Palace of Justice 1924. With a memorable dedication that we offer: The memory of my wife LUCIA TANOVICEANU-Tie who encouraged me and encouraged me to print this work, but who did not have the satisfaction of seeing it published, I worship you the fruit of a significant part of my life. You will now be together forever and subject to the same fate of remembrance and oblivion.

obvious at least from the perspective of the intervention of the limitation period, for example.

c) the presentation of the facts with sufficient precision, so as to result in compliance with the rule of incrimination in order to ensure that the defendant is able to prepare a concrete and effective defense.

d) In the device of the indictment to be found exactly the contents of the order that describes the act/deeds.

From the point of view of the right of defence and effective defence, the indictment must describe the act in detail or at least sufficiently specify the manner of the charge and the circumstances of time and place in such a way that the defendant understands the content of the accusation, and, otherwise the right of defence is devoid of its essential content.

The criminal procedure code is often scolded with Romanian language and grammar, but we do not linger on this aspect, maybe on another occasion.

Use of the gerund mode (verbal mode expressing an ongoing action, without reference to the author and at the time of the action[5]) without a verb on a personal (predictive) way it becomes difficult to distinguish the action alleged to be committed by the defendant and accordingly the content concretely of the accusation.

To his honor, in a motivation a magistrate senses these aspects. With the passage of time, however, we will move away from grammar and we will not notice such aspects.

„Thus, as far as the defendant T.M., was actually detained that at the date of. 1 concluded between, reception of camp organization services under contract no._____, for students, for 4 nights.''[6]

In order to be, for example, in the presence of a crime of intellectual forgery in the indictment, it must be described in detail what are the circumstances unfit for the truth about which the prosecutor retains that they were attested in the document thus to be consistent with the incrimination norm.

3.**Conclusions**. In conclusion, we appreciate that the way to present the accusation must be clear, and,

concise, precise in such a way that the defendant understands the concrete facts for which he is accused.

Moreover, in such a hypothesis even specialized legal assistance is difficult to provide and formulate.

[5] Dex –The explanatory dictionary of the Romanian language - Univers Encyclopedic Edition II of Bucharest 1998, p. 420

[6]Ending of 05.12.2023 pronounced by the Tribunal of Bucharest - Section I Criminal - Preliminary Room/Fond in case no. 5033/3/2023/a1 unpublished

Finally, we consider that compared to the previous ones, the standard imposed by art is not respected. 6 paragraph 3 point a) of the European Convention on Human Rights on the right of the defendant to be informed in detail of the nature and cause of the accusation brought against him in such a way that it allows him to benefit from the support of specialists of the law and to understand what is being reproached for him and what is the criminal significance of his conduct.

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Cooperation versus Competition in Contemporary International Trade – the Dilemma of Today's Society

Pavel Constantin DIACONU [*]

Abstract

In a rapidly changing world, society's dilemma regarding the impact and importance of concepts related to competition or cooperation in various aspects of our lives is a constant challenge. Competition is explored as a driver of progress and economic efficiency, while cooperation is presented as essential for solving complex problems and promoting social cohesion. This analysis highlights the advantages and disadvantages of each approach and suggests ways to manage this dilemma within contemporary society.

Keywords: *competition, cooperation, resources, equity, economy, consumer, producer*

Introduction

In a world that is transforming and evolving day by day, a world in which social principles and values are rapidly changing on all levels: social, cultural, political, economic, spiritual, etc., our perceptions regarding the behavior we should adopt in society are also undergoing major modifications. This refers to both our behavior in interpersonal relationships and the way we understand how to approach professional relationships. One of the important aspects of human behavior is the competitiveness we demonstrate in all the activities we undertake. In this context, from an economic perspective, economic well-being fundamentally depends on maintaining a permanent and fair competition, which is the main way to create balance in the market economy. Regarding economic activities, competition always arises from market interactions, where supply and demand, as well as the consumer and the producer, intersect in the process of exchange. We can say that there is economic competition when the consumer has several alternatives available and can choose the one that best suits their preferences. [1]Thus, competition is closely linked to the freedom of choice. However, competition would not be possible without cooperation between people. The necessity to produce goods using available resources has led to

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[1] Bălăceanu, C., "The Dilemma of Competition and Cooperation in Contemporary Romanian Society," Romanian Sociological Review, vol. 12, no. 2, 2016.

collaboration when resources become insufficient, and production becomes unsatisfactory.

Considering these aspects, the approach to competition and cooperation remains, to this day, a controversial subject, with pros and cons for both notions.

The Evolution of Competition and Cooperation in History

From ancient times, the concepts of competition and cooperation have evolved and been reinterpreted in various social, economic, and political contexts, such as:

Antiquity:

❖ **Ancient Greece:** In ancient Greek society, competition was seen as a means to promote excellence and encourage achievements in various fields such as sports, art, and philosophy. The ancient Olympic Games were an example of competition dedicated to promoting physical and spiritual excellence.

❖ **The Roman Empire:** In the Roman Empire, competition was often associated with the struggle for political and economic power. The Roman arena was a place where gladiators and athletes competed for glory and recognition, and competition was often used by rulers to consolidate their power and control.

❖ **In Antiquity:** Cooperation was essential for the survival of human communities. Ancient societies, such as the Egyptians, Sumerians, or Chinese, demonstrated that people collaborated to build cities, irrigation systems, and other infrastructures necessary for life in society.

Meritocracy, the concept by which individuals are rewarded based on their merits and abilities, has been present in various forms throughout history. Often associated with competition, it has played a significant role in the evolution of societies. In Ancient Greece, meritocracy was promoted as a means to encourage excellence and reward individual achievements in fields such as sports and philosophy. Similarly, in the Roman Empire, meritocracy was evident in the promotion of the most capable individuals to political and military positions.

Today, meritocracy continues to be a central principle in many societies, but there are debates regarding how it is applied and interpreted. Some argue that meritocracy should offer equal opportunities to all individuals based on their merits, while others believe that this system may not always be fair and could perpetuate social inequalities.

Despite the criticisms, meritocracy remains an ideal that many societies aspire to, hoping that promoting individual excellence will lead to progress and innovation in various fields. Meritocracy, promoted as a concept of equal opportunity and social mobility in contemporary democracies, is increasingly challenged in practice. Terms like “mediocracy” and “stupidocracy” describe a reality in which merit is often overshadowed by external influences and social privileges.

Although meritocracy is officially embraced, the gaps between declarations and reality are evident.

Questions about the authenticity of meritocracy are becoming more pressing, even among education leaders. In the United States, debates about access to higher education and the role of merit in social mobility have intensified, emphasizing the importance of an equitable perspective and the promotion of equal opportunities for all young people, regardless of their social background.

Authors like Daniel Markovits and Michael J. Sandel have argued that meritocracy, as practiced today, can perpetuate inequalities, and erode democracy. Critics suggest that an excessive focus on merit can undermine the dignity of work and perpetuate class privileges. Thus, the need for reform in the educational system and success criteria is becoming more urgent to restore balance and social justice.

In conclusion, debates about meritocracy are not merely academic but have profound implications for the social and political structures of contemporary society. A critical analysis of the concept of merit and how it is applied is essential for building a more equitable and democratic society, where real opportunities and individual merits truly prevail.

The Middle Ages:

❖ **Feudalism:** During the feudal period, competition was often subordinate to rigid social and economic hierarchies, and access to opportunities and resources was heavily influenced by social status and the privileges held by the nobility.

❖ During the feudal period, cooperation was often regulated by feudal structures, where vassals collaborated with their lords for protection and economic support in exchange for their labor and loyalty.

The Modern Era:

❖ **The Industrial Revolution:** During the Industrial Revolution, competition intensified with the development of capitalism and the market economy. Entrepreneurs and manufacturers competed for access to markets and resources, with innovation becoming a crucial factor for economic success.

During the Industrial Revolution, cooperation was promoted by the emergence of enterprises and workers organizing into unions to secure better rights and working conditions. Cooperation between businesses was also essential for the development and implementation of new technologies and production processes.

❖ **The Modern Era:** Competition became a central theme in democratic and capitalist societies, where the free market and open competition were promoted as means of driving innovation, efficiency, and economic growth.

❖ **The World War Periods:** During the two World Wars, cooperation between nations was vital for managing conflicts and ensuring global peace and

stability. This led to the creation of international organizations such as the League of Nations and the United Nations[2], among others.

The Contemporary Era:

❖ **Globalization:** In the era of globalization, competition expanded to a global level, with businesses and states competing for resources, markets, and influence internationally. Competition in fields like technology, trade, and innovation has become increasingly intense and complex.[3]

In the era of globalization, international cooperation is crucial for addressing global challenges such as climate change, poverty, and food security. International organizations like the World Trade Organization, the World Health Organization, and the United Nations were created to promote cooperation among nations.

Meritocracy Between Theory and Reality

Meritocracy, the concept by which individuals are rewarded based on their merits and abilities, has been present in various forms throughout history. Often associated with competition, it has played a significant role in the evolution of societies. In Ancient Greece, meritocracy was promoted as a means to encourage excellence and reward individual achievements in fields such as sports and philosophy. Likewise, in the Roman Empire, meritocracy was evident in the promotion of the most capable individuals to political and military positions. Today, meritocracy remains a central principle in many societies, yet there are debates about how it is applied and interpreted. Some argue that meritocracy should provide equal opportunities to all individuals based on their merits, while others believe that this system may not always be fair and could perpetuate social inequalities. Despite the criticisms, meritocracy remains an ideal that many societies strive for, hoping that the promotion of individual excellence will lead to progress and innovation in various fields. Meritocracy, promoted as a concept of equal opportunity and social mobility in contemporary democracies, is increasingly contested in practice. Terms like “mediocracy” and “stupidocracy” are used to describe a reality where merit is often overshadowed by external influences and social privileges.

Even though meritocracy is officially embraced, the discrepancies between statements and reality are evident. Questions about the authenticity of meritocracy are becoming increasingly prominent, even among education policymakers. In the United States, debates about access to higher education and

[2] Constantinescu, C., "The Evolution of Competition and Cooperation Concepts in the History of Human Society," University of Bucharest Publishing House, Bucharest, 2012.

[3] Popescu, A., "Globalization and Its Impact on Competition and Cooperation in the World Economy," Economic Publishing House, Bucharest, 2015.

the role of merit in social mobility have intensified, highlighting the importance of an equitable perspective and the promotion of equal opportunities for all young people, regardless of their social background.

Authors such as Daniel Markovitz and Michael J. Sandel have argued that meritocracy, as practiced today, can perpetuate inequalities, and erode democracy. Critics claim that the excessive emphasis on merit can undermine the dignity of work and perpetuate class privileges. Therefore, the need for reform in the educational system and success criteria is becoming increasingly urgent to restore balance and social justice.[4]

In conclusion, the debates about meritocracy are not merely academic but have profound implications for the social and political structures of contemporary society. A critical analysis of the concept of merit and its application is essential to building a more equitable and democratic society where real opportunities and individual merits genuinely prevail.

Competition and Cooperation in Contemporary International Trade

Cooperation and competition are two fundamental aspects in the context of contemporary international trade, each with its pros and cons. Arthur Holly Compton, an American physicist, once said about cooperation: "If cooperation is the lifeblood of science and technology, it is similarly vital for society as a whole."[5] Meanwhile, David Sarnoff, a media magnate, said about competition: "Competition brings out the best in products and the worst in people."[6]

Cooperation in international trade involves collaboration between states or enterprises to achieve common goals or address issues related to trade and economic development. This may include trade agreements, strategic alliances, regulatory cooperation, or economic and social development initiatives.

Competition in international trade refers to the rivalry between states or enterprises for resources, market shares, and competitive advantages in a globalized environment. This can take the form of competition for exports, foreign direct investments, and innovation.

Similarities between competition and cooperation: Both competition and cooperation affect international trade relations and can influence how states and businesses interact in the market, sometimes even leading to interdependence in certain situations.

Differences between competition and cooperation: While cooperation involves working together to achieve common benefits or overcome shared obstacles, competition implies rivalry to gain competitive advantages in the market, for resources, and for market shares.

[4] https://www.cotidianul.ro/meritocratie-si-democratie-andrei-marga/
[5] http://www.citatepedia.ro/
[6] https://www.cristinne.ro/citate-motivationale-afaceri/

Pros and Cons of those Two Concepts (competition and cooperation)

1. Pros and Cons of Competition:

❖ **Pros:** Competition stimulates innovation and improves efficiency,[7] as firms are motivated to enhance their products and services to gain and maintain market share. Competition can also lead to lower prices for consumers, as companies are forced to offer quality products and services at fair prices to remain competitive in the market. Additionally, competition can encourage diversity and innovation in the products and services available, providing consumers with more options and greater freedom of choice.

❖ **Cons:** Intense competition can lead to the concentration of economic power in the hands of a few large market players, restricting access for other firms and potentially leading to monopolistic or oligopolistic practices.[8] In the pursuit of cost reduction and market share, some companies might sacrifice product and service quality, which can harm consumers. Moreover, competition can lead to social inequalities, as some groups or regions may be marginalized or excluded from competition due to limited resources or reduced capacity to compete effectively.

2. Case Study on the Advantages of Competition

Competition between two companies in the tech industry, such as Apple and Samsung, serves as a relevant example. These two companies have competed in a highly competitive environment to strengthen their market position and attract customers. Over the years, this intense competition has spurred innovation and led to the launch of innovative and advanced technological products, such as smartphones, tablets, and laptops. While Apple and Samsung have occasionally engaged in legal disputes and fierce competition, this rivalry has been beneficial for consumers, as it has resulted in a wider range of options and continuous improvements to products and prices that meet consumer demands. In this case, competition proved more effective than cooperation in driving innovation and technological progress.

3. Case Study on the Disadvantages of Competition

The analysis of the negative effects of excessive competition between companies in a particular industry, which can lead to the over-concentration of power and limit consumer choices, highlights the drawbacks of competition. An example could be the telecommunications industry in some countries, where a small number of large operators dominate the market. This concentration can lead to several disadvantages: when there are only a few players in the market, they may impose high prices for their services because consumers have few alternatives. In the absence of competitive pressure, operators may be tempted to

[7] Popescu, G. (2015). "Competition and Innovation in the Global Economy," ASE Publishing.
[8] Ivan, A. (2010). "Monopolies and Oligopolies in the Economy," Didactic and Pedagogical Publishing House.

reduce investments in improving infrastructure and services, leading to a decline in the quality of services offered.

Therefore, this case study shows that in some cases, excessive competition can have negative consequences for consumers and society as a whole, emphasizing the importance of a balanced competitive environment.

4. Pros and Cons of Cooperation

a) **Arguments in favor of cooperation** can be outlined as follows: cooperation between states can lead to increased efficiency through specialization and resource exchange, allowing states to focus on producing goods and services where they have common advantages, resulting in increased productivity. Cooperation can contribute to economic stability by reducing the risk of trade and political conflicts, and trade agreements and international treaties can facilitate stability in economic relations. Cooperation can lead to a wider variety of goods and services available to consumers at more attractive prices, and access to foreign markets increases the supply of new and cheaper products for consumers.

b) **Aspects of cooperation that may have negative effects**: excessive cooperation can lead to a country's dependence on other states or international organizations, which can undermine economic sovereignty and autonomy.[9] Cooperation may exacerbate economic inequalities between developed and developing states, as some countries may benefit at the expense of others in trade relations, maintaining global inequalities. International cooperation can lead to the relocation of production to countries with lower labor costs, which may cause job losses in developed countries and negatively impact living standards.

5. Case Study on the Advantages of Cooperation

The European Union is an example of cooperation between European states that have pooled their resources and interests to form a single market and a common regulatory framework. Instead of competing with each other for resources and market shares, EU member states chose to collaborate in various fields such as trade, monetary policy, environmental protection, and security.[10]

By creating a single market, the EU eliminated trade barriers between member states, facilitating the free movement of goods, services, capital, and labor. This led to an increase in trade and investment between member states. Cooperation within the EU contributed to economic growth and job creation across the region. By establishing common rules and standards, businesses were given easier access to markets in other member states.

[9] Dobrescu, M. (2018). "International Cooperation and State Sovereignty: Implications and Risks," Expert Publishing House.

[10] Popescu, A. (2020). "Cooperation within the European Union: A Case Study on Its Impact on Economy and Society," Universitario Publishing House.

The EU promotes solidarity and cohesion between member states by providing financial support and resources for less developed regions. Cohesion funds and cohesion policies have helped reduce economic and social inequalities between member states.

Through collaboration, EU member states can act as a united front in international trade and political negotiations, thereby strengthening the EU's influence and position in global affairs.

The collaboration between EU states demonstrates the significant progressive benefits of cooperation compared to a strictly competitive approach in the context of international trade and beyond. By joining forces and creating the Single Market, EU member states have achieved economic prosperity, stability, and undeniable global influence, which would have been difficult to achieve through a purely competitive approach.

6. Case Study on the Downsides of Cooperation

The disadvantages of cooperation can be illustrated by the existence of a cartel in the oil industry. A cartel is a form of cooperation between competing companies that agree to control production and prices in order to maximize profits. However, there are several drawbacks associated with the formation of a cartel:

The creation of a cartel can lead to artificially inflated prices for the products or services involved, as cartel members set a common price that is much higher than the price in a free market. Companies not involved in the cartel are discouraged from entering the market or competing with the cartel, as high prices and agreements among cartel companies can make competition and even the survival of smaller companies difficult.

Therefore, this case study demonstrates that despite the potential benefits of cooperation, there are significant risks and disadvantages associated with the formation of cartels and anti-competitive practices. These can have negative consequences for the economy and consumers, highlighting the importance of enforcing antitrust laws and promoting free and fair competition in the market.

Conclusions

As shown above, both cooperation and competition are two different concepts, each with its own advantages and disadvantages, but they can coexist and, in certain situations, are interdependent. This is illustrated in the case study of the relationship between China and the United States, which compete to strengthen their positions in international markets, fighting for market shares in sectors such as technology, manufacturing, and the trade of goods and services. Beyond the competitive aspects between the two countries, there are also areas of cooperation, such as cultural and educational exchanges, global security (non-proliferation of nuclear weapons, combating terrorism, and managing pandemics), diplomatic exchanges, and dialogue.

The dilemma of competition versus cooperation is complex and the subject of intense debate. In conclusion, it is important to recognize that both concepts play a role in shaping and operating our society. Competition can stimulate innovation, efficiency, and economic progress, but it can also lead to inequalities and social tensions. On the other hand, cooperation is essential for solving complex problems and promoting social cohesion, but it can be difficult to achieve in an environment dominated by divergent interests and excessive competitiveness.

Thus, a balanced approach that combines both competition and cooperation may be the best solution. A conclusive example in this regard is when a person is running for the presidency: in the initial phase, he is in a situation of competition with all his colleagues in the party who want to occupy the same position, but he is also in a state of cooperation with the rest of his colleagues who vote him for candidacy, in the next phase, after he is nominated, he cooperates with the whole party to make the best possible campaign for the elections, but the competition with the rest of the candidates from the other parties appears. Finally, after he is elected as president, the competition with the rest of the candidates and the parties they belong to turns into a cooperative situation to fulfill the mandate of the President in the most efficient way.

It is important to ensure fair and equitable competition that encourages innovation and excellence while ensuring that no one is left behind. At the same time, we must cultivate and support collaboration and solidarity among individuals and communities to address the social and global challenges we face.

Collaboration and competition are two complementary forces that drive innovation and progress in society. While competition stimulates competitiveness and economic efficiency, collaboration facilitates the resolution of complex problems and promotes social cohesion. These two interconnected aspects contribute to the balance and sustainable development of our communities, highlighting the importance of a balanced approach between them.

Ultimately, the best solutions for our society may come from a deep understanding of the complexity of this dilemma and from collaboration between various sectors and actors to find the right balance between competition and cooperation.

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Evolution of Romanian Legislation on Liability in Environmental Law

Ion FLAMINZEANU

Abstract

Liability provisions can also serve as gap-fillers, covering activities not specifically identified as illegal but nevertheless resulting in harm to the environment, livelihoods, and public health. Liability for environmental harm is designed to compensate affected parties, with a particular focus on restoring or replacing injured resources and providing compensation for lost value. By increasing the costs for those who harm the environment, liability provisions can serve an important deterrent role, promoting compliance with laws and regulations.

Keywords: *evolution, environmental, costs, liability, legislation*

Before presenting the chosen issue, let me briefly discuss two aspects, firstly: the motivation for choosing this topic and secondly the concept of environmental liability.

The motivation, I could say from the outset, is as simple as it seems, one that essentially concerns man's life on earth, and is therefore increasingly topical, man cannot live without his coexistence with the environment, is however a problem that unfortunately in recent times, especially in recent decades, when, due to increasingly advanced pollution, due to phenomena both dependent and independent of man's will, in this category we can mention, for example, the rise in global temperatures at a staggering rate, acid rain, the accumulation of greenhouse gases, the maintenance of the ozone layer, etc., is thus becoming a serious problem on which our very existence on this earth depends.

As regards the concept of liability in general, and in particular that of legal liability in the field of environmental law, the law does not give a definition of legal liability, nor of one of its concrete forms[1].

According to the Explanatory Dictionary of the Romanian Language, to answer means "to take responsibility for one's actions or those of someone else,

[1] Ion Flămânzeanu, LegalLiability, Pro Universitarea Publishing House, Bucharest, 2010, p.9-10.

to guarantee for another person, as well as the fact of being answerable, the obligation to answer for the performance of an action, task"[2].

Also in this dictionary, it is stated that to hold or call someone to account means to force someone to give an account of his actions, or to ask someone to give an account. The sense of responsibility being nothing else, apart from the awareness, the significance of the tasks assumed or received, the seriousness towards them when we address with the formula "on someone's responsibility" means that it is about someone's moral or material guarantee. Legal liability takes several forms, including criminal, civil, administrative, administrative offence and disciplinary liability, the first being the most serious.

We are specifically interested in own liability in environmental law, both in terms of domestic and international law.

Among the principles of a general nature, we cannot omit those relating to legality, liability for acts committed with guilt, personal liability, swiftness, fair sanctions or proportionality of legal liability, or that of not being liable twice for the same fault, nor can we omit the presumption of innocence.

Specific to environmental law as general principles, we find, in addition to the well-known polluter-pays principle, the principle of prevention, of precaution[3].

In the last 4 decades, especially after the Stockholm Conference in June 1972 and Law 9/1973, which was the first law in this field, environmental law has taken on a new dimension, gaining autonomy and the right to a healthy environment being recognised and guaranteed by the constitution. In fact, this process, which has been and still is one of unparalleled dynamism, has had, over the last few decades, certain points of reference, not forgetting, among the international institutions that have had and continue to have major concerns in the field of environmental law, the Council of Europe – 1991, then the European Environment Agency – 1998.

Nor can we omit the moment of Romania's accession to the EU – 1 January 2007.

They took place as a result of new EU requirements, as a result of the development of the market economy, the transition, the fundamental changes that have taken place both domestically and internationally, in terms of concepts, ideas, legal regulations, there has been and there is a process of legislative renewal, witness the adoption of a new constitution, its revision, the emergence of specific environmental legislation, which has undergone profound changes

[2] Explanatory Dictionary of the Romanian Language, Ed. Univers Enciclopedic, Bucharest, 1996, p.891. See also the 1998 edition of the Dictionary, Bucharest, "Iorgu Iordan" Institute of Linguistics, p.913.

[3] Liability in environmental law, Mircea Duțu, Andrei Duțu, Romanian Academy Publishing House, Bucharest, 2015, pp.135-136 – Its recognition has generated new legal duties and thus a new legitimacy of fault-based liability has been restored.

over the years, the emergence of several framework laws on the subject, culminating in increasingly advanced principles, procedures and techniques in the field of environmental protection, this wide-ranging process, as we have already pointed out, culminating in the enshrinement and constitutional guarantee.

The culmination of these developments has been, in addition to the constitutional enshrinement, the development of the means, instruments and practices necessary to guarantee and realise its meanings[4].

A start in this extensive process was undoubtedly made by Law no.137/1995 on environmental protection[5].

We cannot omit the major role played by this law[6], in addition to the fact that it represented a modern concept, creating a legal-strategic framework, in the very first article it was mentioned, as an objective of major interest – and among the strategies, or rather strategic elements leading to the development of society, other principles could not be missing, which have not been stated so far, I will make a brief review of the main principles including: the principle of preserving biodiversity and ecosystems, integrated pollution reduction and control, the principle of preventing environmental risks and damage, the removal of pollutants affecting human health, sustainable use of natural resources, involvement of civil society in environmental decision-making, etc.

If we were to take a brief look at the history of global legal regulation of the environment, internationally[7] we can start with 242 BC in India, where Emperor Asoka established a nature reserve, and in the Roman Empire the death penalty for killing a stork was prescribed for a certain period.

Then also in Europe after the 10th century, the kings of Poland adopted some measures to protect game as well as forests. In 13th-century England, King Edward I issued several ordinances concerning smoke from burning coal.

The examples can be continued in both England and Finland, the first banning the dumping of rubbish and its disposal on quays or islands, and in Finland adopting a law on forests, precisely as a result of the disappearance of forests, especially pine forests, through massive logging for export, the Emperor Napoleon himself in 1810 by a decree applicable in Holland and Belgium, regulated the implementation of industries according to the degree of toxicity.

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[4] Mircea Duțu, op.cit., p.43

[5] Law 137/1995 was republished in M.Of Part I, no.70 of 17/2000 with subsequent amendments and additions. It was repealed pursuant to Article 105(a) of GEO No 195/2000 on environmental protection.

[6] Law no.137/1995 published in M.Of. no.70/17.02.2000, supplemented by GEO no.91/2002 published in M.Of. no.465 of 28.06.2002 approved by Law no.294/2003, published in M. Of. no.505/14.07.2003.

[7] Gheorghe Iulian Ioniță, Environmental Protection and Law, 2nd edition, Universul Juridic Publishing House, Bucharest, 2007, p.15 and following.

And in the U.S.A., first in 1832, the Hat Spring Reservation was established in Arkansas and then in California in 1864, Yosemite Park was established to protect the Sequoia trees.

Then towards the end of the 19th century in Germany and Luxembourg, systems of licences, authorisations to carry out industrial activities were approved.

In 1872, the most beautiful reserve in the world was established in the Rocky Mountains, with 3000 geysers among other things. In the last century, we can mention the establishment of the International Union for the Conservation of Nature in 1948, then in chronological order, the World Wildlife Fund in 1961, Man and the Biosphere launched by UNESCO in 1970, Greenpeace, the United Nations Environment Programme in 1972, etc.

In 1972, the first World Conference on Environmental Protection took place in the Swedish capital from 5 to 16 June, with Romania participating along with 113 other countries. During this conference, 26 principles were adopted, among others, including those relating to living in an environment that allows dignity and well-being, the human right to freedom, optimal living conditions, equality of all, as well as principles concerning international cooperation. In fact, let us not forget that 5 June has been declared "World Environment Day".

Exactly two decades after this conference, the second World Conference on Environment and Development took place on 3-14 June in South America, more precisely in Brazil, in the carnival city of Rio de Janeiro. This meeting met with the approval and appreciation of the participants and was in fact the largest high-level meeting of the last century, with 145 presidents, prime ministers and vice-presidents in attendance. On this occasion, the 'Rio Declaration', which was dubbed the 'Earth Charter', included declarations on forests, desertification, the Convention on Biodiversity, the Convention on Climate Change and the Climate Agreement.

Another decisive moment was the Millennium Declaration – UN General Assembly Resolution No. 55/2000 adopted on 08.09.2000, exactly at the beginning of the third millennium, of course, there were references and clarifications on respect for nature and concrete measures for environmental protection.

So to move on to the national issue, we can say that over time there have been several stages (periods). Since the time of the Fanariote reigns, punishments were imposed, generally consisting of confiscation of property and corporal punishment. Then with the Treaty of Adrianopol in 1829, with the liberalisation of trade and the massive clearing of forests, regulations were introduced to protect the soil, wildlife, forests, water, etc. Then, with the laws passed during the reign of Alexandru Ioan Cuza and the advent of the penal and forestry codes, the fight to protect the environment and wildlife intensified, and in the inter-war period, in 1930, the law on natural monuments was adopted, then in 1973 the first

law on environmental protection was adopted, Law 9/1973, then Law 137/1995, the Forestry Code[8] (Law 26/1996), the Water Law, Law 107/1996, the Law on the Safe Conduct of Nuclear Activity, Law 111/1996.

As moments of reference we cannot forget 1935 when the Retezat National Park was established, also 1930, corresponding to the establishment of the law on the protection of natural monuments, and in 1950 the commission for the protection of natural monuments within the Romanian Academy was organized, in fact, reorganized.

This has also developed on the basis of subcommittees of the Cluj, Iasi and Timisoara branches, all of which have the role of campaigning for the protection of fauna and flora and stopping any activities that would damage the environment, and in fact there has been an increase in the number of reserves – 130 – but the surface area has also increased to 75,000 ha. During this period, i.e. the eighth decade of the last century, after the approval of Law no.9/1973, a framework law at that time, Romania being one of the few countries in the world to regulate this legal regime of environmental protection in a modern institutional framework for those times, the same year the National Council for the Protection of the Environment was established, and the following year Law no.59/1974, Law no.58/1974, Law no.8/1974[9] were adopted, among others. Two years later, the National Perspective Programme for River Basin Management and the National Programme for the Conservation and Development of the Forestry Fund for the period 1976-2010 were drawn up, which were major objectives for that period, both in terms of strategy and duration. In fact, during that decade, in almost all aspects, especially the economic one, Romania has experienced great achievements. In 1987 Law 2/1987 was adopted, in 1989 Law No. 5 – Law on the rational management, protection and quality assurance of water. After the revolution, in 1991, the Ministry of the Environment was set up, which is now known as the Ministry of Forests, Water and the Environment, and throughout its existence has had various names.

[8] Law 9/1973 published in the Official Gazette no.91/23.06.1973, Law 26/1996 published in the Official Gazette no.93/08.05.1996, Law no.107/1996 published in the Official Gazette no.584/30.06.2004, Law no.11/1996 (republished), published in M.Of. nr.78/18.02.1998 amended by OUG nr.204/2000 published in M.Of. nr.589/21.12.2000 (approved by Law nr.384/2001) published in M.Of. nr.400/20.07.2001.

[9] Law no.193/2003 published in m.Of. no.343/20.05.2003; Law no.59/1974 – Law on land fund, was published in B.Of. no.138/05.11.1974; Law no.58/1974 entitled Law on the systematization of the territory and urban and rural localities; Law no.8/1974 published in B.Of. no.52/04.04.1974, this law is entitled the Water Law; Law No 2/1989, known as the Law on the conservation, protection and development of forests, their rational and economic exploitation and the maintenance of the ecological balance; Law No 5/1989 was published in B.Of. No 24 of 5 July 1989.

Another important moment that constitutes the permanent struggle for the protection of the environment was the adoption of the Law no.82/1993[10] which established the "Danube Delta" Biosphere Reserve.

After the adoption of the Law on Environmental Protection, the following year, 1995, the Law on Hunting and Game Protection[11], the Law on Water – Law 107/1996[12], the Law on the Safe Conduct of Nuclear Activities – Law 111/1996[13] were adopted. At the beginning of the third millennium, several ordinances were adopted to protect the environment, among which we cannot omit GEO no.236/2000, GEO no.243/2000.

The following year could only be the natural continuation of these reforms to improve environmental conditions, in this regard the Romanian Government issued Ordinance No.16/2001 – the Law on Conformity Assessment of Products, entitled Law No.608/2001. In 2002 appeared among others: the Law on zoos and public aquariums and Law No.191/2002, an ordinance that supplemented the Environmental Protection Law[14]. In 2003 and 2004 the following laws were adopted: Law approving the Emergency Ordinance on the Safe Conduct of Nuclear Activities. Specifically, Law 193/2003.

On the evolution of environmental legal regulations in Romania, see among others E. Lupan, Mircea Duțu, Radu Stancu, Gheorhe Deaconu, Daniela Marinescu, P. Drăghici, Anca I. Dușcă.

We cannot omit as reference works in the field of environmental law Prof. Mircea Duțu – Environmental Law, Editura Economică, Bucharest, 1998; Dictionary of Environmental Law, 3rd Edition, Ed.C.H.Beck, Bucharest, 2007, Liability in Environmental Law, Ed. Academiei Române, 2015; Daniela Marinescu – Environmental Law, 2nd and 3rd editions, Bucharest, 1993, Ed.Șansa, Bucharest, 2017, Editura Universul Juridic, P. Drăchici, Anca I. Dușcă – Domestic and Community Environmental Law, E.Lupan – Environmental Law, Independent University "Dimitrie Cantemir", Cluj-Napoca and 1996 – Environmental Law, General Part, Lumina Lex Publishing House.

We do not claim to have set out all the works in the field of environmental law, but we have highlighted some of the seminal works in this area. Now I would

[10] Law 82/1993 published in M.Of. nr.283/07.12.1993 modified by Law nr.69/1996, published in M.Of. nr.150/17.07.1996, OUG nr.112/2000 published in M.Of. nr.305/04.07.2000 approved by Law nr.454/2001, published in M.Of. nr.418/27.07.2001.

[11] Law no.103/1996 published in M.Of. no.328/17.05.2002

[12] Law 107/1996 published in M.Of. nr.70/17.02.2000 supplemented by GEO nr.91/2002, published in M.Of. nr.584/30.06.2004

[13] Law 111/1996 published in M.Of. nr.78/8.02.1998, amended by OUG nr.204/2000, published in M.Of.nr.589/21.11.2000.

[14] GEO 236/2000. This concerns the regime of protected natural areas, conservation of natural habitats, wild flora and fauna; GEO no.243 – the latter being entitled the Ordinance on the Protection of the Atmosphere.

like to list some of the institutions that are responsible for the protection, conservation, protection, supervision and development of environmental conditions, such as the Ministry of Agriculture, Forestry, Water and the Environment[15].

This specialized body is part of the central public administration, of course having legal personality and naturally being subordinate to the Government, among its duties we cannot omit those related to: ensuring sustainable development in the fields of agriculture, forestry, food industry, management and rational exploitation of the forestry fund, forest vegetation, ensuring financial resources for the realization of these goals, realization of the policy in the fields of water and environmental protection at the national level, applies the[16] strategy and the Government program in order to promote policies in the field of agriculture, food industry, rural development, health and veterinary, forestry, water and environmental protection, coordinates the endorsement, promotion, implementation and monitoring of specific investment objectives, ensures and implements government policies in its areas of activity, develops and supports rural development programmes in its area of activity, studies concerning mountainous and disadvantaged rural areas, coordinates the endorsement, promotion and monitoring of specific investment objectives, proposes mechanization, modernization and refurbishment programmes, coordinates the asset activity of the public institutions under its supervision, coordinates and monitors the concessioning of assets of the National Forestry Administration, represents the Government in relations with domestic and international bodies in the fields of agriculture, forestry, water and environmental protection, organizes and exercises directly through the territorial authorities for environmental protection, the control of compliance with legislation and environmental protection standards, applies sanctions and determines the measures to be applied when the law is violated.

- elaborates the strategy for the management and rational exploitation of the resources of the national forest fund and of the forest vegetation outside it, assigns the management of hunting funds and exercises the powers provided by law in the field of hunting, submits annual reports to the Government on the evolution of the state of the national forest fund, organizes the system for monitoring the health of forests, takes measures for the forest reconstruction of those in decline and coordinates the management of protected areas of the national forest fund.

- establishes the methodology for establishing the system of water payments and the procedure for drawing them up, coordinates, from a water management

[15] H.G. on the organization and functioning of MAPAM no.739/2003 published in M.Of. no.495/09.07.2003

[16] Art.4 points 1-44 of the H.G.

point of view, the approval and authorisation of works to be built on or in connection with water.

It also plays a decisive role in the elaboration and promotion, according to the law, of draft normative acts, regulations, instructions and technical standards specific to the fields of meteorology, hydrology, hydrogeology and water management and dam operation safety, updating and, where appropriate, implementing the national strategy and the national action plan for water resources management.

The territorial public authorities for environmental protection are, according to the legislation in force, the environmental protection agencies. They operate in the territory, as well as the Administration of the "Danube Delta" Biosphere Reserve within the perimeter of the reserve.

Among the tasks of these institutions are those relating to: the legislative framework in the sense that they initiate draft laws, technical rules, regulations and procedures, endorse rules and regulations on activities with an impact on the environment drawn up by other authorities and monitor their application.

Other tasks concern the implementation of its own programmes, the development of educational materials, the creation of the information system, the conditions and terms that will allow free access to information, public participation in environmental decisions, the linking of environmental planning with land-use and urban planning, and the imposition of ecological reconstruction measures, monitor the implementation of the programme and measures for compliance with international conventions to which Romania is a party in the environmental field, also in cases of non-compliance with the rules apply sanctions to the holders of illegal activities, consult periodically with non-governmental organizations and civil society, make available to the public data on the state of the environment, environmental protection programmes and policy, etc.

Among the acts with a particular impact on environmental protection, we cannot omit the "Government Emergency Ordinance no.195/2005"[17] on environmental protection. The law is made up of 2 chapters, the first being entitled "Regime of dangerous substances and preparations" and the other "Regime of waste", specifically Chapter 3 and 6. The chapter on dangerous substances and preparations regulates, among other things, that the manufacture, use, placing on the market, temporary and permanent storage, handling, disposal,

[17] Art.25 of GEO 195/2005 on environmental protection. The central public authority and the territorial public authorities for environmental protection as well as other public authorities empowered by law, control compliance with the regulations on the regime of dangerous substances and preparations. According to art.26 and 27 of the Ordinance for the control of import, export and transit of dangerous substances in customs, the customs authority convenes the competent authorities in the field of dangerous substances and preparations, in accordance with the legal provisions in force.

introduction and removal of dangerous substances and preparations are subject to a regulatory and management regime.

We highlight some of the most important obligations that both natural and legal persons have[18], these are: to keep strict records of the quantity, means of insurance, characteristics of dangerous substances, preparations including containers and packaging in their field of activity, to dispose of dangerous substances and preparations that have become waste in a safe way for the health of the population and the environment, to prevent and identify the risks that these substances and preparations pose to human health and to notify the specialised authorities of any unforeseen discharges or accidents that may occur.

As regards the management of this waste, this can only be done under conditions that ensure the health of the population and the environment, based on specific rules. This role of protecting and managing waste in the best possible conditions is incumbent on both natural and legal persons, including local authorities and those with specific obligations[19], we can safely say that this role, *lato sensu,* is incumbent on the entire population.

In the article published in Pandectele Române no.6/2015, the renowned professor Mircea Duțu, one of the most renowned specialists in the field of environmental law, if not the most renowned, referring to the liability for the future[20]; after specifying the inclusion in the new Civil Code respectively art.1385(2) the liability for the future brings into discussion the work "Principle of liability" by Ionas published in 1979.

Further by recognising the precautionary principle, Directive 2004/35/EC admits liability in the case of an "imminent threat", the role that this new "law of risks" has gradually gained, leaving behind the "law of damages", is highlighted. This trend towards liability for the future, which emerged in France more than two decades ago, has also made itself known in the legal literature of other countries, including the national legal literature, where a positive reaction is expected.

In addition to phenomena such as global warming, nuclear risk, climate change including the space perspective, planetary risks, major nuclear accidents, with repercussions for the entire planet, the renowned professor brings up.

The areas concerned by liability for the future are generally collective, they can even be encountered in the form of landslides[21], floods (especially as a result

[18] Art.29, 30 and 31 of GEO/2005 on environmental protection

[19] Article 32 (1), (2) and (3) of the Ordinance specifies in detail everything that concerns both the transit and the export of waste, regardless of its nature, in accordance with the agreements and conventions to which Romania is a party and of course in full compliance with the specific legislation in the field.

[20] Mircea Duțu, Speech delivered on the occasion of the awarding of the title of Doctor Honoris Causa, "Valahia" University, 12 June 2015.

[21] Mircea Duțu, op.cit., p.5

of the phenomenon of global warming) and can be affected both the human species, the life system, so we have on the one hand the happier, minor part, namely subjective damage (felt by a person), but we can encounter real catastrophes caused by actual ecological damage.

These destructions, existing degradations, beyond damaging a human interest, bring certain relationships, serious damage that can seriously harm ecological processes, ecosystems, species, we have what in French law has been called the Erika case. The risk of serious and irreversible damage must always be taken into account. We must not forget the accidents at Chernobyl – 1986, Catrina – 2005 or Fukusima – 2011. These principles of precaution and prevention should not be overlooked under any circumstances.

Liability in this situation is on the one hand the well-known fault, but in the case of the creation of a risk towards another, the subject is sanctioned from the moment when it entails a probable or even uncertain risk of serious and irreversible damage.

Both natural and legal persons are liable for offences committed by causing damage, i.e. by harming the environment, the latter form of liability does not exclude the former. The penalties applicable to the legal person provide for a fine as the main penalty and, as additional penalties, suspension of one of the legal person's activities, closure of the legal person's workplaces, dissolution of the legal person, prohibition from participating in public procurement procedures, and publication or dissemination of the judgment of conviction. Trade unions, political parties, employers' associations, religious organisations and legal entities operating in the press are not subject to the additional penalties of dissolution or suspension of the legal entity's activity.

Public institutions are not criminally liable for offences committed in the exercise of an activity which cannot be the object of private domain[22] The State and public authorities are not liable for offences committed in the performance of the object of activity or in the interest or on behalf of the legal person. Romanian legislation establishes direct liability, i.e. liability for one's own act, so we have both the material element and the subjective element. As far as environmental protection is concerned, many of the offences are related to the performance of the object of activity that generates pollution or damage to the environment and environmental factors.

In the same opinion, see at length Daniela Marinescu[23] in the sense that the damage created obliges the person or persons in question to repair it, and the

[22] Florin Streteanu, Considerations regarding the criminal liability of legal persons in the light of the new Criminal Code, in Noua legislație penală, tradiție, recodificare, riforma, progres juridice, vol.1, Ed. Universul Juridic, Bucharest, 2012, pg.80-88.

[23] Daniela Marinescu, Environmental Law Treatise, 4th revised and added edition, Ed. Universul Juridic, Bucharest, 2010, p.159

known, well-known forms, civil, criminal, administrative, are not sufficient, since we are talking about an ecological damage[24].

In this view that common liability is insufficient, inadequate, when environmental protection rules are violated, environmental law being a young branch and failure to act in an optimal preventive and timely manner can have particularly serious consequences[25]. In line with the European Union strategy and in order to fulfil the commitments undertaken in the negotiation process with the European Union, the "National Strategy for Sustainable Development – Horizon 2025" has been drawn up, which sets short, medium and long-term environmental objectives.

The needs and constraints imposed by environmental protection in the context of economic development, satisfying the requirements of sustainable development, can only be ensured if there is a real and functional link between economic and environmental policy at all levels of the state structure and in all branches of the economy. Pollution prevention, waste management, conservation and restoration of the environment, global control of the phenomenon, management of natural resources, maintenance of biodiversity of species, require great efforts, especially of a financial, organisational and human nature, mobilisation of research and development potential, especially the concept of sustainable development, must be one of the basic, if not the most important concern of every society.

[24] Marilena Uliescu, Environmental Law, Ed. Christian University "Dimitrie Cantemir", Bucharest, 1998, p.56

[25] Dragoș Rădulescu, Legal liability for environmental damage, in Annals of the Christian University "Dimitrie Cantemir", Law series 2006, Ed. ProUniversitarea, Bucharest, 2006, p.159. See also Andrada Mihaela Trușcă – Particularities of legal liability in environmental law, Ed. S.C.Universul Juridic, Bucharest, 2012, p.7-10.

Legal Aspects Regarding the Notion, Indivisibility, Legal Characters and Special Nullities of the Life Annuity Contract in the Current Regulation

Vlad-Teodor FLOREA[*]

Abstract

The present study analyses some legal institutions in the field of life annuity contract, as regulated by Law no. 287/2009 on the Civil Code. The author focuses on legal issues related to the life annuity contract and examines how they were regulated, highlighting gaps, unclear wording and ambiguities. At the same time, the doctrinal opinions in the matter regarding the legal characters of the life annuity contract and its special nullities, completed or on the contrary rejected, investigated with adequate legal arguments.

Keywords: *life annuity contract; creditor; co rentier; the indivisibility of the life annuity; random contract; contract with successive execution; intuit-personae contract; irrevocable contract; absolute special nullities.*

1. The idea of annuity contract.

The current Civil Code[1] regulates the life annuity contract in Book V ("On obligations"), Title IX ("Various special contracts"), by art.2242-2253.

According to art. 2242 para. (1) Civil Code, "Through the life annuity contract, a party, called co rentier, undertakes to perform for the benefit of a certain person, called creditor, periodic benefits, consisting of sums of money or other fungible goods. "

Examining the legal definition of the contract in question, a few remarks have to be made.

First, we note that if in the previous Civil Code[2], the life annuity contract was not regulated; the Civil Code in force emphasizes the essential feature of this type of agreement, namely the fact that it represents a contract with successive execution ("periodic benefits"), having as an object, and the transmission of sums of money or other fungible goods. The annuity contract lacks the claim involving periodic benefits.[3]

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[1] Law no. 287/2009 on the Civil Code

[2] See Civil Code of 1864

[3] See, M.G. Berindei, "*Succinte precizări cu privire la noțiunea, durata, cazurile de nulitate absolută și rezoluțiunea contractului de rentă viageră în reglementarea actuală"*, in *Studii și cercetări juridice*, no. 3/2015, Ed. Romanian Academy, p.376.

Second, the term "annuity" highlights the specificity of the analysed contract, highlighted by this very term. An annuity means a receivable whose object consists of periodic benefits of the nature of fungible goods. Thus, the current legal definition of the contract takes a back seat, in the sense that it erases the topicality of the doctrinal opinion[4] expressed under the previous legislation, according to which the debtor's obligation was limited to the periodic payment of a sum of money.

However, the current legal definition extends the debtor's[5] obligation by stating that the object of his benefit is not only the amounts of money, but also other fungible goods, i.e. any goods determinable by number, size or weight or that can be replaced by each other in execution of the obligation. [Art.543 para. (2) Civil Code].

Third, the question naturally arose in the literature[6] whether the expression "other fungible goods" can mean any goods in this category that could be subject to the debtor's obligation, or, conversely, only those fungible goods compatible with the life annuity contract.

Acquiring the evoked doctrinal opinion, namely those only fungible goods that "compete for the purpose of the annuity contract", could be subject to the obligation of the debtor, we add another argument. The principle of "*specialia generalibus derogant*" operates, the species represented by the maintenance contract.

In other words, if the expendable goods that constitute the debtor's periodic obligation are of the nature required by the maintenance contract (for example, food for the creditor's daily food), then we are no longer dealing with the legal nature of the life annuity contract.

Fourth, we specify that we adhere to the doctrinal opinion[7] according to which "… the person for whose benefit the annuity is constituted may be a party to a life annuity contract (co-contractor of the debtor) or may be a third party to this contract (case in which the annuity is confused with a stipulation for another)".

The argument invoked by the aforementioned author in support of the defence of this thesis is that in the matter of the life annuity contract, "the debtor is a party and the creditor is a person", as stipulated by the legal provisions.

Along with this argument can be attached the one resulting from the provisions of art.2243 paragraph (2) of the Civil Code. Thus, according to this text of law, when the annuity stipulated in favour of a third party, the contract is

[4] See, Fr. Deak, "*Tratat de drept civil. Contracte speciale, ed. a III-a, actualizată și completată"*, ed. III, updated and completed, Ed.Universul Juridic, Bucharest, 2001, p.524 and following.
[5] See, C.Macovei, M.C.Dobrilă, "*Contractul de rentă viageră"*, in Fl.-Antoniu Baias, E.Chelaru, R. Constantinovici, I.Macovei, "*Noul Cod covil. Comentariu pe articole"*, Ed. C.H.Beck, Bucharest, 2012, p.2196-2197.
[6] See, M.C. Berindei, op.cit, P.376.
[7] See, C.Macovei, M.C.Dobrilă, op.cit. P.2196.

not subject to the form provided for donation, even the third party receives it free of charge.

Therefore, we note the first thesis of the sentence – there is a possibility that one of the parties of the contract, called the stipulator, may impose on the other, called the promisor, the obligation to perform a periodic service, having as object the transmission of a sum of money or other fungible goods, in favour of a third beneficiary. The beneficiary creditor thus acquires, free of charge, drawn up with the intention of gratifying, *donandi causa*, a free benefit, through an indirect donation, exempted from its formal conditions.

2. The indivisibility of the life annuity

In the legal literature[8], the opinion was that the indivisibility of the life annuity in the case of the plurality of creditors applies only if the life annuity has as object a sum of money.

However, according to Art. 2245 of the Civil Code, the obligation to pay the life annuity is indivisible with respect to the creditors, unless otherwise agreed. Therefore, the law does not make any distinction between the situation in which the annuity consists of a sum of money, or, on the contrary, in other fungible goods, to state that the indivisibility of the annuity would apply only in the case of the benefit consisting in an amount of money.

In conclusion, we are of the opinion, together with other authors[9], that in the situation where the annuity was constituted in favour of several persons, any of these creditors may request the full execution of the obligation to pay the annuity by the debtor.

Therefore, the applicant creditor, who has applied in court to prosecute the defendant debtor for the entire annuity, will not be able to oppose the enrichment without legitimate grounds, or an exception, which will have the effect of introducing the other creditors in question.

At the same time, in the event that the debtor has made the full payment of the annuity to one of the creditors, then the solvent debtor will be released to all creditors. The active indivisibility of the annuity is presumed, which means that the parties can, by expressly expressing their legal will, remove the indivisibility of the life annuity claim.

3. Legal characteristics of the life annuity contract

From the overall economics of the regulations relating to the life annuity contract, we understand that it has the following legal characteristics:

[8] See, C. Hamangiu, I. Rosetti Bălănescu, Al. Baicoianu, "*Tratat de drept civil român"*, vol. II, All Beck Publishing House, Bucharest, 2002, p.1029-1030.

[9] See, B. Florea, "*Drept civil.Contractele speciale"*, Universul Juridic Publishing House, Bucharest, 2013, p.203.

a) Is a named contract. In Book V ("Despre obligatii"), Title II ("Izvoarele obligatiilor"), Chapter I ("Contractul"), Section 2 ("Diferite categorii de contracte"), art.1171-1177 of the Code civil law in force, there are different categories of contracts found in civil law.

Examination of these regulations does not result in the categorization of conventions into named or unnamed contracts.

However, art.1168 civil code ("Reguli aplicabile contractelor nenumite") refers to the circumstance that the provisions of this chapter apply to contracts not regulated by law, and if these are not sufficient, the special rules regarding the contract with which it most closely resembles.

Therefore, the unnamed contract is that convention which does not benefit from its own regulation in the civil law in force.

On the contrary, it follows that a contract has a named character if expressly regulated in the Civil Code or special laws. As a life annuity contract finds, as we have stated above, a special regulation in the current Civil Code, it means, without a doubt, that it is a named contract.

b) It is an onerous contract or free of charge. Life annuity is onerous.

On the contrary, if the debtor undertakes to pay the annuity to the director until the death of the beneficiary, without receiving anything in return, we are in the presence of a free annuity contract.

c) Is a random contract, most of the times. According to art.1173 para. (2) Civil Code, contractual is random, if by its nature or by the will of the parties offers at least one of the parties the chance of a win and exposes it at the same time to the risk of loss, both sides (chance and win) depending on a future and uncertain event.

The terms "gain" and "loss" refer to property rights and obligations.

The life annuity contract is random if it is for a fee, depending on the uncertain date of the creditor's death.

If, on the other hand, we are talking about a free life annuity contract, then we are no longer dealing with randomness. This happens because one party to such a convention enjoys a gain, while the other party suffers a loss, without that the existence of the gain or loss depend on a future and uncertain event, the latter affecting only the amount of the gain, respectively the loss.

d) Is an atypical contract with successive execution. Thus, the debtor will pay the annuity successively, while the creditor will execute its assumed obligation, *uno ictu*.

Thus, we hold the unanimous opinion of the doctrine that in order for a contract to have a typical successive character, both parties must fulfil their obligations in succession, as is the case, for example, the lease contract.

e) It is an intuitive-personae contract, because at its conclusion the person of the debtor is taken into account, who has certain qualities, among which that

inspires the confidence that he will fulfil his obligation to provide life annuity until the termination of the contract.

f) Is an irrevocable contract. This character completes the intuitive-personae character of the life annuity. In accordance with the provisions of art.2252 of the Civil Code, the debtor cannot be freed from the payment of the annuity by offering the return of the capital and renouncing the claim to be refunded the instalments paid.

The debtor is required to pay the annuity until the date of death of the person during whose life the annuity was constituted, no matter how burdensome its provision may become.

4. Absolute special nullities in the case of a life annuity contract

The current Civil Code regulates two special cases of absolute nullity of the life annuity contract. These are: a) The case when the life annuity established during the life of a third party who has already died, and b) the case when the life annuity contract established during the life of a person affected by a lethal disease.

a. *The absolute nullity of the life annuity when constituted during the life of a third party already deceased*. According to art.2246 Civil Code, the contract stipulating an annuity constituted during the life of a third party who was deceased on the day of its conclusion, is struck by absolute nullity.

This regulation gives us the opportunity to clarify.

First, let us emphasize that in order to be in the hypothesis outlined by the text of the law, the period of validity of the life annuity contract must be established during the life of a person who is not a party to the contract.

Second, the absolute nullity of the annuity also operates if the third party has the status of creditor of the annuity, deceased on the day of the conclusion of the contract.

Third, for the absolute nullity of the annuity to operate, the death of the third party must have taken place before the time of conclusion of the contract. This condition results from the wording of the regulation adopted by the legislator, which requires that the third party be deceased on the day of conclusion of the contract.

Fourth, we agree with the doctrinal opinion which considers that the previous regulation (Civil Code of 1864), which sanctioned with absolute nullity the contract of "annuity for life" established in favour of a person who was already deceased "at the time of the contract" (art. 1644), was a clearer solution than the regulations in force.

In the current Civil Code, the phrase "the day of concluding the contract" is used, and in the previous one the expression "the moment of concluding the contract".

If, on the same day as the conclusion of the life annuity contract, the death of the third party during the life of the annuity were established, there is no doubt that the previous regulation, which used the term "moment" of the contract, makes it easier to establish, by any means of proof. If the third party was alive when the contract was concluded, than the expression in the current regulation, namely the one referring to the "day" of the conclusion of the contract.

Fifth, if the annuity was constituted during the life of several third parties, of which only one was deceased at the time of concluding the contract, the absolute nullity regulated by art.2246 Civil Code, no longer applies. In such a case, unless otherwise stipulated, the life annuity contract shall remain valid until the date on which the last of the designated third parties dies.

b. The absolute nullity of the life annuity when constituted during the life of a person affected by a lethal disease. In accordance with the provisions of art.2247 of the Civil Code, the contract by which an annuity was established for a fee, during the life of a person who, at the date of concluding the contract, suffered from an illness due to which he died within a maximum of 30 days from this date, does not produce any effect.

It is another special case of absolute nullity of the life annuity contract, which, in turn, involves some emphasis.

First, let us note that in order for the sanction of absolute nullity to apply, it is necessary for the annuity to be constituted for consideration.

Second, at the time of concluding the contract, the person during whose lifetime the period of validity of the life annuity has been established must suffer from an illness.

Third, it is required that the illness suffered by the person concerned when determining the duration of the contract be the cause of his death.

On the contrary, if the death was not caused by that illness, but by, for example, another illness, which arose after the conclusion of the contract, then the absolute nullity of that life annuity no longer, applies.

Fourth, in order for this case of absolute nullity to occur, the death of that person must take place within a maximum of 30 days from the date of conclusion of the contract.

Fifth, if the life annuity was established during the life of several persons, and only one or some of them die under the conditions mentioned in the text of the law, the contract remains valid as long as at least one of those persons is alive after 30 days from the date of conclusion of the contract.

5. Conclusions

The current regulation of the life annuity contract has created an opportunity for us to try to examine some legal institutions related to this matter and for their correct application.

Essential Features of Arbitration as a Possible Decentralized and Autonomous Resolution Mechanism for Disputes in the Metaverse and Web 3.0

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Abstract

The dispute resolution structure and context require reinvention to keep the peace with the technological settings of the new environment construed around the new and innovative notions as metavers, Web 3.0 (now will be 4.0), smart contracts, non-fungible tokens NFTs, cryptocurrencies and so on. The current legal system used is based on location because it is the world we are living in. But in the Web 3.0 and metaverse – where anonymous avatars from around the globe interact and transact with each other, time, location and identity are fluid perceptions. The legal concepts of habitual residence, place of business of the parties or real estate property location, which are traditionally at the core of private international law rules, become meaningless in this context. The rise of Web 3.0, the metaverse, and NFTs has brought significant technological advancements, but it also poses unique legal and jurisdictional challenges. Traditional legal systems struggle to address disputes arising from these decentralized environments. The rapid evolution of Web 3.0 technologies, including blockchain, cryptocurrencies, and the metaverse, has ushered in a new era of digital interactions and transactions. As these innovations reshape our online experiences, they also give rise to novel legal challenges and disputes. This paper focuses on addressing the presentation of the ecosystem in discussion, formed of Web 3.0, NFTs, and the metaverse and moreover, explores the potential of arbitration as a decentralized and autonomous dispute resolution mechanism and its advantages on using such mechanism in solving conflicts efficiently.

Keywords: *arbitration, metavers, blockchain, smart contracts, Web 3.0*

1. Introduction

The development of Web 3.0, characterized by decentralization, blockchain technologies, and increased user control, has revolutionized digital interaction. Within this framework, the metaverse - a collection of interconnected virtual worlds - and NFTs, unique digital assets stored on the blockchain, have emerged as transformative innovations. However, these advancements come with challenges, particularly in dispute resolution.

Disputes in the Web 3.0 ecosystem often involve issues like intellectual property rights, conflicts related to NFTs, digital assets or art, to virtual property ownership, and smart contract disagreements and execution issues.[1] There are also involved cryptocurrency transactions and token issuances, metaverse-related

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[1] https://atblegal.com/blog/dispute-resolution/arbitration/web-30-technology-disputes/

disputes, such as virtual property rights and avatar interactions[2], blockchain technology and protocol disputes.

1.1 Arbitration – a solution to solve such conflicts

Traditional legal systems face difficulties addressing such disputes due to jurisdictional limitations and the pseudonymous nature of blockchain transactions. To fill this gap, arbitration presents a promising solution. As a flexible and neutral dispute resolution mechanism, arbitration can be tailored to the decentralized nature of blockchain ecosystems, offering efficiency and enforceability through smart contracts and decentralized platforms.

Concerning the arbitrability of Web 3.0 disputes, these are generally considered arbitrable., and in many cases, arbitration may be the most suitable forum for their resolution.[3] The decentralized and international nature of Web 3.0 technologies aligns well with the fundamental advantages of arbitration,[4] including:

1. Privacy and confidentiality, which are crucial when dealing with sensitive technological information or proprietary code.
2. Enforceability of arbitral awards under the New York Convention, particularly important given the global nature of Web 3.0 participants.
3. Flexibility in choosing arbitrators with relevant professional expertise and capabilities in complex technological matters.

This paper explores how arbitration can be adapted to serve as a decentralized and autonomous[5] dispute resolution mechanism for the metaverse, NFTs, and Web 3.0, addressing jurisdictional, technical, and ethical challenges along the way.

According to the theory of autonomous arbitration,[6] arbitrations should remain autonomous and free from state interference.[7] Accordingly, international arbitrations should be governed by international rules and practices, not by national laws. However, proponents of this theory have recognized that parties must rely on courts to enforce arbitral awards.[8]

Of course, when parties refuse to voluntarily comply with the terms of an award or the instructions of the tribunal during the arbitral process, the injured

[2] https://www.lalive.law/the-metaverse-and-international-arbitration-how-to-anticipate-and-resolve-web-3-0-disputes/?t

[3] https://arbitrationblog.kluwerarbitration.com/category/metaverse/

[4] https://atblegal.com/blog/dispute-resolution/arbitration/web-30-technology-disputes/

[5] https://arbitrationblog.kluwerarbitration.com/2022/03/11/autonomous-arbitration-in-the-era-of-the-metaverse/;

[6] https://academic.oup.com/crawlprevention/governor?content=%2farbitration%2farticle%2f22%2f2%2f179%2f208671

[7] https://eprints.soas.ac.uk/39075/1/Chapter%2030%20Emilia%20Onyema.pdf

[8] https://figshare.le.ac.uk/articles/thesis/The_Autonomous_Theory_Of_International_Commercial_Arbitration_An_Autopoietic_Perspective/24261283?file=42588595

party is forced to knock on the doors of national courts, primarily those that have jurisdiction over the assets of the losing party. Most national courts, when exercising their jurisdiction, apply national law.

But for arbitration to be fully autonomous,[9] it must not rely on states at all and must have its own enforcement mechanism.[10] Perhaps this change will be for the better. It will depend on what users want. The arbitration community is currently scared and hesitant about the possibility of using a fully autonomous and decentralized mechanism for resolving disputes related to virtual and augmented space. In particular, the replacement of human arbitrators with robots is one of the most delicate and debated topics, which recently appears on the agenda of most conferences or lectures related to these issues.

1.2 AI Robot Arbitrators

It's impossible to imagine legal practice without legal-tech these days, and AI (Artificial Intelligence)[11] will undoubtedly become increasingly sophisticated and useful in the future. It seems that we are all becoming more impatient and we all want to participate in this process.

However, by its very nature, we believe that AI cannot properly decide cases regarding legal disputes, since a brief analysis of the legal decision-making process in detail clearly shows that even simple cases cannot be judged by robots.[12] However, cases can rarely be qualified as "simple" in advance. Even the handling of implicit cases, for example, can be a delicate and complex matter: many legal technical issues may arise in the proceedings, especially in an international setting, and these require special attention from a judge or arbitrator. The detailed step-by-step analysis of the legal decision-making process emphasizes that a judge or an arbitrator should never be replaced by a robot, not even in simple cases.[13]

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[9] https://jusmundi.com/en/document/publication/en-achieving-the-dream-autonomous-arbitration

[10] https://research.bond.edu.au/en/publications/autonomous-arbitrability-whose-autonomy-whose-arbitrability

[11] http://www.vyablog.com/2020/04/artificial-intelligence-in.html

[12] https://www.ciarb.org/news/ai-technology-and-international-arbitration-are-robots-coming-for-your-job/; http://arbitrationblog.practicallaw.com/summoning-the-demon-robot-arbitrators-arbitration-and-artificial-intelligence/; https://globalarbitrationreview.com/review/the-arbitration-review-of-the-americas/2020/article/the-role-of-artificial-intelligence-in-international-arbitration; https://www.abacademies.org/articles/the-use-of-a-machine-arbitrator-as-an-application-of-artificial-intelligence-in-making-arbitral-awards-11993.html; https://www.garrigues.com/en_GB/new/artificial-intelligence-international-arbitration-legal-prediction-awards-issued-robots; https://www.academia.edu/42710443/Robotic_Arbitration_To_What_Extent_Could_Robots_Conduct_Arbitrary_Procedures; https://www.terralex.org/publications/arbitration-in-the-time-of-artificial-intelligence; https://www.ibanet.org/article/E62B06F6-7772-458A-A6E7-1474DB7136B5

[13] https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4936638;
https://www.degruyter.com/document/doi/10.1515/ajle-2020-0008/html?lang=en&srsltid=AfmBOornssLGIgdfhkT3-Lxllojq6oCRWHVDp8YW5S957ejLR0tvfElE;
https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3863136;

The question arises whether human intervention will be involved in the judging and decision-making process or will it be completely eradicated. For now, as the regulations are and how society is created, at the current stage of technological development, human intervention is still necessary and desirable.

Arbitration users (and not only), people in general, have not given up the right to explanation, analysis and motivation of a decision. AI can give a recommendation or answer a question with certain solutions, but it is not yet developed to render a decision and show at the same time the reasoning behind it,[14] since it is an algorithm, which chooses from a database. So, depending on what it has been taught and what access it has to knowledge and information, it will apply its algorithm, but, for now, it cannot issue reasoned judgments, case analyses and explain why a certain solution is the one chosen.[15]

The human characteristic of intelligence and the ability to argue has not yet been algorithmized and introduced into the AI system, even though these robots have become machine-learning, meaning they have come to make synapses on their own and carry forward the possibilities of finding new solutions to a certain problem.[16]

2. Understanding the Ecosystem: Web 3.0, NFTs, and the Metaverse

2.1 Web 3.0

Web 3.0 refers to the evolution of the internet into a decentralized, blockchain-driven network.[17] Unlike its predecessors, Web 3.0 prioritizes user

chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://justen.com.br/wp-content/uploads/2024/11/IE-231-Generative-Artificial-Intelligence-and-Legal-Decision-making.pdf; https://www.researchgate.net/publication/382221768_Arbitration_and_AI_from_Arbitration_to_'Robotration'_and_from_Human_Arbitrator_to_Robot

[14] To bring some trust, the posteriori idea Explainable AI (XAI), interpretable AI, or explainable machine learning, has been introduced, as a set of tools and frameworks to help you understand and interpret predictions made by your models thus retaining intellectual oversight. To trust and understand or explain, we need to build white box AI/ML/AGI algorithms as causal world AI models with the inputs and outputs, mediated with internal transformation mechanisms, and modelled by causal hypergraph networks.
It is especially important in domains like government and politics, medicine, defense, finance, and law, where it is crucial to understand decisions and build trust in the algorithms and models. https://www.quora.com/To-what-extent-can-current-A-I-explain-its-reasoning-when-it-solves-a-problem-or-makes-an-identification-Even-if-A-I-can-do-more-in-the-future-can-we-call-something-A-G-I-if-it-cant-explain-how-it-learned-or-made (Kiryl Persianov)

[15] https://hbr.org/2022/09/ai-isnt-ready-to-make-unsupervised-decisions

[16] For more about the AI in science, on the reasoning of machine-learning systems, and on some challenges in the development of "explainable AI", see https://www.oecd.org/en/publications/artificial-intelligence-in-science_a8d820bd-en.html

[17] https://www.simplilearn.com/tutorials/blockchain-tutorial/what-is-web-3-0; https://www.simplilearn.com/tutorials/blockchttps://www.mckinsey.com/featured-insights/mckinsey-explainers/w

control, data ownership, and trustless interactions. Smart contracts, self-executing agreements coded on blockchains, underpin this ecosystem. They automate transactions and agreements, removing the need for intermediaries. However, their rigidity can lead to disputes when unforeseen circumstances arise.

2.2 Non-Fungible Tokens (NFTs)

NFTs are unique digital tokens that represent ownership of a specific digital or physical asset. Stored on blockchains, NFTs are widely used for art, music, gaming assets, and virtual real estate. Disputes in the NFT space often arise from copyright issues, fraudulent transactions, and contested ownership.[18]

2.3 The Metaverse

The metaverse[19] comprises interconnected virtual environments that allow users to interact in real-time through avatars. These environments, powered by blockchain technology, support virtual economies where users can buy, sell, and trade virtual assets. Disputes in the metaverse typically involve virtual property rights, contractual obligations, and identity theft.

2.4 Challenges in the Ecosystem

These ecosystems operate across borders, making traditional jurisdictional approaches inadequate. Furthermore, the pseudonymity of blockchain users complicates the enforcement of legal judgments. Decentralized dispute resolution mechanisms must address these challenges to ensure fairness and enforceability.[20]

3. Arbitration as a Decentralized Dispute Resolution Mechanism

3.1 On Arbitration

Arbitration is a private (non-court alternative) dispute resolution process where parties agree to have their disputes decided by a neutral panel of arbitrators

hat-is-web3; https://www.ramotion.com/blog/what-is-web-3-0/; https://www.britannica.com/money/what-is-web3

[18] https://www.investopedia.com/non-fungible-tokens-nft-5115211; https://www.researchgate.net/publication/376622455_Non-Fungible_Tokens_NFTs-Survey_of_Current_Applications_Evolution_and_Future_Directions; https://www.medialaws.eu/rivista/non-fungible-tokens-nft-business-models-legal-aspects-and-market-valuation/

[19] https://ecos.am/en/blog/the-metaverse-and-cryptocurrencies-a-comprehensive-guide-to-virtual-realities-digital-assets-and-future-opportunities/?srsltid=AfmBOopqy2ipiFd3kjaci7WVcaplqa-HEvrIbQ_LvQfBPIcF_bKWFQd0;
https://www.researchgate.net/publication/383326858_Metaverse_in_the_Play_A_Platform_for_Entrepreneurship_and_Innovation_ABSTRAK_A_R_T_I_C_L_E_I_N_F_O;
https://www.mdpi.com/1999-5903/16/10/379;
https://www.sciencedirect.com/science/article/pii/S0167739X23000493; https://dex-trade.com/news/academy-261224; https://www.sciencedirect.com/science/article/pii/S0268401222000767

[20] https://brill.com/edcollchap-oa/book/9789004514850/BP000029.xml?language=en;
https://www.researchgate.net/publication/388220916_Beyond_the_blockchain_hype_addressing_legal_and_regulatory_challenges;
https://www.researchgate.net/publication/382349305_Legal_frameworks_for_digital_transactions_Analyzing_the_impact_of_Blockchain_technology

compose of one or three members, who render a binding decision of the dispute. It is valued for its flexibility, possibility to nominate professional experienced arbitrators, confidentiality, and enforceability. Arbitral awards are typically binding and enforceable under international agreements like the New York Convention.

3.2 Decentralized Arbitration

Decentralized arbitration refers to a method of resolving disputes between private parties using blockchain-assisted technology and a decentralized set of decision-makers, method which integrates traditional arbitration principles with blockchain technology.[21]

Traditional dispute resolution processes are often time-consuming, expensive, and can be susceptible to bias. In the digital age, where transactions occur across borders and legal jurisdictions, a more efficient and globally accessible solution is imperative. Decentralized arbitration offers a decentralized dispute resolution system that is not bound by geographical constraints or bureaucratic delays.[22]

Platforms like Kleros and Aragon Court exemplify this approach. These systems rely on community-selected jurors and smart contracts to resolve disputes.

3.3 Advantages of Arbitration in Web 3.0 Ecosystems

Web 3.0 introduces a decentralized internet framework where users interact directly, without intermediaries, through blockchain-based platforms. In this environment, arbitration offers significant advantages over traditional legal systems by aligning with the core principles of decentralization, automation, and user control. Below is a deeper exploration of how arbitration can address disputes in Web 3.0 ecosystems, by emphasizing the essential features of the arbitration advantages:

- **Autonomy:** Parties can design their arbitration process, selecting arbitrators, rules, and procedures.
- **Efficiency:** Smart contracts automate many arbitration steps, reducing time and costs.
- **Decentralization:** Blockchain-based arbitration removes reliance on centralized judicial systems.

[21] https://lawblocks.medium.com/revolutionizing-dispute-resolution-the-power-of-decentralized-arbitration-with-lawblocks-2a39f0dc107c; https://digitalcommons.pepperdine.edu/drlj/vol24/iss1/2/; https://moritzlaw.osu.edu/sites/default/files/2022-08/10-%20BERGOLLA%2055-98.pdf; https://www.frontiersin.org/journals/blockchain/articles/10.3389/fbloc.2021.564551/full; https://jusmundi.com/fr/document/publication/en-from-smart-contract-litigation-to-blockchain-arbitration-a-new-decentralized-approach-leading-towards-the-blockchain-arbitral-order

[22] https://lawblocks.medium.com/revolutionizing-dispute-resolution-the-power-of-decentralized-arbitration-with-lawblocks-2a39f0dc107c

3.3.1 Autonomy

In traditional arbitration, parties have the freedom to define the process, including selecting arbitrators, rules of procedure, and governing laws. This flexibility is even more pronounced in Web 3.0 arbitration, where blockchain technology allows for smart contracts and custom arbitration mechanisms to be embedded directly into the platforms.[23]

The autonomy advantages in Web 3.0 could be the following:

- **Customizable Dispute Resolution Processes:**

Users can negotiate the terms of arbitration clauses in smart contracts to suit their specific needs. For instance, parties in an NFT transaction can define the scope of disputes (e.g., fraud, ownership) and pre-select arbitrators from a decentralized network of experts.[24]

- **Transparent Rule Design:**

Blockchain allows arbitration rules to be encoded as immutable smart contracts. These rules are accessible to all parties, ensuring transparency and preventing disputes over procedural terms.[25]

- **Self-Governed Communities:**

Decentralized Autonomous Organizations (DAOs) can create tailored arbitration frameworks for resolving internal disputes. For example, DAOs can vote on arbitrators or rules through governance tokens, ensuring that the arbitration process reflects the community's values and goals.[26]

- **Real-World Example:**

In the Kleros platform, every step of the arbitration process (securing evidence, selecting jurors, etc.) is fully automated. Parties can design their own arbitration process, selecting jurors from a decentralized pool based on expertise, reputation, or other criteria, who will study the evidence and vote for a decision.[27]

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[23] https://lawblocks.medium.com/revolutionizing-dispute-resolution-the-power-of-decentralized-arbitration-with-lawblocks-2a39f0dc107c; https://www.lexology.com/library/detail.aspx?g=9e9eba2b-61f5-43cc-aa38-59a85cdd9cbd; https://www.jstor.org/stable/45467490; https://www.globalarbitrationnews.com/2024/09/19/hong-kong-arbitration-as-an-ideal-mechanism-for-resolving-crypto-disputes/

[24] https://arbitrationblog.kluwerarbitration.com/2022/09/29/crypto-arbitration-a-survival-guide/; https://www.nortonrosefulbright.com/en/knowledge/publications/ea958758/arbitrating-smart-contract-disputes; https://stanford-jblp.pubpub.org/pub/resolving-nft-blockchain-disputes/release/4

[25] https://www.csq.ro/wp-content/uploads/5-S.-PACHAHARA-C.-MAHESHWARI.pdf

[26] https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4378966; https://www.researchgate.net/publication/358889700_BLOCKCHAIN_DISPUTE_RESOLUTION_FOR_DECENTRALIZED_AUTONOMOUS_ORGANIZATIONS_THE_RISE_OF_DECENTRALIZED_AUTONOMOUS_JUSTICE; https://www.walkersglobal.com/en/Insights/2024/10/Litigation-Against-Decentralised-Autonomous-Organisations

[27] https://kleros.io/whitepaper_long_en.pdf; https://kleros.io/whitepaper.pdf; https://medium.com/kleros/kleros-a-decentralized-justice-protocol-for-the-internet-38d596a6300d; https://moritzl

In what concerns the challenges and opportunities, while autonomy ensures flexibility, there is a risk of imbalance if one party has more power to dictate the terms of arbitration. Blockchain governance mechanisms can help mitigate this by requiring mutual consent for arbitration clauses in smart contracts.[28]

3.3.2 Efficiency

Efficiency refers to resolving disputes quickly and cost-effectively. In Web 3.0 ecosystems, where transactions and interactions occur in real-time, prolonged dispute resolution processes can disrupt operations and erode user trust. Arbitration in blockchain environments leverages automation and technology to streamline resolution.[29]

Detected advantages in Web 3.0 which could be highlighted are:

- **Automation through Smart Contracts:**

Arbitration agreements encoded into smart contracts[30] can trigger the dispute resolution process automatically when predefined conditions are met. For instance, if an NFT sale fails to deliver the asset to the buyer's wallet, the arbitration process can be initiated without manual intervention.[31]

- **Reduced Administrative Burdens:**

Traditional arbitration involves significant paperwork, scheduling, and administrative coordination. Blockchain-based arbitration eliminates these burdens by automating key steps, such as evidence submission, voting by arbitrators, and issuing decisions.[32]

- **Faster Resolution Times:**

Decentralized arbitration platforms such as Kleros resolve disputes quickly by crowd-sourcing decisions to jurors or arbitrators, who operate on a predefined

aw.osu.edu/sites/default/files/2022-08/10-%20BERGOLLA%2055-98.pdf; https://www.mdpi.com/2073-4336/14/3/34

[28] https://www.cliffordchance.com/content/dam/cliffordchance/briefings/2023/08/arbitration-of-cryptoasset-and-smart-contract.pdf

[29] https://blog.arksigner.com/en/dispute-resolution-in-web-3-0-era

[30] https://www.jamsadr.com/files/uploads/documents/dj-garrie-andler-smart-contracts.pdf'; https://www.gide.com/en/news-insights/blockchain-smart-contracts-and-alternative-dispute-resolution/; https://www.cliffordchance.com/content/dam/cliffordchance/briefings/2023/08/arbitration-of-cryptoasset-and-smart-contract.pdf

[31] https://uk.practicallaw.thomsonreuters.com/w-040-1142?transitionType=Default&contextData=(sc.Default)&firstPage=true; https://www.bclplaw.com/en-US/events-insights-news/smart-contracts-and-the-use-of-arbitration-to-resolve-related-disputes.html; https://www.nortonrosefulbright.com/en/knowledge/publications/ea958758/arbitrating-smart-contract-disputes

[32] https://www.researchgate.net/publication/365615362_New_Technology_Arbitration_Blockchain_Arbitration_and_Data_Arbitration; https://www.ibanet.org/lex-cryptographia-due-process-blockchain-based-arbitration; https://iccwbo.org/wp-content/uploads/sites/3/2022/02/icc-arbitration-and-adr-commission-report-on-leveraging-technology-for-fair-effective-and-efficient-international-arbitration-proceedings.pdf; https://scholarship.law.upenn.edu/cgi/viewcontent.cgi?article=9702&context=penn_law_review; https://aria.law.columbia.edu/blockchain-arbitration-promises-and-perils/

timeline. This contrasts with traditional systems, which can take months or even years.[33]

- **Cost Savings:**

By eliminating intermediaries and automating procedural tasks, blockchain arbitration significantly reduces costs. For example, parties do not need to hire legal counsel to navigate complex procedures, as the rules and decisions are encoded in the smart contract.[34]

- **Real-World Example:**

In the context of Decentraland, disputes over virtual land ownership can be resolved quickly and efficiently using arbitration clauses encoded in smart contracts, ensuring minimal disruption to the platform's economy.[35]

In terms of challenges and opportunities, efficiency may come at the expense of due process if the arbitration process is overly simplified. Ensuring fairness and transparency, even in a highly automated system, is essential to maintaining trust in decentralized arbitration mechanisms.[36]

3.3.3. Decentralization

Decentralization is a core tenet of Web 3.0.[37] Traditional arbitration relies on centralized judicial systems, which are often slow, expensive, and jurisdictionally constrained. Blockchain-based arbitration replaces these centralized authorities with decentralized networks, aligning dispute resolution with the Web 3.0 ethos.[38]

The most notable advantages of decentralization in Web 3.0 are:

- **Jurisdictional Neutrality:**

Decentralized arbitration operates independently of national legal systems, enabling users from different jurisdictions to resolve disputes without facing conflicts of laws. For example, a dispute between a metaverse user in Asia and

[33] https://blog.kleros.io/is-kleros-a-fair-dispute-resolution-system/; https://moritzlaw.osu.edu/sites/default/files/2022-08/10-%20BERGOLLA%2055-98.pdf

[34] https://www.researchgate.net/publication/376742095_Arbitration_in_Smart_Contracts_Disputes_-_A_Look_into_the_Future; https://www.researchgate.net/publication/333169372_The_impact_of_blockchain_technologies_and_smart_contracts_on_dispute_resolution_arbitration_and_court_litigation_at_the_crossroads

[35] https://www.bclplaw.com/en-US/events-insights-news/smart-contracts-and-the-use-of-arbitration-to-resolve-related-disputes.html; https://www.cliffordchance.com/content/dam/cliffordchance/briefings/2023/08/arbitration-of-cryptoasset-and-smart-contract.pdf; https://www.researchgate.net/publication/345173802_Selling_LAND_in_Decentraland_The_Regime_of_Non-fungible_Tokens_on_the_Ethereum_Blockchain_Under_the_Digital_Content_Directive

[36] https://jusmundi.com/en/document/publication/en-due-process-in-arbitration-and-how-to-balance-fairness-and-efficiency; https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2611337

[37] https://stanford-jblp.pubpub.org/pub/birth-of-decentralized-justice/release/1

[38] https://www.researchgate.net/publication/360977595_The_Promise_of_a_Decentralized_Internet_What_is_Web_30_and_How_Can_Firms_Prepare; https://jusmundi.com/en/document/publication/en-unlocking-the-potential-of-blockchain-in-web-3-0-dispute-resolution-assessing-the-challenges-and-opportunities-for-litigation-and-international-arbitration

one in the European Union can be resolved seamlessly on a global arbitration platform.[39]

- **Immutable and Transparent Decisions:**

Arbitration decisions recorded on the blockchain are immutable and accessible to all parties. This ensures transparency and prevents tampering or post-hoc alterations of rulings.[40]

- **Community-Driven Decision-Making:**

Decentralized arbitration platforms, such as Aragon Court,[41] rely on community members to act as jurors or arbitrators. This crowd-sourced approach democratizes dispute resolution and reduces reliance on traditional legal professionals.[42]

- **Resilience Against Censorship:**

Unlike centralized systems, blockchain-based arbitration is resistant to censorship or interference by external authorities. This is particularly important for disputes involving politically sensitive issues or jurisdictions with restrictive legal environments.[43]

- **Real-World Example:**

Aragon Court resolves disputes within decentralized organizations by allowing community members to vote on cases. This decentralized model ensures that decisions reflect the collective judgment of the community rather than a centralized authority.[44]

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[39] https://arbitrationblog.kluwerarbitration.com/2023/09/27/arbitration-tech-toolbox-applicable-law-choice-of-courts-and-enforcement-issues-in-metaverse-disputes/; https://www.lexology.com/library/detail.aspx?g=e57bd0b8-34a9-45c3-9a08-29c22995aeb8; https://www.uria.com/documentos/publicaciones/8224/documento/iao10-um.pdf?id=13158&forceDownload=true; https://www.simmons-simmons.com/en/publications/cl794aafg68ec0a43nle87gvt/meta-versus-part-3-how-will-disputes-be-resolved-in-the-metaverse

[40] https://arbitrationblog.kluwerarbitration.com/2018/03/05/topic-to-be-confirmed/; https://ir.lawnet.fordham.edu/cgi/viewcontent.cgi?article=1859&context=iplj; https://www.ccarbitrators.org/wp-content/uploads/2021/05/Michaelson_Jeskie_Arbitrating-Disputes-Involving-Blockchains_AAA_DRJ_Oct2020.pdf

[41] https://aragon.org/aragon-court

[42] https://www.tandfonline.com/doi/full/10.1080/1369118X.2021.1942958#d1e149; https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4417682; https://hackernoon.com/the-lay-of-the-land-in-blockchain-dispute-resolution-and-governance-designs-6e858004e444; https://www.bloomberglaw.com/external/document/XA9GE5VS000000/litigation-professional-perspective-benefits-risks-of-decentrali; https://www.mq.edu.au/__data/assets/pdf_file/0010/866287/Blockchain-Based-Crowdsourced-Arbitration.pdf

[43] https://arbitrationblog.kluwerarbitration.com/2023/12/14/adr-in-the-blockchain-ecosystem-a-primer/

[44] https://www.researchgate.net/publication/373132634_A_Categorization_of_Decentralized_Autonomous_Organizations_The_Case_of_the_Aragon_Platform

The challenges and opportunities involved refers to the idea that decentralization enhances fairness and inclusivity, but it can also lead to inconsistent rulings if there is no oversight or standardization, for that reason hybrid models that combine decentralization with human oversight may provide a solution to this challenge.

4. Arbitrating on-chain

The blockchain arbitration concept, as futuristic as it looks like, is already used by several decentralized dispute resolution platforms which provide such services (e.g., Kleros,[45] Jur,[46] Aragon[47]). The entire procedure, from the submission of the dispute, is digital as these platforms conduct entirely virtual automated proceedings, online on a blockchain platform**,** leading to an award issued as a smart contract. As such, the award is automatically executed on the blockchain. Some of these platforms link their awards to escrow accounts into which the parties are required to transfer a certain amount of cryptocurrency. Hence, the system is still limited to awards for monetary compensation, but further development in blockchain technology will lead to increasingly complex transactions.[48]

In this respect, Kleros defines itself as "an open-source online dispute resolution protocol which uses blockchain and crowdsourcing to fairly adjudicate disputes."[49] Smart contracts have to designate Kleros as arbitrator and may even choose a specialized section of Kleros's quasi-judicial system.[50] When a dispute is submitted, the platform draws jurors through a self-selection system based on Kleros's own token. Once the jurors have assessed the evidence, the decision is put to a vote, and the platform even has an appeal system in place.

In this point the autonomous characteristics of the dispute resolution mechanism reveal, as these awards are self-executing with no need for enforcement proceedings. It appears then the legitimate question if this mechanism is a fully-fledge arbitration and these awards can be seen as real arbitral awards. But it seems that the parties to on-chain arbitration proceedings have no need of such responses, as for them this classification does not even matter. Their interest is just an efficient and transparent method of deciding their conflict as quick as possible, without spending further time and money. Parties to on-chain arbitration proceedings are interested in a quick, neutral, and enforceable determination of their rights and obligations, and that is exactly what

[45] https://kleros.io/
[46] https://jur.io/
[47] https://aragon.org/aragon-court
[48] https://portolano.it/en/newsletter/portolano-cavallo-inform-digital-ip/arbitration-and-the-metaverse
[49] https://kleros.io/about
[50] https://kleros.io/whitepaper.pdf

decentralized dispute resolution platforms provide. The mechanism resembles adjudication or informal arbitration, in which the final award produces the legal effects of a contract, more than pure arbitration. Pursuing this analogy, smart arbitration awards can be considered as legally binding as any smart contract and would therefore have to meet the same legal requirements. Accordingly, they should be governed by contract law rather than by arbitration law.

However, arbitration already seems to be the preferred means for resolving user-to-platform metaverse disputes, and in the near future global pioneers of institutional arbitration can expect a substantial virtual caseload. The importance of studying the metaverse business and its legal implications thus cannot be overstated. In this context, the innovation in information technologies and the advanced tools emerged in this ecosystem developed the perception of settling disputes in a new and modern way, with a different approach than the one used so far in classic arbitration. This perception will inevitably influence and perhaps even disrupt international commercial arbitration as we know it today, as the classic method will itself borrow from the characteristics of this new one and this will shape a new way of arbitration, more adapt to its users' future need.

Conclusion

The advantages of arbitration in Web 3.0 ecosystems - autonomy, efficiency, and decentralization - determine it as a powerful tool for resolving disputes in decentralized environments like the metaverse and NFTs. By enabling parties to design their own processes, leveraging smart contracts for automation, and eliminating reliance on centralized systems, arbitration aligns with the core principles of Web 3.0.

However, to realize its full potential, challenges related to fairness, transparency, and standardization must be addressed. A proactive strategy and a coherent cooperation between various experts, as IT engineers, legal specialists, arbitral institutions, corporate and business actors is indispensable to look for interdisciplinary approaches. This endeavour is welcomed in order to develop a practical, sound and fair framework to regulate the jurisdictional concerns and protect the metaverse activity and find the most proper method of settling all kind of disputes that could arise in relation with it. Since no specialized dispute resolution mechanism beside arbitration was created so far, the one that better responded to the specific need of this ecosystem (even on-chain) is still arbitration. Through its legally binding rulings and all its advantages, arbitration holds the potential to harmonize, protect, and drive the metaverse towards a future defined by fairness, innovation, efficiency and digital progress.

These digital and virtual platforms are in an emerged diversity and the unitary vision is the key to consider a smooth interoperability and navigation between them. It is also important to ensure the harmonization of the dispute resolution methods used to solve conflicts due to cross-platform interactions,

ownership of assets across different platforms and differing terms of service agreements.

It should not be overlooked that the digital environment, especially the field of Web 3.0 ecosystems, is in continuous dynamic evolution, industry standards are constantly changing, and dispute resolution procedures must respect all these developments and be flexible enough to adapt to the needs of the market, user trust and contribute to its stability.

The Role of E-Government and Digital Governance in the Public Sector Accounting

Luminița IONESCU[*]

Abstract

The digital transformation of the society and economy is radically changing service delivery practices for all EU member states. In the last few decades, the public sector is facing many challenges on national and international level, due to the current global crises, such as: economic, educational and national security crises. The role of E-Government in the European public sector is significant, because the public sector is an important part of the economy. Therefore, any improvement in public sector performance would have an effect on economic growth and reduce stress on fiscal policy. Citizens, companies and public servants are looking to the government managers to improve the public services and to accelerate the public sector innovation.

Keywords: *E-government, innovation, accounting, public administration*

JEL Classification: M48, H0, H83

1. INTRODUCTION

E-Government and digital transformation have a significant role in rethinking public administration in the digital era. Thus, the E-Government Action Plan enables people across the European Union to fully enjoy the benefits of digital public services. In the last few years, the digital transition was accelerating despite the COVID pandemic and the energy crisis. During the Covid pandemic, EU member states have been advancing in their digitalization efforts, but still struggle to close the gaps in digital skills, the digital transformation of SMEs, and the roll-out of advanced 5G networks[1].

As part of a broader effort to encourage its citizens and businesses to go digital, the European Union is exhorting member governments to practice what they preach: to shift their own operations to electronic – and particularly online – platforms[2].

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[1] https://digital-strategy.ec.europa.eu/en/news/digital-economy-and-society-index-2022-overall-progress-digital-skills-smes-and-5g-networks-lag

[2] https://graphics.eiu.com/files/ad_pdfs/Central_Europe_egov.pdf – E-government in Central Europe

E-Government is related to public sector accounting and digital public services in order to reduce administrative costs and promoting transparency and efficiency in the public administration. The level of transparency is influencing efficiency of public services delivery and, therefore, the economic performance of municipal governments (Cifuentes-Faura, J et.al, 2022).

2. E-GOVERNMENT AND DIGITALIZATION OF PUBLIC SERVICES

In order to modernize the public administration, EU is encouraging the digitalization of public services in the digital era because the citizens are demanding more digital solutions not only in their private lives, but also when interacting with public sector organizations. Thus, the digital transformation of the society and economy is radically changing service delivery practices and new approaches to offer services in the private sector have raised citizens' expectations regarding the delivery of public services. The shift from reactive to proactive service delivery mechanisms, enabled by a transition from e-government to digital government, where the use of digital technologies is assumed as an integrated part of governments' modernisation and innovation strategies, creating public value through the engagement of a broad ecosystem of stakeholders, offers the chance to better respond to user demand[3].

According to the data from Eurostat's, information society database and the OECD ICT database, public data is a powerful asset to move from citizen-centred to citizen-driven approaches, allowing governments to better design and tailor public service delivery processes. The increasing number of connecting participants to the e-government portals and the complexity of transactions in the public sector determine the modernization of the web-net Internet applications. Also, a key premise of open government data (OGD) policies is enhanced engagement between government and the general public.

[3] https://www.oecd-ilibrary.org/docserver/gov_glance-2017-72-en.pdf?expires=1668437759&id=id&accname=guest&checksum=479D3B459EA6F33EBEDF7BBB891D34E9

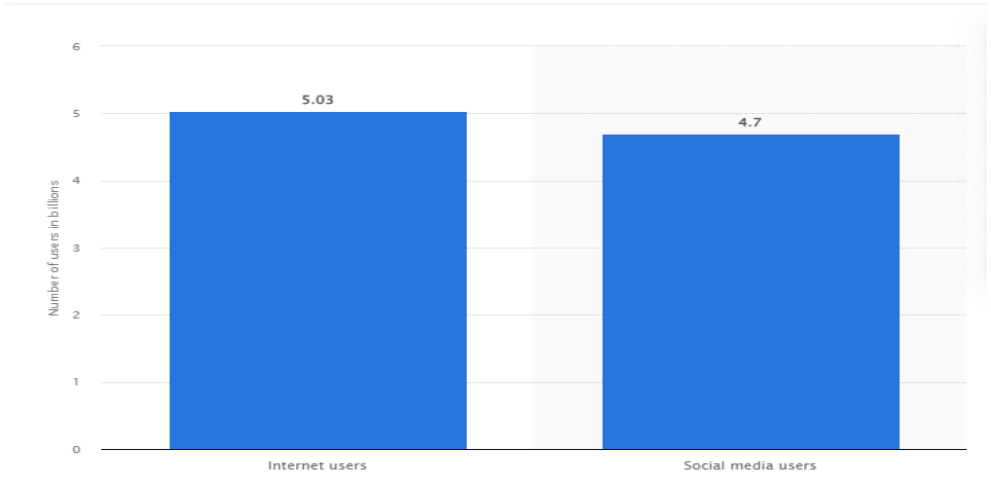

Figure no. 1. Number of internet and social media users worldwide as of July 2022
Source: www.statista.com/statistics/617136/digital-population-worldwide/

In United Kingdom, the frequency of using social networking websites or apps is more than several time a day:

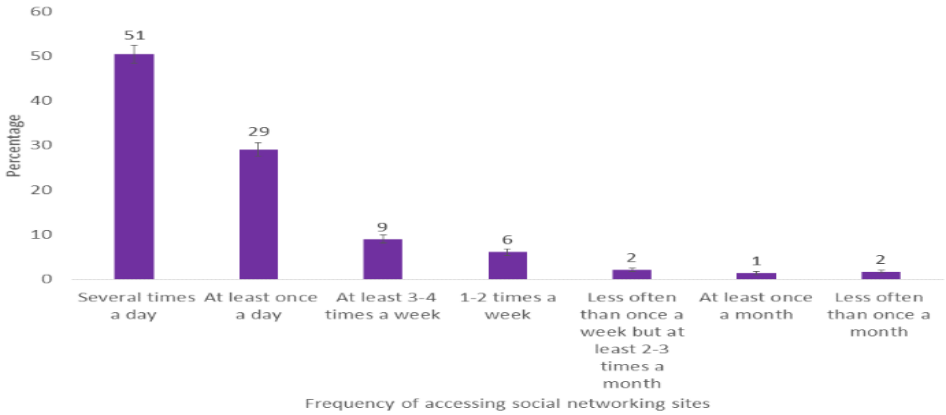

Figure no. 2. Reported frequency of using social networking websites or apps
Source: www.gov.uk/government/statistics/taking-part-201920-social-networking/social-networking-taking-part-survey-2019/2020

According to UK government statistics, in 2019/2020, 87% of respondents had used social networking websites or applications in the past 12 months, an increase from 84% in 2018/2019. Of these, just over half accessed these websites or apps several times a day (51%) and over a quarter (29%) at least once a day.

In Romania, citizens are interested to interact with public institutions and the E-Government portals, but many individuals do not have access to the Internet and social networking websites.

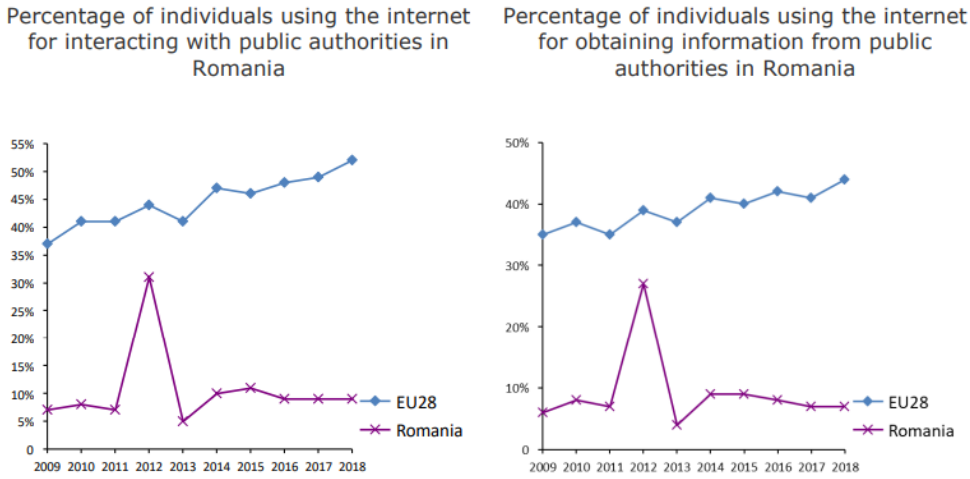

Figure no. 3. Percentage of individuals using the internet for interacting with public authorities in Romania
Source: http://appsso.eurostat.ec.europa.eu/nui/show.do?dataset=isoc_bde15ei&lang=en Eurostat

In the figure no.3 we could observe that the percentage of individuals using the internet for obtaining information from public authorities in Romania or using the internet of interacting with public servants is lower than the percentage of EU member states.

Digitalization of public services in Romania was increased when the Romania Virtual Payment Office (Ghiseul.ro) was adopted. Thus, The Romania Virtual Payment Office (Ghiseul.ro) was upgraded with an access point E-Delivery, which ensured the interconnection of Ghiseul.ro with other information systems for data exchange. The platform allows citizens to make electronic payment of fines, taxes and other fiscal obligations via bank cards. Thus, The National Electronic Payment System, operable from Ghiseul.ro, was extended to also allow the payment of obligations due to the general consolidated budget by companies and other entities without legal personality.

In addition to taxes to the state budget, the companies will also be able to use this platform to pay other obligations due to other public institutions (such as fines), if that entity is enrolled in the National Electronic Payment System (SNEP[4]).

3. DIGITAL GOVERNANCE AND PUBLIC SECTOR ACCOUNTING

Public sector organizations are increasingly confronted with internal obstacles. On average, most public sector employees are older than their

[4] https://www.romania-insider.com/ghiseulro-accessible-companies-taxes

counterparts in the private sector, with employees aged 60 and above accounting for only 7 percent of the private sector workforce but 11 percent of the public sector workforce[5]. Romania has established the Digital Romania Council, an expert group whose chief aim is strengthening the development of information society. Also, Romanian government adopted the National Strategy on Digital Agenda. The National Strategy on Digital Agenda for Romania targets directly the ICT sector and aims to contribute to economic growth and increase competitiveness. It hopes to achieve both by direct action and support of the development of effective Romanian ICT and through indirect actions such as increasing efficiency and reducing public sector costs in Romania, improving private sector productivity by reducing administrative barriers in relation to the state, improving the competitiveness of the labour force in Romania and beyond.

In order to follow the provisions of *EU E-government action plan,* Romanian fiscal administration has been modernized and opened the useful portals for citizens, such as:

- E-Invoicing in Romania;
- *E-guvernare* and
- E-Payment.

E-Invoicing

Economic operators are free to choose their preferred service provider to submit E-Invoices to contracting authorities. Currently there is no common approach or specific legislation relating to the use of electronic invoices by the public authorities. For the moment, there are no centralized platforms to process E-Invoices in Romania.

E-Guvernare is useful for Income taxes: declaration, notification of assessment. Forms may be signed electronically according to the legislation in force and sent to the relevant agencies through electronic means that guarantee delivery. Payment of local taxes via the Internet is currently used in 50% of Romanian municipalities.

E-Payment is another government platform to allows citizens to order electronic payments. Thus, Virtual Payment Office The Virtual Payment Office (Ghiseul Virtual de Plati) project aims at facilitating citizens' interaction with the Public Administration by allowing for electronic payment of fines, taxes and other fiscal obligations via bank cards. New types of payments towards the State were added into the system, such as tax obligations related to salary income (where appropriate) and income from: commercial activities; liberal professions; intellectual property rights; concession of the use of goods; transfer of securities; term buying/selling operations of the currency on a contractual basis; agricultural activities; and real estate property transfer.

[5] Destatis, *Öffentlicher Dienst: Beschäftigte im Durchschnitt 44,5 Jahre alt, 2017*, accessed: 12.04.2021.

National Information System for Tax Payment Online and the National Centre for the Management of Information Society (CNMSI), established a modern E-Payment platform to be used with credit cards. Its main purpose is the elimination of queues at taxation offices, thus enabling citizens, businesses and the Public Administration to save both time and costs.

The new digital payments are transforming the businesses and paving the path to the future of Accounts Payable for companies and individuals. The new government platforms and digital payments empowers businesses to improve efficiency, security, and visibility while also lowering costs and saving time on manual processes. The modernization of public sector accounting was facilitated by the e-Government portals and applications (Ionescu, L, 2015).

3. Conclusions

The role of the E-Government and digital governance in public sector accounting is significant in promoting accountability in government ministries as well as the challenges facing the implementation of e-payment in public administration.

The use of E-Government and digitalization of public services undoubtedly is contributing to the low rate of corruption and fraud in public sector administration.

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Reflections on the unconstitutionality of Article 24 of Law No. 544/2004 on Administrative Litigation

Roxana IONESCU[*],
Diana Anca ARTENE[**]

Abstract

The authors analyze Article 24 of Law No. 554/2004 on Administrative Litigation in terms of the reasons for unconstitutionality in relation to the provisions of Article 21 paragraph 3, Article 24 paragraph 1 of the Constitution, Article 36 of Law No. 24/2000, and Article 6 of the European Convention on Human Rights (ECHR).

Keywords: *Law No. 554/2004 on Administrative Litigation, reasons for unconstitutionality, fine – sanction*

The procedure regulated by Article 24(3) of Law No. 554/2004 on Administrative Litigation stipulates that, *upon the creditor's request, within the limitation period for enforcing a judgment, which starts from the expiration of the deadlines provided in paragraph (1) that were not met due to fault, the enforcement court, by ruling with the parties summoned,* ***imposes a fine of 20% of the gross minimum wage per day of delay*** *on the head of the public authority or, as the case may be, on the obligated person. This fine is to be paid to the state budget, and the claimant is granted penalties in accordance with Article 906 of the Civil Procedure Code.*

Article 24(4) of Law No. 554/2004 states that if, *within three months of the communication of the decision to impose a fine and penalties, the debtor, through fault, does not fulfill the obligation stated in the enforceable title, the enforcement court, upon the creditor's request, will determine the amounts owed to the state and the penalties owed to the creditor by issuing a ruling with the parties summoned. In the same ruling, the court will also establish, in accordance with Article 892 of the Civil Procedure Code, the compensation the debtor owes to the creditor for failing to execute the obligation in kind.* [1]

A significant issue arises in the enforcement procedure under administrative litigation. According to Article 24(3), in certain cases, the court has formally imposed a fine on the head of the institution/authority,

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[1] Law No. 554/2004 on Administrative Litigation

and in the procedure for determining the amount of the fine/penalties, the court rules in contradiction with other parties (heads of institutions) who were not summoned in the case where the fine was imposed on the head of the institution and penalties were imposed on the public institution.

In such circumstances, the heads of institutions were not afforded the right to a fair trial, as they were not summoned, violating their right to defense.

In legal doctrine and jurisprudence of the supreme court, it has been noted that *the special enforcement procedure provided* by Law No. 554/2004 applies only in the strict cases outlined by this law, **specifically in the case of final judgments by administrative litigation courts where the action was admitted, and consequently, the public authority is obliged to conclude, replace, or modify the administrative act, issue another document, or perform certain administrative operations—i.e., obligations that can only be carried out by the defendant public authority.**

As previously mentioned, in the enforcement stage according to Article 24(4), the court brings the head of the institution into the case to determine the existence or non-existence of fault in the execution of the enforceable title.

In other words, the enforcement court is tasked with determining whether the head of the public institution is at fault in enforcing the enforceable title, despite the fact that the head of the institution was not specifically identified in the procedure outlined in Article 24(3), but was only formally referred to using the general phrase "*head of the public institution.*"

In conclusion, heads of institutions are only summoned in the procedure under Article 24(4) of Law No. 554/2004, where the fine is directly applied to them.

In its jurisprudence, the Constitutional Court has ruled that the application of the fine under Article 24(2,3) of Law No. 554/2004 is the consequence **of the culpable non-execution of a final court decision** (see Decision No. 1.566 of November 19, 2009, published in the Official Gazette of Romania, Part I, No. 26 on January 13, 2010, and Decision No. 396 of March 24, 2011, published in the Official Gazette of Romania, Part I, No. 364 on May 25, 2011).

Moreover, the European Court of Human Rights has ruled that the right of access to a court does not obligate a state to execute any judgment, **regardless of the circumstances. The possibility of factual or legal circumstances that result in a delay or even impossibility in executing the enforceable title is accepted.** What must be sanctioned is the **inertia and passivity of the public administration** (see, for example, the judgment of May 27, 2003, in the Sanglier v. France case). The Court's jurisprudence also allows for the consideration of circumstances that justify non-execution or delayed execution of a court judgment, provided all rights and procedural guarantees of the parties are

respected (see the judgment of July 12, 2007, in the S.C. Ruxandra Trading S.R.L. v. Romania case).

In its jurisprudence, the Court has noted that **the presumption of fault is relative, not absolute, and thus, to decide whether there has been culpable non-execution of an obligation established by the enforceable title, the court may determine, in light of the circumstances of the case, whether there was an objective impossibility to fulfill the enforceable title.**

If the head of the authority was not summoned and did not know about a potential non-execution, fault cannot be presumed.

In conclusion, we argue that the formal imposition of a fine on the head of the institution, without identifying the individual, and later determining the amount of the fine on the authority's head without identifying the person, constitutes grounds for unconstitutionality in light of the provisions of Articles 21(3), 24(1) of the Constitution, Article 36 of Law No. 24/2000, and Article 6 of the European Convention on Human Rights.

New Forms of Human Trafficking- Forced Marriage and Illegal Adoption- Comparative Overview

Roxana-Daniela PĂUN[*]

Motto:
"*Trafficking in human beings and especially trafficking in women and children for the exploitation of their labor, including sexual exploitation, is one of the most serious human rights violations faced by the United Nations. The phenomenon is continuously spreading and rising. Its roots lie in the social and economic conditions of the victims' countries of origin and are facilitated by discriminatory practices, inadequate legislation or the indifference of society in general to the unimaginable suffering of those who fall prey to traffickers. It's time to wake up to reality! Thus the phenomenon tends to become chronic! »*

Kofi Annan, ***Speech delivered at the opening of the session of the UN Conference on the Prevention of Transnational Organized Crime, Palermo, December 12, 2000****.*

Abstract

The globalization of life in contemporary society brings both advantages and disadvantages. The generalized access to information, the understanding of the mechanisms that evolve or involve following the adoption of some models of some so-called civilized societies, but first of all the accentuation of the development gaps at the economic and social level between the different states of the world, generate new ways of masking human trafficking in ever more ingenious and surprising forms even in the vision of a normal person. In these conditions, a prompt reaction at the legislative, regulatory, global level to those slippages that dehumanize the person subjected to those inhumane treatments, that violate all fundamental human rights, and reduce the human being to those animal behaviors that remind of the genesis of human evolution! Human trafficking is regulated and sanctioned in the laws of states with an economic level and a historical culture of recognition and respect for human rights, which provides a certainty that abnormal things are detected and regulated, in order not to endanger the future of the human race from the perspective of the emergence of new forms of exploitation of vulnerable people, who become sure victims of the exploiters. The present study presents a brief analysis of the evolution of the regulations regarding human trafficking in different countries of the world, with an emphasis on the European EU and American regulations. Thus, some forms of human trafficking that are functional in Asian countries, for example, also extend to Europe, which generates the need to update those regulations in European legislation as well. The migration to

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the developed states of some peoples where local customs and traditions violate the norms of modern civilization, brought with it strange forms, which are considered inhumane treatments in civilized societies and normality in those cultures. The dynamics of human trafficking is continuously increasing, the accentuation of the economic and standard of living gaps between the different areas of the globe, generates, in an accelerated way, even out of step with the legislative capacity of the states of the world, shocking situations, dishonorable, inhumane treatments which flagrantly violates the fundamental rights of people in a state of victimization, and even in danger of losing their lives. The excuse of cultural, religious differences, local traditions, the history of those civilizations cannot be used as an argument to accept these facts, ignoring any right of the person trafficked for economic purposes, most of the time, or in the proliferation of new forms of slavery adapted to contemporary modern society. Forced marriage and illegal adoption will be explicitly included among the types of exploitation covered by the Parliament and Council directive amending Directive 2011/36/EU on preventing and combating trafficking in persons and protecting its victims, once they have started to appear such actions in the European states, protected from this phenomenon until the start of the migration phenomenon a few years ago!

Keywords: *human rights, migration, human trafficking, cooperation, forced marriage, illegal adoption.*

Introduction:

With the migration invasion in Europe, phenomena appeared that Europe has not faced since the last world conflagrations. No one can forget the shocking images that invaded the European and international media of women, men, children of small or older ages, who were recovered from fishing vessels, from cargo ships that were damaged or even sunk, generating tragedies, with shots full of hidden immigrants traveling inhumanely, and of carriages and traffickers who shrugged their shoulders in ignorance. This was the beginning of the decline of the European Union which faced, at the level of each member state, situations that divided them at the political level in the European management structures (Parliament, Commission, Council...etc)

In the generalization of the phenomenon of migration, we took advantage of the fundamental functional freedoms at the level of the member states, in which the free movement of people is one of these freedoms, (let's talk between us, and currently there are abuses by some member states that are vehemently against Romania's accession to Schengen space, although we have been fulfilling the conditions, substantive and formal requirements for many years...but, because the EU is also a political union, here is concrete proof, for the pro-European optimists, that politicians ignore reality and legislation is not applied!)

Those who literally invaded, through a classic aggression, states and civilizations very different from theirs, invoking the precarious economic situation in the countries of origin, settled according to their free will in the states

where they decided to stay, or just to transit them to much more developed states, with social insurance systems that would allow them to start a new life.

The majority population had no right to reply, and conflicts even appeared at the borders, juggling like a ping-pong ball with those unfortunate people, with hopes for a better life, taking risks, because inevitably there were also tragedies!

That it was a phenomenon at the planetary level, no one has any doubts... we all remember the wall erected during the presidency of Donald Trump on the border with Mexico. And still following the American model, we remember Austria's proposal, "Without a physical barrier, it will not work" to stop illegal migration. A proposal that he made even though he knew it would be rejected![1].

How easy it is to slip away from the principles of democracy that were the basis of the creation of the European family. And as of course not everything works in a family, according to some prejudices and stereotypes, a bigger, more serious problem was necessary to forget about migration and the problems it raises from the perspective of the host state... the war in Ukraine! In the end, we see day by day how European solidarity works...everyone on their own, but with imposed rules, which even if they are no longer effective....remain...because they are regulations imposed by the EU membership status!

Are the current regulations on human trafficking effective? Next, it is useful to compare the American and European regulations using the "Report of Trafficking in persons June 2023" in the USA and the proposal for a directive of the EU Parliament and the Council, amending Directive 2011/36/EU on the prevention and combating of human trafficking persons and protecting its victims.

USA

According to the quoted report, the multidisciplinary approach of the partnership between the institutions involved is the key to success:

"**Historical Background Effective**, "*multidisciplinary partnerships have long been essential to the success of the "3P" framework of prosecution, protection, and prevention in global anti-trafficking efforts. A comprehensive approach to human trafficking requires governments to prioritize multiple layers of cooperation, including internally between government agencies and externally with other governments, international organizations, the private sector, academia, media, community leaders, NGOs, and survivors and survivor-led organizations. The 2023 Trafficking in Persons Report (TIP Report) introduction examines and highlights how governments and a wide range of stakeholders have used partnerships to advance anti-trafficking priorities and goals. The introduction also shares innovative approaches and specific examples of partnerships that have complemented and supported the success of prosecution, protection, and*

[1] Austria's Federal EU Minister Karoline Edtstadler has proposed building a wall around Europe to stop illegal migration, according to Kronen Zeitung. https://stirileprotv.ro/stiri/actualitate/un-ministru-din-austria-a-cerut-construirea-unui-zid-la-frontiera-externa-a-ue.html- 15 dec 2022

prevention efforts. The UN TIP Protocol and the United States' Trafficking Victims Protection Act of 2000, as amended (TVPA), recognize the importance of both the "3P" framework and strategic partnerships in global efforts to fight human trafficking. Over the years, multilateral organizations have been at the forefront of establishing and supporting a strong international framework for partnerships to address human trafficking. In 2010, the UN General Assembly adopted a Global Plan of Action to Combat Trafficking in Persons, which included a section on partnerships and highlighted the wide range and types of partnerships necessary to strengthen global anti-trafficking efforts. Alliance 8.7, a global partnership committed to achieving Target 8.7 of the UN Sustainable Development Goals, convenes anti-trafficking stakeholders across various sectors to take measures to eradicate forced labor, end modern slavery and human trafficking, and secure the prohibition and elimination of the worst forms of child labor by 2030. Alliance 8.7 further demonstrates the breadth of organizations and individuals that should be included in effective partnerships such as governments, international and regional organizations, workers' and employers' organizations, the private sector, NGOs, survivors and survivor-led organizations, academic and research institutions, and public and private donors. In 2021, the UN General Assembly reaffirmed its commitment to implement the Global Plan of Action and recognized that both it and the 2030 Agenda for Sustainable Development mutually reinforce the importance of partnerships. Other multilateral frameworks bolstering partnerships include the Addendum to OSCE's Action Plan, which formally incorporates partnership as a fourth "P" and highlights the need for enhanced international cooperation, including among law enforcement entities, between origin and destination countries, and between public institutions and the private sector. While not every partnership needs to have global reach, the prioritization of partnership by multilateral organizations has been essential to the establishment and potential of international anti-trafficking efforts." [2]

Although the USA and the EU face the same forms of human trafficking, the environments are different, a challenge being the trafficked people from Asian cultures, where especially women do not have rights, they are considered inferior to men, which is why there are also many countries in Asia that they did not adopt the international regulations regarding fundamental human rights, in their updated forms, where legal protection is granted to an extended number of categories of people considered vulnerable by the legislator and who need the protection of the law, at the international level. In this study I will even exemplify a concrete situation.

However, the American report defines human trafficking:

[2]Extract from TRAFFICKING IN PERSONS REPORT JUNE 2023 https://www.state.gov/wp-content/uploads/2023/09/Trafficking-in-Persons-Report-2023_Introduction-V3e.pdf

"*HUMAN TRAFFICKING DEFINED The TVPA*[3] *defines "severe forms of trafficking in persons" as: Ò sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such an act has not attained 18 years of age; or Ò the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery. A victim need not be physically transported from one location to another for the crime to fall within this definition."*

The 94-page report surprises in detail: "*human trafficking around the world and the tools we are using to strengthen our response and coordination. Every year millions of people are exploited within and across borders. They are forced to work in factories for little or no pay; harvest crops; toil in terrible conditions in mines, construction sites, and fishing boats; or work in private homes. Many victims are exploited for commercial sex, adults and children alike. (...) It also highlights the stories of survivors, emerging tactics—like cyber scam operations—used by traffickers and provides recommendations for how we can better work together to address this crime*, "as declared in the introduction of the report by the responsible secretary of state during the mandate of President Biden, lawyer and diplomat during the mandate of Barack Obama, and now, Antony John Blinken.

In the category of victims of human trafficking, both adults and children are exploited for commercial sex. At this moment, it is easy to make the connection with forced marriages and illegal adoption for purposes other than legal ones, to raise and educate a child that some couples cannot conceive as a natural child.

EU

At the EU level, in order to update the European legal framework, regarding the fight against human trafficking, "the Council established its position in favor of stricter rules." (…) Forced marriage and illegal adoption will be explicitly listed among the types of exploitation covered by the directives. Forced marriage and illegal adoption will be explicitly listed among the types of exploitation covered by the directive. The agreed text makes it clear that Member States are obliged to criminalize human trafficking for the purpose of forced marriage or illegal adoption. This will enable law enforcement and judicial authorities in Member States to effectively combat human trafficking aimed at these two forms of exploitation.[4]

According to the proposal to amend Directive 2011/36/EU on preventing and combating human trafficking and protecting its victims, "intentionally resorting to services provided by victims of human trafficking, knowing that it is

[3] TVPA= *Trafficking Victims Protection Act*

[4] https://www.consilium.europa.eu/ro/press/press-releases/2023/06/09/fighting-human-trafficking-council-agrees-position-for-stronger-rules/

a victim of trafficking", will be criminalized in the member states. In these cases, "Member States must ensure that the offense is subject to effective, proportionate and dissuasive sanctions."

Investigation and prosecution by national law enforcement authorities and judicial authorities for that crime should not depend on a victim reporting or accusing.

The impact of criminalizing the use of services provided by victims of human trafficking will be analyzed in a report by the European Commission, which it will present five years after the transposition of the legislative act.

In the context where the EU's main legal instrument to combat human trafficking is the Directive on preventing and combating human trafficking and protecting the victims of this crime, which dates back to 2011. It establishes minimum rules regarding the definition of crimes and criminal sanctions. The Directive also contains common provisions to ensure better prevention and protection of victims. Sexual exploitation and labor exploitation are the main purposes of human trafficking. However, other purposes of trafficking, such as begging or organ harvesting, already explicitly mentioned in the 2011 directive, and forced marriages and illegal adoption, which are not explicitly mentioned in that directive, currently represent 11 % of all human trafficking cases in the EU.[5]

Terminological specifications, seat of the matter:

Directive 2011/36/EU of the European Parliament and of the Council [6] constitutes the main legal instrument of the Union regarding the prevention and combating of human trafficking and the protection of the victims of this crime. That Directive establishes a comprehensive framework for combating human trafficking by establishing minimum rules on the definition of offenses and criminal sanctions. The Directive also includes common provisions, taking into account the gender perspective, to ensure better prevention and better protection of victims.

In the definition of the draft directive, Trafficking in persons is a serious crime, often committed in the context of organized crime, a serious violation of fundamental rights, which is explicitly prohibited by the Charter of Fundamental Rights of the European Union. Preventing and combating human trafficking remains a priority of the Union and the Member States*."*[7]

[5] https://www.consilium.europa.eu/ro/press/press-releases/2023/06/09/fighting-human-traffickin g-council-agrees-position-for-stronger-rules/-

[6] Directive 2011/36/EU of the European Parliament and of the Council of April 5, 2011 on preventing and combating human trafficking and protecting its victims, as well as replacing Council Framework Decision 2002/629/JHA, OJ L 101, 15.4. 2011,

[7] https://data.consilium.europa.eu/doc/document/ST-9313-2023-INIT/ro/pdf

EU strategy on combating human trafficking 2021-2025[8] sets out a policy response that takes a multidisciplinary and comprehensive approach, from the prevention and protection of victims to the prosecution and conviction of traffickers. The strategy included a number of actions to be implemented with the strong involvement of civil society organizations. However, in order to address the evolving trends in the field of human trafficking, as well as the shortcomings identified by the Commission and to further intensify efforts to combat this crime, it is necessary to amend Directive 2011/36/EU. [...] The identified deficiencies of the criminal law response that require an adaptation of the legal framework relate to human trafficking offenses committed in the interest of legal entities, the data collection system and national systems aimed at early identification, assistance and support for victims of human trafficking.[9]

The proposal to amend the directive envisages the inclusion of forced marriages and illegal adoption in the list of forms of exploitation explicitly listed in [...] Directive 2011/36/EU, with the aim of ensuring that member states "address within the systems their national legal the most diverse range of forms of exploitation, to the extent that they meet the constitutive elements of human trafficking*."*[10]

"*Forced marriage and illegal adoption may already fall within the scope of the crimes related to human trafficking as defined in the directive, to the extent that all the criteria constituting the said crimes are met. However, given the seriousness of those practices, the exploitation of forced marriage and illegal adoption should be explicitly included as forms of exploitation in Directive 2011/36/EU. The rules in this directive do not affect the definitions of marriage, adoption, forced marriage and illegal adoption or related crimes, if they are provided for in domestic or international law"(p 6)*[11]

Here I am continuing to demonstrate with a case presented by the Asian press in 2009, that this practice has gradually expanded through globalization, until the moment when it is requested to include a regulation to prohibit these practices in European countries.

Ordering brides for weddings is a common practice in the Asian world.

"*In May 2009, Hollywood actor Alec Baldwin found himself the target of criticism in the Philippines when he quipped on the Late Night Show with David Letterman about letting a Filipina mail order bride in order to expand his family and have more kids.*

[8] Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions regarding the EU Strategy on combating human trafficking 2021-2025, COM(2021) 171 final, 14.4.2021.
[9] https://data.consilium.europa.eu/doc/document/ST-9313-2023-INIT/ro/pdf p 5
[10] https://data.consilium.europa.eu/doc/document/ST-9313-2023-INIT/ro/pdf
[11] https://data.consilium.europa.eu/doc/document/ST-9313-2023-INIT/ro/pdf p 6

His comments sparked outrage, with one Filipino senator threatening to beat him up if he sets foot in the country. Baldwin later apologized but the Philippine Bureau of Immigration still banned him from visiting the country.

The issue of mail-order brides has been a contentious issue in the Philippines for years.

Yearly, thousands of Filipino women who seek a better life are getting into brokered marriages arranged through matchmaking but many end up as victims of domestic violence and abuse.

Today, the global mail-order bride industry has evolved. On many Web sites, you will see Filipina and other Asian women being advertised as prospective brides.[12]

To understand the legislation, the author of the article presents the legislation of the Philippines:

"*The scheme was outlawed in the Philippines with the passing of Republic Act 6955, or the Anti-Mail-Order-Bride Law in 1990, which banned the practice of matching Filipino women for marriage to foreign nationals on a mail order basis and other similar practices, including the advertisement, publication, printing or distribution of brochures, fliers and other propaganda materials.*

However, illegal marriage brokers continue to operate underground in the Philippines and victimize innocent Filipino women" wrote the author of this article.

Starting from the legislation in the Philippines, we find out from the statement of "*Maria Regina Angela Galias, head of the Migrant Integration and Education Division of the Commission on Filipinos Overseas (CFO), (told the Korea Times) that lately,* ***South Korea and Japan have become the top destinations of Filipina mail-order brides.***

While matchmaking companies are illegal in the Philippines, they are legal in South Korea. Every year, thousands of Koreans sign up for matchmaking with the hope of meeting their future spouses.

In April 2009, Philippine Ambassador to South Korea Luis Cruz warned Filipinos against marrying Korean nationals through illegal matchmaking agencies.

He said in recent months that the embassy has received complaints from Filipino wives of abuses committed by their Korean husbands that caused separation, divorce and abandonment."

The whole state of affairs is bizarre for Europeans, but also functional in other Asian countries, according to the statement of the responsible Filipino official.

[12] http://www.koreatimes.co.kr/www/news/nation/2009/10/211_53320.html,
Filipina Mail-Order Brides Vulnerable to Abuse Posted: 2009-10-11- By Jonathan M. Hicap Korea Times Correspondent

"*Cruz told The Korea Times that marriages contracted through these illegal matchmaking agencies don't involve courtship and there is an exchange of money.*

These become the root of problems between the mail-order brides and their husbands as language and cultural differences clash and the Filipina women are regarded as commodities bought by the Korean men."

Matrimonial agencies exist all over the world, but they operate respecting the rights and freedoms of those who choose to look for a partner in social media!

"Based on data from the Korean government, there are 6,191 Filipinos in South Korea who are married to Koreans. However, no data was available on how many of these marriages were products of the mail-order bride scheme.

The Philippine government regulates the marriage between Filipinos and foreigners by requiring Filipinos to attend counseling. Under Philippine law, Filipino women who are going overseas as fiancies and spouses of foreign nationals are required to attend the CFO's guidance and counseling program[13] *to help them make informed decisions regarding their marriage to foreign nationals and to prepare them for their adjustments in cross-cultural marriages. Attending the program is a pre-requisite for the issuance of a passport.*

After the counseling, the CFO issues certificate and registration stickers to the applicant before they leave the country.

The counseling program proved to be an effective tool in identifying Filipino women who are mail-order brides."

Beyond the procedure regulated in the Philippines, there remains the legitimate question of how ethical this procedure is, without being restrictive in realizing that it is the right and freedom of every human being to choose his partner with whom he will spend the rest of his life.

In the conditions where globalization brings novelties and challenges and in the area of personal and matrimonial relationships, multicultural marriages are a reality of the contemporary world, and any institutional structure that has the necessary mechanisms to facilitate the knowledge of the customs, habits, culture, traditions, countries of origin of the two future potential partners are welcome.

But...if it turns out that brides are bought and sold, as a commodity, it is illegal in a civilized, evolved, educated world, where the partners are equal in a marriage relationship, in a freely consented communion!

As the author of the article concludes: "*When you think about it deeply, it constitutes a mail-order bride scheme because there was matchmaking involved and a fee was paid by either party," she said. These, she said, are clear violations of the Philippines'anti-mail-order-bride law."*

[13] The Commission on Filipino Overseas (CFO) Guidance and Counseling Program (GCP) is a program of the Philippine government that aims to protect Filipino fiancés and spouses of foreigners who wish to migrate overseas from human trafficking and other schemes.

Reality has shown that: "*During the counseling, the females involved in the practice tell lies in order not to be caught by the interviewer. But they eventually fail when they can't even answer simple questions like the job of their husbands. In some cases, they admit that a third party introduced them to their husbands."*

The existence of a third person to facilitate the connection between the two potential matrimonial partners also exists in other traditions from other countries, with or without payment!

Majority of Filipina mail-order brides met their husbands by attending show-ups. Under this, several Filipinas attend a meeting to meet a Korean client who is looking for his future wife. In the show-up, the Korean picks a prospective wife among the group, and in just a matter of days, they get married.

In this case, in which the parties involved are of Filipino and South Korean nationality, even the terminology used is offensive, but often used, unfortunately: the Korean client buys a Filipino wife!

The effect in many cases, also confirmed in the analyzed case: "*They abandoned their husbands because they couldn't bear the situation*, even if "*That's the mode of introduction to their Korean husbands. It becomes a problem since when they go to Korea, there are a lot of cases when the wives leave their husbands and run away."*

And of course, as in any non-legislated situation correctly*..."Some illegal brokers in the Philippines also forge CFO certificates so that the Filipina mail-order brides won't have to go to the CFO for counseling."*

At the diplomatic level, this situation was resolved directly, at the level of embassies:*"The Korean embassy in the Philippines requires Filipina applicants to submit their CFO certificates for the issuance of visas*.

The Philippine official declaring that in 2009," *the embassy received complaints from 11 Filipino women who are married to Korean husbands. In 2008, it handled 12 complaints.* ***In the majority of the complaints, domestic violence was the number one problem involving mail-order brides.*** Filipino women who get married under the mail-order bride scheme are usually between 18 and 25 years old and want to help their families in the Philippines.

So here is the proof that it is not a union of love, between two compatible partners, but a mutually beneficial business relationship. If one of the parties is not satisfied, only then is the reality revealed.

In the presented case, "*In most cases, we learned that they agreed to enter the scheme to help their families for economic reasons. For some, mail order was the only choice they had to marry a foreigner and live or work in another country*, according to the declarations of the Philippine official.

It is a proof of the development of the system and the involution at the economic and educational level in the Philippines, the same Filipino official declares: "*She said that in early 2000, most of the Filipino women who were*

married to Koreans were college graduates. But, in 2007, most of the brides were high school graduates, an indication that they are mail-order brides."

Academic approach

At the same time, *assistant professor Kim Min-Jung of the department of cultural anthropology at Kangwon National University concluded in her study on Filipina wives and multicultural families in Korea, that* "*Korean men are often greatly influenced by bias and misunderstanding when choosing their foreign wives."*[14]

The study is interesting due to the sincerity of the conclusions regarding its own compatriots: "*She said Korean men characterize Southeast Asian women, including those from the Philippines, as coming from poorer countries; as strangers to Korean culture and language, which will prevent them from running away; as people from a tropical and agricultural country who have good personalities; as docile and obedient; able to speak English; and as familiar with Korean patriarchal culture."*

This mentality excused by the patriarchal Korean culture indicates involution and inability to adapt to the new contemporary realities, when every parent must be careful how he brings up his own child in order not to become a dictator or a victim, in both cases an unhappy adult!

The need for multidisciplinary analysis of any topic is vital to understand the functioning mechanisms and optimize the effects of the regulations. Laws are made by humans for humans, and in the future by humans for hybrids and robots, using AI artificial intelligence in favor of humans and not against them.

Moreover, the researcher concludes:*"Filipino-Korean couples who met through matchmaking agencies and religious organizations are the biggest in number and the center of public attention in relation to human rights and multiculturalism issues. The profile of Korean men who marry mail-order brides belong to the lower-middle class, in their late 30s or older, in need of housewives who will take care of them and their children from failed former marriages, or their old parents, according to the study."*

"*Kim said, generally, these men found it difficult to marry Korean women who are younger or obedient to their mother-in-law so they try to find girls in poorer countries have inferior qualifications and circumstances. The study revealed that situation for mail-order brides become a problem because the groom pays thousands of dollars in agency fees, travel, expenses and wedding ceremonies, which give them unconditional rights to choose brides and plan life after marriage."*

[14] http://www.koreatimes.co.kr/www/news/nation/2009/10/211_53320.html,
Filipina Mail-Order Brides Vulnerable to Abuse Posted: 2009-10-11- By Jonathan M. Hicap, Korea Times Correspondent

"*Some unreliable agencies cheat both Korean grooms and Filipina brides, wrote Kim, which is why mail-order bride schemes are described as a form of human trafficking by non-government organizations.*

To continue with illegal adoptions disguised as human trafficking. Abused children, whether adopted or not, are forever traumatized souls, future adults with problems, who are misfit in society and often end up killed.

All the involved parties know this and each one tries to act according to the possibilities, according to the ability to realize the tragedy of these souls, according to their own level of consciousness, empathy, education, etc. PREDA Foundation org.[15] wrote on August 26, 2022, that it is necessary for the church and the state to protect abused children. [16]

To exemplify everything with the Philippines, using a document on the **Dynamics of human trafficking**. *Source:* **Department of Social Welfare and Development – Philippines**, we realize that traffickers have similar ways of operating, regardless of their nationality. Thus, they attract such victims abroad, with false promises of legal employment. Organized crime groups traffic people from China through the Philippines, but less frequently this country is the final destination. There is internal traffic from rural to urban areas. The sexual exploitation of children in the Philippines through pornography, the Internet and sex tourism is a problem of increasing concern. Over 150,000 Filipino women were trafficked to Japan for prostitution in 2009. Some of them were sold to the Yakuza for amounts ranging from $2,400.00 to $18,000.00. Also, a May 31, 1995 news item in the Manila publication "Chronicle" mentions that 150 young Filipino women were sold for $5,000.00 each to organized crime syndicates and nightclub owners in some African countries, particularly in Nigeria.[17] In such businesses, a trafficker earns $3,000 – $5,000 for each woman or girl sold in the international sex trade. (some links have been disabled, they can no longer be accessed!) [18]

Foreign pedophiles take advantage of the fact that most single mothers work abroad and leave their children in the care of elders. Under the pretext of hiring them for different jobs, the pimps collect the children and sell them by the hour or by the day for sex to different "tourists". It is a mode of operation that is also

[15] Asociația de protecție si asistenţă a victimelor abuzului sexual-

[16] https://www.preda.org/2022/action-by-church-and-state-needed-to-protect-children-from-abuse/ Action By Church And State Needed To Protect Children From Abuse, Fr. Shay Cullen, 26 August 2022

[17] ArticlePower.org » » ***The Real Pinay Scandal*** *cited in the doctoral thesis with the theme Contributions to the problem of crime and human trafficking, coordinator Prof. univ. Dr. Florin Sandu, doctoral student Ion Țincu, Police Academy 2011, chapter 3 elements of comparative law, selection Philippines – p 253*

[18] ***Women & The Economy – Globalization & Migration***

applied in Europe and other countries of the world, which makes it more difficult to detect, sanction and eradicate.

Conclusions

Forced marriage, the model of brides recruited by mail from the Philippines has generated the need to update the European regulations to punish from the start any such practice that must be discouraged by clear legal rules, and a concerted application between the member states before it spreads contagiously!

Although the Philippine **Republic Act 6955** declares illegal "the practice of recruiting Filipino women by mail for marriage, this practice is abusively carried out on a very large scale**."**[19] Numai în perioada 1986-1996 au fost racolate pentru SUA 55.000 de mirese prin mail.[20]

Arthur Matibag, an assistant professor in the Department of Sociology at Iowa State University, says that browsing sites for potential brides is as easy as shopping for a shirt. Each woman is assigned a catalog number from which you can choose [21] (the post has been deleted!). Regina Maria Angela Galias, head of the Migrant Integration Agency in the Education Directorate of the Commission on Overseas Filipinos (CFO), said that South Korea and Japan have recently become the top mail destinations for bride orders.[22] Over 70% of Filipino women live in poverty, making them particularly vulnerable to the mail order bride industry.[23] (link active at the time of publication of this study!) "*Filipina mail-order brides are subjected to abuse as they are regarded by their husbands as a thing or possession. The increasing number of abuse cases involving Filipina mail-order brides in South Korea has alarmed the Philippine government, which has alerted Korean authorities.*

However, many Filipina mail-order brides are unable to live happily with their Korean husbands because of cultural differences and abuse. Abuse has no causal relationship with the quality of mail-order brides. Abuse and violence are often found in South Korean families and are recognized although they do not bring honor to the Korean people.

[19] BI in pursuit of 5 British pedophiles, Sun-Star Manila, May 9, 2008. "An act to declare unlawful the practice of matching Filipino women for marriage to foreign nationals on a mail-order basis and other similar practices including the advertisement, publication, printing or distribution of brochures, fliers and other propaganda materials in furthurance thereof and providing penalty therefor". Chanrobles Law Library. http://www.chanrobles.com/republicactno6955.html

[20] http://www.catwinternational.org/factbook/usa1.php *cited in the doctoral thesis with the theme Contributions to the problem of crime and human trafficking, coordinator Prof. univ. Dr. Florin Sandu, doctoral student Ion Țincu, Police Academy 2011, chapter 3 elements of comparative law, selection Philippines – p 253*

[21]http://www.asianpacificpost.com/portal2/c1

[22] http://www.koreatimes.co.kr/www/news/nation/2009/10/211_53320.html

[23] http://www.nostatusquo.com/ACLU/anderson/brides/pg1.html

The Philippine official confirms that *"the victims said they felt that they were being abused. The language and culture differences become a main problem for the spouses. It causes misunderstanding. Some of them were really physically and sexually abused so they had to leave their husbands. Philippine embassy provides counseling and repatriation to the Filipina victims.*

In its 2008 Human Rights Report, the US Department of State said rape and violence against women in South Korea remain a problem."

Later, some aspects were fixed, from the point of view of the authorities, but they remain in the history of human trafficking and cannot be ignored!

Although trafficking in persons is illegal in South Korea, women from Russia, other countries of the former Soviet Union, China, Mongolia, the Philippines and other Southeast Asian countries were trafficked to the country for sexual exploitation and domestic servitude.

Cultural differences and adaptation are used as an excuse: "*language barrier and adjustment to the Korean way of living. Some had quarrels with their Korean husbands because they don't know how to cook Korean food or they don't eat Korean dishes. Others can't get along with their in-laws."*

At a simplistic conclusion, one could say that it is not a tragedy if Filipina-Korean couples are not prepared for marriage. However, the attitude of turning one of the partners in the marriage into a slave and abusing him, regardless of the pretext, is unacceptable.

The argument invoked "Their expectations don't match," excuses the violation of dignity, human freedom, the right to a decent living, along with many other fundamental rights and freedoms that make the difference between a human and an animal. Although animals also have rights in an evolved, civilized society.

Here's why the law must be fair to everyone:*"Philippine Embassy is doing research on a proposal requiring Korean men to immerse in Philippine culture so that they understand their Filipina wives better. The CFO is studying how to improve and amend the Philippine anti-mail-order-bride law.*

These include increasing the penalty for illegal marriage brokers and expanding the ways to prove that a marriage was contracted under the mail-order bride scheme.

Under the current Philippine law, only the victim can file the case against the broker. Galias said they want this amended so government agencies can directly file cases against them. The CFO is also planning to submit a proposed executive order to Philippine President Gloria Macapagal-Arroyo that will require the holding of pre-marriage counseling as an additional requirement for Filipinas marrying foreigners. As part of a cooperation agreement, the Korean embassy in the Philippines verifies the names of Filipina applicants with the CFO to find out if they have undergone counseling. The CFO has also asked the Korean Ministry of Health, Welfare and Family Affairs to inform matchmaking companies in South Korea that the scheme is illegal in the Philippines and that

they should not deal with Filipino agents who conduct underground operations."[24]

Living proof that where the parties involved collaborate, at the diplomatic level, peaceful solutions are found, agreed by both parties to resolve a life situation.

Education has its key role: "*Philippine authorities hope that by helping Filipinas understand the risks of getting into such an arrangement, they will prevent the cycle of abuse, discrimination and violence against women."*[25]

At the European level, the existing legal framework in Directive 2011/36/EU already includes, in the scope of the definition of human trafficking, crimes committed through the use of information and communication technologies, for example for the recruitment and exploitation of victims, the organization of their transport and accommodation, online promotion of services offered by victims and contacting potential customers, monitoring of victims and communication between criminals, including all related financial transactions. To combat this modus operandi of traffickers, law enforcement authorities must improve their digital expertise and capabilities to keep up with technological developments. In addition, Member States are invited to consider preventive measures, in particular to discourage demand, which address the abuse of online services for human trafficking. [...]

By rewording Article 2, paragraph 3 [...] Exploitation includes, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, **the exploitation of forced marriage or illegal adoption,** forced labor or service, including begging, slavery or practices similar to slavery, servitude, criminal exploitation or organ harvesting.

The effectiveness of a legal norm is demonstrated by the sanctioning regime, correlated with the seriousness of the act.

In the present case, the extension of the sanctions and measures applied to the legal entities involved which include criminal or other fines and may include other criminal or other sanctions or measures, such as: [...]

a) exclusion from the right to receive public benefits or public aid;

b) closing the units that served to commit the crime;

c) prohibition [...] to carry out commercial activities; ([...]

d) placement under judicial supervision; ([...]

e) judicial liquidation.

demonstrates the involvement of bodies and institutions with attributions in the field in remedying legislative gaps generated by the appearance in real life of new cases, situations of human trafficking that affect the legal order, peace, harmony, balance of social life in the EU member states.

[24] http://www.koreatimes.co.kr/www/news/nation/2009/10/211_53320.html

[25] Idem 24

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Legality Issues and Legal Considerations Regarding the Turning to Account of the Period of Contribution in the Public Pension System /at the Same Time with / Simultaneously with Periods of Contribution / Seniorities in Service Completed in the System Pensions that are not Integrated Into the Public Pension System

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Abstract

The purpose of this paper is to clarify the legality issues concerning the turning to account of the period of contribution completed in the public pension system, simultaneously with periods of contribution completed in pension systems that are not integrated into the public pension system, such as the state military pension system and the pension system for lawyers and notaries.

Keywords: *period of contribution, contributiveness, public pension system, pension system that is not integrated into the public pension system, military pension, pension for lawyers and notaries public*

The analysis that we propose is of theoretical and practical importance, from the point of view of **the turning to account of the period of contribution completed in the public pension system** by persons who *simultaneously complete a period of contribution in pension systems that are not* ***integrated into the public pension system.***

Taking into account the provisions of principle of the Law no. 263/2010 on the unitary system of public pensions[1] art. 2, lett. c), according to which **the social security rights are due on the basis of the social security contributions,** it would justifiably appear that the issue making the object of this analysis cannot exist. We consider that, according to the above-mentioned rule of principle, the period during which a person has contributed to the public pension system constitutes period of contribution to that pension system.

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[1] Published in the Official Gazette of Romania, 1st Part, no. 852 of December 20, 2010, with further amendments and extensions

I. The first aspect we focus on refers at the distinction *between the pension systems that are not integrated into the public pension system* and the so-called "*special pensions*".

The beneficiaries of *"special pensions/allowances" (hereinafter called "special pensions")* and the source of law for each category of beneficiaries are the following:

a) Law no. 96/2006 on the statute of deputies and senators[2] – Chapter XI – Age limit allowance;

b) Law no. 7/2006 on the statute of parliamentary public servants[3] – art. 731 and art. 93-94;

c) Law no. 47/1992 on the organisation and functioning of the Constitutional Court[4] – Chapter VI – Statute of the Judges of the Constitutional Court;

d) Law no. 303/2004 on the statute of judges and prosecutors[5] – art. 82-87;

e) Law no. 564/2004 on the specialised auxiliary personnel of the courts of law and prosecutor's offices working within the National Institute of Forensic Expertise[6] – art. 68;

f) Law no. 94/1992 on the organisation and functioning of the Court of Accounts[7] – Chapter V – Appointment and statute of the Court of Accounts Staff;

g) Law no. 216/2015 on granting service pension to the members of the Romanian diplomatic and consular corps[8];

h) Law no. 223/2007 on the statute of professional civil aviation personnel in civil aviation in Romania[9] – art. 42-48.

These special pensions **are not, by their very nature, specific social insurance systems that are not integrated into the public pension system, within the meaning of the law related to the public pension system**. The arguments presented herein come to support the above:

[2] Republished in the Official Gazette of Romania, 1st Part, no. 49 of January 22, 2016, with further amendments and extensions

[3] Republished in the Official Gazette of Romania, 1st Part, no. 343 of May 25, 2009 with further amendments and extensions

[4] Republished in the Official Gazette of Romania, 1st Part, no. 807 of December 3, 2010, with further amendments and extensions

[5] Republished in the Official Gazette of Romania, 1st Part, no. 576 of September 13, 2005, with further amendments and extensions

[6] Republished in the Official Gazette of Romania, 1st Part, no. 1197 of December 14, 2004, with further amendments and extensions

[7] Republished in the Official Gazette of Romania, 1st Part, no. 238 of April 3, 2014, with further amendments and extensions

[8] Republished in the Official Gazette of Romania, 1st Part, no. 546 of July 22, 2015, with further amendments and extensions

[9] Republished in the Official Gazette of Romania, 1st Part, no. 481 of July 18, 2007, with further amendments and extensions

a) the beneficiaries of these social insurance benefits are contributors to the public pension system, in accordance with the provisions of the law on the public pension system;

b) the calculation and manner of payment of the pension is made by the competent institutions that are authorised by law to manage the public pension system;

c) together with the calculation of the special pension amount, **the age limit pension due according to the legislation on the public pension system shall also be calculated**, and the part of the special/service pension exceeding the level of the pension from the public pension system **shall be borne by the state social insurance budget***, and the part of the special/service pension exceeding the level of the pension from the public pension system shall be borne by the state budget*, respectively by the budget of the Ministry of Labour and Social Protection. The payment/financing source in case of the survivors' benefits, of specific character, is similarly regulated.

Considering all the above, we note that what is special about these pensions usually concerns aspects related to the nature of the pension supplementary to the level of pension established in the public pension system/the calculation basis of such pensions, the retirement age, the seniority in speciality and/or seniority in function; the modalities of calculating the discount rates for these pensions**, without, however, having to deal with social insurance systems that are not integrated into the public pension system,** such is the case of military pensions, of pensions for lawyers and notaries.

Unlike these "*special pensions",* the **pension systems that are not integrated into the public pension system** have their own specific Pension Laws[10] and their own houses of pension (sectorial houses of pension – in case of the military pensions, Lawyers' Insurance House – in case of lawyers, respectively the House of Pensions of Notaries Public of Romania – in case of notaries public). The beneficiaries of these pensions that are not integrated into the public pension system contribute from their income, however their individual contributions are not included into the social insurance budget, but, according to the case, into the state budget – in case of militaries, or into the specific social insurance budgets of lawyers, respectively of notaries. Consequently, the pensions due to the beneficiaries of the pensions that are not integrated into the public pension system are not borne by the social insurance budget for pensions,

[10] i.e., the Law no. 223/2015 on the state military pensions, published in the Official Gazette of Romania, 1st Part, no. 556 of July 27, 2015, with further amendments and extensions; the Law no. 72/2016 on the public pension system and other social security rights of the lawyers – published in the Official Gazette of Romania, 1st Part, no. 342 of May 5, 2016, with further amendments and extensions, and the Law no. 39/2020 on the public pension system and other social security rights of the notaries public in Romania – Published in the Official Gazette of Romania, 1st Part, no. 281 of April 3, 2020.

but by the state budget or by the specific social insurance budgets, according to the case.

II. Having identified the systems of pensions not integrated into the public pension system, and having also made the distinction between these pension systems and the so-called "*special pensions",* we resume the topic of our paper, respectively the situation when a contributor to a system of pensions not integrated into the public pension system simultaneously performs an activity, respectively works as an employee with an individual employment contract.

In accordance with the provisions of art. 6 para. (1) lett. a) of the Law no. 263/2010, with further amendments and extensions, the persons who perform activities, with individual employment contracts, are mandatorily insured in the public pension system. Therefore, *militaries, lawyers or notaries*, who are active and simultaneously legally perform an activity, abiding by the provisions of their professional by-laws, on the basis of an individual employment contract *(i.e., university professor),* **mandatorily contribute at the public pension system**, *simultaneously with the contribution due to the pension system that is not integrated into the public pension system.*

Consequently, in full compliance with the norm of law mentioned above on the principle of contributiveness, the respective person is entitled to receive ***pension*** *in the pension system that is not integrated into the public pension system he/she contributed at* and, for the same period of time, to receive pension in the public pension system, corresponding to the period of contribution completed in that pension system.

There are also express legal provisions to this effect. Thus, in accordance with the provisions of art. 110 para. (3) of the Law no. 223/2015 *on state military pensions,* **the periods of contribution completed in the public pension system, that are not turned to account upon the recalculation of the *military* pension** *(our note: in order to avoid double turning to account),* as well as those completed after the entry into force of that law**, are turned to account in the public pension system.**

However, the provisions of art. 110 para. (3) of the Law no. 223/2015, which we consider **imperative and unequivocal,** have been disregarded in case of a military who, while in active duty, contributed at the public pension system and was simultaneously involved in teaching, as a university professor, with individual employment contract. In other words, the respective person contributed simultaneously **both** at the public pension system, from his salary he was entitled to, based on the individual employment contract, **and** at the military pension system, from his military pay, depending on his military position and rank.

In such a case, the territorial pension house issued a decision considering only the period of contribution at the public pension system, after the military was discharged from the active duty. The claim filled by the respective person in the Court of First Instance – Tribunal of Bucharest – was dismissed, the court

invoking the provisions of art. 192 para. (1) of the Law no. 263/2010, according to which *"Between the public pension system and the specific social security systems that are not integrated into it (*our note: as is the case of military pensions and pensions for lawyers and notaries*), the contribution periods, respectively the seniority in work or the seniority in service, are mutually recognized for the purposes of establishing the rights for age limit pensions, disability pensions and survivors' benefits."*

We consider it obvious *the lack of any connection between these legal provisions with the situation presented above.* In this case**, it is not about** *recognising periods of contribution / seniority at work completed in a pension system that is not integrated into the public one* **for calculating the pension in this system.** The claim was about *recognising the period of contribution at the public system upon calculating the pension in this system.*

At the remedy at law, the appeal was dismissed. The Court considered that "*The provisions of art. 110 para. (3) of the Law no. 223/2015* on the state military pensions, according to which the periods of contribution completed in the public pension system, not turned to account upon the recalculation of the military pension, will be turned to account in the public pension system, cannot be applied, given that *these are periods of time considered as interval, which cannot be temporally doubled... (our note: ?) No lex tertia may be created".*

We consider that the decision of the court of judiciary control is unsubstantiated, or at least criticisable, out of the following arguments:

1. the *principle of contributiveness*, enshrined in the law, is effectively denied, as the turning to account of periods of contribution completed in different pension systems, even if simultaneously, despite the fact that it is not doubled, is denied;

2. a principle enshrined in the theory of law, according to which "*if the law does not make distinctions, the implementing body (the judge or the official servant) may not make distinctions as well"*, is denied.

We consider that, as long as art. 110 para. (3) of the Law no. 223/2015 foresees that **the periods of contributions completed in the public pension system, not turned to account** in the military pension system, **will be turned to account in the public pension system**, without making a distinction whether these were completed or not in the same period, therefore the judge may not make a distinction either.

3. constitutional provisions are infringed upon, as follows:

a) art. 124 para. (1) of the Constitution of Romania – according to which "Justice shall be rendered in the name of the law". Consequently, it cannot be argued that a text of the *law "cannot be applied (...) temporally"* and a *lex tertia"* is necessary, because the principle of separation of powers would be violated. Justice must be rendered in agreement with the provisions of the law, respectively *"in the name of the law";*

b) art. 126 para. (3) of the Constitution of Romania – regarding to which the Constitutional Court, with the Decision no. 838/2009[11], ruled that the High Court of Cassation and Justice has the obligation to make sure that all the courts of law abide by the principle of separation and balance of powers (see art. 1, para. (4) of the Constitution of Romania), the courts of law have no constitutional competence to enact, amend or abrogate legal norms. In the same spirit, they cannot affirm that **a text of law** *(art. 110 para. (3) of the Law no. 223/2015), which is imperative and unequivocal,* **cannot be applied.**

In conclusion, we point out that, using the principle of identity of reasoning, the problem is similar in the case of the other pension systems that are not integrated into the public pension system – that of lawyers and notaries public.

[11] Published in the Official Gazette of Romania, 1st Part, no. 461 of July 3, 2009

Trends of European Union Policies and Strategies for Consolidating the Area of Freedom, Security and Justice

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Abstract

Following the general trend of social evolution, the threats and challenges to global security are gaining new value, adding to them sources of insecurity such as terrorism, proliferation of weapons of mass destruction, trafficking in weapons, radioactive substances, drugs and people, illegal migration, hybrid threats, pandemics, natural disasters. In this context, the policies of the European Union attach great importance to the creation of an Area of Freedom, Security and Justice for its citizens. The dynamics of international relations favor the politico-diplomatic approaches for building a new European security system, able to ensure the consolidation of democracy. According to the Lisbon Treaty (came into force on 1 December 2009), the main objectives of the European Union include building a Union that can guarantee respect for human rights, universal values, in order to strengthen the area of freedom, security and justice, increasing the level of security for citizens of the Member States. Aware of its membership in European culture, sharing Euro-Atlantic values and principles of Western democracy Romania, a member of NATO and the European Union, promotes and protects its national interests by achieving security objectives in close accordance with their obligations and responsibilities.

Keywords: *EU policies, Area of Freedom, Security and Justice, Justice and Home Affairs (JHA), Treaty of Lisbon, hybrid threats.*

The European Union **(EU) is the political and social expression of an association, designed as sustainable, of the European States. After 1998, the EU has put the accent on the efforts to strengthen security at European level by developing a common foreign and security policy, which is highlighted in the Treaty of Amsterdam.[1] The Treaty of Amsterdam, which came into force on 1 May 1999, updated and clarified the Maastricht Treaty. Its main aim**

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[1]European Security and Defense Policy – work elaborated under Phare RO-2002/000-586.03.01.04.02, p. 4, available at http//ier.gov.ro/wp-content/uploads/publicatii/Securitate_si_aprare.pdf (accessed on 7 May 2021)

was to enshrine the free movement of EU citizens and citizens outside the EU and, at the same time, to ensure public security by fighting against all forms of organized crime (human beings traffic, drug and arms traffic, child exploitation, child abuse, fraud and corruption, etc.). The Treaty of Amsterdam has removed all provisions that have become obsolete from the European Treaties, while avoiding that the legal effects that were previously derived from them would be affected.

According to the Lisbon Treaty[2] rules, amending the Treaty on European Union and the Treaty founding the European Community, which came into force on 1 December 2009, the main objectives of the European Union include the construction of a European Union, of respect for human rights and values, consolidating the Freedom, Security and Justice Area, increasing the security level for the citizens of the Member States, promoting legal and administrative solidarity mechanisms for EU citizens.

The Treaty of Lisbon does not contain provisions that make it declarative and binding for States to harmonize national legislation with decisions taken at Union level. In order to correct this omission, a Declaration accepted by each Member State has been attached to the Treaty: "*the Conference recalls that, in accordance with settled case-law of the European Union Court of Justice, the Treaties and the legislation adopted by the Union on the basis of the Treaties have priority over the law of the Member States, under the conditions laid down in the aforementioned case-law".*[3]

These European instruments necessary to ensure the Freedom, Security and Justice Area have as their main means of enforcing the commitment of the Member States to take legislative measures to ensure the fundamental rights of their citizens, thus constituting an additional guarantee for European control systems.

The Treaty of Lisbon lays down three fundamental principles:

principle of democratic equality: "In all its activities, the Union shall respect the principle of equality of its citizens, who shall receive equal attention from its institutions, organisms, offices and agencies (Article I 45..[4]

[2]Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community, published on https//eur-lex.europa.eu/legal-content, JO C 306, 17.12.2007. (accessed on 8 May 2021)

[3] DECLARATIONS ENCLOSED TO THE FINAL ACT OF THE INTERGOVERNMENTAL CONFERENCE WHICH ADOPTED THE TREATY OF LISBON 26.10.2012 Official Journal of the European Union C 326/33, published on https://eur-lex.europa.eu/resource.htm (accessed on 8 May 2021)

[4] https://lege5.ro/ Democratic principle-equality-Treaty Treaty between the Kingdom of Belgium, the Czech Republic, the Kingdom of Denmark, the Federal Republic of Germany, R Estonia, R Hellenic, Reg. Spain, R French, Ireland, R Italian, R Cyprus, R Latvia, R Lithuania, Grand Duchy of Luxembourg, R Hungary, R Malta, Kingdom of the Netherlands, R Austria, R Poland, R Portugal, R Slovenia, R Slovak, R Finland, Reg. Sweden, United Kingdom of Great Britain and

- principle of representative democracy: "*(1) The functioning of the Union shall be based on the principle of representative democracy. (2) citizens are directly represented, at the Union level, in the European Parliament, the Member States are represented in the European Council by their Presidents or by their Government and inside the Council by their governments, which in turn are democratically accountable either to their national parliaments or to their citizens (article I 46).*"[5]
- The principle of participatory democracy: "*(1) The institutions shall, by appropriate means, give citizens and representative associations the opportunity to make known their views and publicly exchange views in all areas of the Union actions. (2) the Union institutions shall maintain an open, transparent and constant dialog with the representative associations and civil society. (3) concerning the coherence and transparency of the Union actions, the Commission follows a wide-ranging consultation of the interested parts (article I 47).*"[6]

The values of the EU[7] are common to all Member States:

- ***Human dignity is inviolable. It must be respected and protected*** [8] and it is the actual basis for the fundamental human rights. The European system for the protection of human dignity has as its main document the Convention on the Protection of Human Rights and Fundamental Freedoms, elaborated inside the European Council. *"Affirming that it is a matter of priority for the High Contracting Parties, in accordance with the principle of subsidiarity, to guarantee respect for the rights and freedoms defined in this Convention and its Protocols, and that, to this end, they benefit by appreciation under the supervision of the European Court of Human Rights established by this Convention".*[9]

Women and children trafficking having as purpose the sexual exploitation is a type of organized crime that grossly violates the principle of respect for human dignity but generates high profits, with relatively low risks for traders. Many of these victims come from developing countries and Central and Eastern Europe. They are violated all their rights included in the European Convention for the Protection of Human Rights and Fundamental Freedoms. Only a small number of cases are reported and convictions for this type of crime are rare

Northern Ireland (EU Member States) and R Bulgaria and Romania concerning the accession of R Bulgaria and Romania to the EU since 25.04.2005, Article I45, (accessed on 8 May 2021)

[5] idem art I46

[6] idem art I47

[7] https://europa.eu/european-union/about-eu/eu-in-brief_ro.(accessed on 8 May 2021)

[8] Article 1 of the Carta of Fundamental Rights of the European Union, available at https://fra.europa.eu/ro/_charterpedia /title/ i-dignity.(accessed on 8 May 2021)

[9] The European Convention on Human Rights, available at https://www.echr.coe.int/documents/ convention_ron.pdf, p. 6 (accessed on 12 May 2021).

according to the scale of the phenomenon. The European Commission considers that human beings trafficking cannot be eradicated or limited without a multidisciplinary and coordinated approach involving all state and non-state actors – NGOs and social authorities, judicial, law enforcement and migration authorities – into an international cooperation.[10] Studies show that, the causes of migration related to the women trafficking are the lack of opportunities in their countries, the extreme poverty in many developing countries and the marginalization of women in the source countries. It also appears that the demand for exotic prostitutes is increased, and women in countries that have a sex tourism industry are more likely to be trafficked abroad.[11]

A study on women trafficking from Romania to Germany found that, in many cases, the first contact person between the victim and the recruiter was a person in the close circle of the victim's family and friends. Recruiters are not always violent at the beginning, often attract victims with jobs promises or marriage relationships.[12]

Preventing and combating the human beings trafficking remains a very often discussed issue in European structures. As an attempt to address the various challenges encountered, to stop or reduce the phenomenon, the said forums have developed various strategies and documents relating to the human beings trafficking or affecting human rights.

Children, victims of trafficking, are recruited, transported, transferred, sheltered or received having as purpose the exploitation. They can be forced to work on the streets as beggars, in workshops, in construction sites, restaurants and hotels, or as domestic servants. Some are forced to work in brotheels and clubs for escort and massage services.[13]

GRETA, the Group of Experts on Action against Human Beings Trafficking, is responsible, at the European Council level, for monitoring the application by the States Member, of the Council of Europe Convention on Action against Human Beings Trafficking.[14]

This document stipulates in Article 12 that "*each part will adopt the legislative or other measures as may be necessary to assist victims in their*

[10] COMMUNICATION FROM THE COMMISSION TO THE COUNCIL AND THE EUROPEAN PARLIAMENT, ON TRAFFICKING IN WOMEN FOR THE PURPOSE OF SEXUAL EXPLOITATION, 1996, pp. 3-6, available at https// eur-lex.europa.eu›,(accessed on 14 May 2021).

[11] COMMUNICATION FROM THE COMMISSION TO THE COUNCIL AND THE EUROPEAN PARLIAMENT, 1996, p. 5, available at https//eur-lex.europa.eu ›, (accessed on 14 May 2021).

[12] Affairs Trafficking in human beings the slavery of our times, 2013, available at https//ec.europa.eu ›, (accessed on 14 May 2021).

[13] https://www.unicefusa.org/mission/protect/trafficking, accessed on 15 May 2021).

[14]Action against Trafficking in Human Beings – Council of Europe, available at https//www.coe.int › web ›,(accessed on 15 May 2021).

physical, psychological and social recovery."[15] Such assistance includes at least adequate and safe accommodation, psychological and material assistance, access to emergency medical treatment, translation and interpretation services, where appropriate, and the provision of legal assistance in criminal proceedings.[16]

The human beings trafficking having as purpose the organisms removal (THBOR) is forbidden all over the world, many countries adopting appropriate legislation against this phenomenon. However, information on the incidence of THBOR and the authorities' response to this challenge is virtually difficult to reach.[17] In Romania, this offense is incriminated in Article 384 of Law 286/2006, *Illegal procurement of tissues or organs*, in conjunction with Article 158(1) and Article 159(1) of Law No 95/2006"[18]

National authorities have stepped up law-making efforts to combat the non-observance of the human dignity. Articles 210 and 211 of the Penal Code criminalized the human beings trafficking having as purposes the sexual exploitation and forced work and provided for prison sentences between 3 and 10 years for offenses involving an adult victim and between 5 and 10 years for offenses involving minors.[19]

The national structure with powers in this field is the *National Agency against Human Beings Trafficking* (NAHBT), which acts as national rapporteur, collecting data from governmental and non-governmental actors. The normative acts governing the organization and functioning of this institution are H.G. No 460 /2011 on the organization and functioning of the National Agency against Human Beings Trafficking, published in the Official Monitor, Part I No 331 of 12 May 2011 and Decision No 84/2018 for amending and supplementing the Government Decision No 460/2011 on the organization and functioning of the National Agency against Human Beings Trafficking published in the Official Monitor, Part I No 217 of 12 March 2018.[20] At European level, through Council of Europe decisions, two structures have been set up – Europol and Eurojust, the first with the task of preventing and combating illegal migration and human

[15] **Council of Europe Convention on Action against Trafficking in Human Beings, available at** https://www.coe. int/ en/web/conventions/full-list/-/conventions/rms/090000168008371d, (accessed on 16 May 2021).

[16] ***Ibidem.***

[17] TRAFFICKING IN HUMAN BEINGSFOR THE PURPOSE OF ORGAN REMOVAL, report 2014, p 8, available at https// ec.europa.eu ›, (accessed on16 May 2021).

[18] VÂRBAN P., *Organs trafficking, tissues or human origin cells*, 2014, available at https//www.juridice.ro, (accessed on 16 May 2021).

[19] Report on human being trafficking (2020), https://ro.usembassy.gov/ro/raportul-pentru-traficul-de-persoane-2020/

[20]Organization and functioning of the national Agency against trafficking in Human beings, available at https//www.universuljuridic.ro/hg-460-2011-organization-and-functioning-national-agency-against-trafficking-of-humans-modify-hg-84-2018, (accessed on 14 May 2021).

beings trafficking, and the second with an important role in preventing and combating organized crime.

- *freedom of movement* gives citizens the right to move and settle freely on the Union territory. "*the right to asylum is guaranteed in accordance with the rules laid down in the Geneva Convention of 28 July 1951 and the Protocol of 31 January 1967 relating to the status of refugees, and in accordance with the Treaty on European Union and the Treaty on the functioning of the European Union".*[21] Discrimination is still widespread in the EU as regards the possibility of exercising the right to work in other States if in their own countries they generally benefit from lower pay and heavier working conditions.[22]

Today, migration must be seen as a result of the interaction between individual decisions and social constraints. The prolonged global crisis has affected the inhabitants of many states, due to pre-existing economic imbalances and the policies of austerity that has been applied, which are driving to recession and unemployment.[23] "*In so far as the governments of different countries are unable to manage the economic difficulties they face with, they stimulate various forms of crime with international manifestation, reduce vigilance over the affection of the ecological security, produce a decrease of the resources allocated to public health and other social programs, and generate the people's migration. All these negative phenomena create a favourable environment for asymmetric threats to international and national security, affecting both states and the international system as a whole."*[24]

- *individual freedoms,* such as respect for the private life, freedom of thinking, religious freedom, freedom of assembly, right to information and freedom of expression, are expressly provided in Title II: *The freedoms* of the Carta of Fundamental Rights of the EU. There is still controversy as to the existence or non-existence of the right to abortion as an individual freedom, in the 2011 "San Jose Articles", which considered that no convention stipulates abortion as an international human right, in the opinion of the signatories, life starting with conception. Some religious sects also prohibit members from having access to certain medical procedures, social or cultural activities.[25] The legal aspect of these limitations of individual freedoms is questionable once accession to these groups is theoretically voluntary.

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[21]The Carta of Fundamental Rights of the European Union, Article 18, available at https://fra.europa.eu/ro/charterpedia /title/ i-dignity.(accessed on 8 May 2021).

[22] Ramona Gabriela Paraschiv, International mechanisms for the protection of human rights, Pro Universitaria Publishing House, 2014, p 223.

[23] *Ibidem* p. 223.

[24] Lynn E. Davis, *Globalization's Security Implications, RAND Issue paper, 2003, p. 4,* cited by T. Frunzeti, G. Dulea, *The psychology of terrorism in the age of globalization,* Edit. Centrului Editorial al Armatei, Bucureşti, 2009, p. 98.

[25] Ramona Gabriela Paraschiv, *op. cit.,*p.226.

- *representative democracy* – every EU citizen has the right to stand as candidate and vote in elections for the European Parliament, either in his residence country or in his origin country.[26]
- *Equality* requires equal rights before the law for all citizens.
- *Rule of law* [27] – Article 2 of the Treaty on European Union considers this concept to be one of the essential values in the functioning of the European construction. Law and justice are protected by an independent judicial organism, the European Court of Justice. The European Union has its own legal order, integrated into the legal system of the member states which are required to do so, and which courts are forced to apply it. [28] Jurisprudence, term interpreted in a wide sense, covering the solutions given by all international human rights organisms, regardless of their nature (judicial, para-judicial, quasi-judicial or non-judicial), is an important source of human rights protection by establishing a practice in this field.[29]

At present the Ministers Committee of the European Council has powers concerning the ensurance of CEDO decisions.[30]

Human security has always been the focus of international opinion since the Universal Declaration of Human Rights (1948): "*everyone has the right to life, to freedom, and to personal security" (Article 3); "each person, as a member of society, has the right to social security; She is entitled, through national efforts and international cooperation, taking into account the organization and resources of each country, to ensure the economic, social and cultural rights which are essential to its dignity and the free development of its personality*" (Article 22).[31]

The principles set out in the Declaration are initialed in Rome, into the *Convention for the Protection of Human Rights and Fundamental Freedoms*, on 4 November 1950, ratified by Romania by the Law No 30 of 13 May 1994, published in Of. M 135 31 May 1994.[32]

[26] Directive 93/109/EC establishing the detailed rules for the exercise of the right to vote and to be elected for the European Parliament for the citizens of the Union residing in a member state of which they are not nationals, available on http://publications.europa.eu/resource/cellar/5c94d 94f-e629-4574-9355-e20dbf05a8ec.0014.03/DOC_1.(accessed on 16 May 2021).

[27]The rule of law: a mechanism for the protection of the EU budget and values, available at https://www.europarl.europa.EU/ news/ro/headlines/EU-affairs/20201001STO88311/the rule of law. (accessed on 16 may 2021).

[28] Judgment of the Court of Justice in Flaminio Costa v. ENEL, 6/64, EU:C:1964:66, paragraph "on the obligation of the national court to apply national law".

[29] Ramona Gabriela Paraschiv, *op.cit.,* pp56-57.

[30] Titus Corlatean, Enforcement of judgments of the European Court of Human Rights, Legal Universe, Bucharest, 2011, p. 34

[31]UNIVERSAL DECLARATION Of HUMAN RIGHTS of 10 December 1948 published on http://www.anr.gov.ro/docs/legislatie/internationala/Declaratia_Universala_a_Drepturilor_Omului.pdf (accessed on 16 May 2021).

[32] Council of Europe texts available at https://www.mae.ro/node/1877(accessed on 16 May 2021).

Romania becomes a full Member of the EU in 2007.[33]

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[33] ACT concerning the conditions of accession of the Republic of Bulgaria and Romania and the adjustments to the Treaties on which the European Union is founded, published in *JO L 157, 21.6.2005, p. 203-375, available at* https://eur-lex.europa.eu/legal-content/RO/TXT *(accessed on16 May 2021).*

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Opinions Regarding the Legal Status of Pensions State Military

Constantin ZANFIR[*]

Abstract

The study aims to clarify the legal aspects regarding the contributory or non-contributory nature of state military pensions. The fact that they are paid from the state budget and do not have a calculation formula similar to that of the public pension system has accredited the public opinion as well as that of many specialists to the idea that state military pensions are non-contributory. The present study legally argues the contributory nature of state military pensions. The individual contribution of the military paid during the activity to the state budget obliges the state to pay the payment of military pensions and other social rights provided by law from the fund thus constituted.

Keywords: *state military pensions, principle of contribution, public pension system*

For several years, there has been a heated debate in the public space about special pensions, in which state military pensions are included in a dilentatistic way (or maybe not).

The issue did not remain only at the level of debate, but also materialized in the adoption of *Law no. 282/2023 for the amendment and completion of some normative acts in the field of service pensions* and *Law no. 227/2015 regarding the Fiscal Code* which modifies the state military pensions system by seriously violating the principles of organization and operation of this system, the principles provided by art. 2 *of Law no. 223/2015 on state military pensions*.

a) the principle of uniqueness,

b) the principle of equality,

c) the principle of autonomy,

d) the principle of gratitude towards the loyalty, sacrifices and privations suffered by the military during their careers.

Increasing the retirement age of all military personnel, indiscriminately, from 60 to 65 years old, changing the basis for calculating pensions and the progressive taxation of state military pensions violate not only the principles mentioned above but also have serious constitutional problems, negatively

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affecting even the fulfillment by the armed forces of their fundamental missions provided by the Romanian Constitution.

The motivation brought by the politicians was the reform of special pensions provided for in the PNRR with the stated aim of reducing them. Although the state military pensions are not listed in the PNRR, without any impact study, they were included in this process, the result being, in addition to the complex negative impact on the military system, the progressive taxation of the military pension, on the grounds that it has only a component non-contributory.

In our opinion, the Sectoral Pension House of the Ministry of Defense was wrong when it considered that the state military pensions only have a non-contributory component, and as a consequence, taxed them progressively.

In this case, state military pensions had to be taxed according to the provisions of art. 64, paragraph (1) letter e) in conjunction with art. 100, paragraph (1) and art. 101 paragraph (2) letter a), with a single rate of 10% on the monthly taxable income from pensions, because pensions state military fully meet the requirements of the contributory principle

Arguments

The principle of contribution is defined by the legislation of the public pension system – Law no. 263/2010, Law no. 127/2019 and Law no. 360/2023. Thus, in accordance with the provisions of art. 2, letter c) of Law no. 263/2010 and art. 2, letter c) of Law no. 60/2023**, the principle of contribution implies the fulfillment of two basic requirements:**

i) social insurance funds are established on the basis of contributions owed by natural and legal persons participating in the public pension system

and

ii) social insurance rights due on the basis of paid social insurance contributions.

Analyzing the system of state military pensions through the prism of the above-mentioned requirements, we find that **state military pensions meet the requirements of the principle of contribution.**

i) The social insurance funds of the military are constituted on the basis of their individual contribution during the activity and the contributions of the Ministry of National Defense, contributions paid to the state budget, according to the law.

Pursuant to art. 31 paragraph (1) of Law no. 223/2015, military personnel pay an individual contribution to the state budget during their work, equal to the individual social insurance contribution, currently 25%.

At the same time, the Ministry of National Defense fulfills its payment obligations to the state budget of the contributions provided by law.

ii) State military pension rights and other social rights provided by law for military retirees are ensured based on the individual contribution to the state budget.

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 a mutual obligation for the state budget to ensure the payment of military pensions and other established social benefits 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, under 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 – the payment of state military pensions and social insurance rights provided for by law:

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*** **(ie 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, the state military pension meets the requirements imposed by the principle of contribution; during the activity, the military performed a parafiscal task, thus contributing to the constitution of the pension fund within the state budget, and the fund thus constituted is and must be used only according to its destination, i.e. the payment of military pensions and other rights and obligations social provided 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 explicitly highlighted by the formula for calculating the amount of the pension and explained in the Retirement Decision/ pension coupon (as it is not explained in the public pension system either, with the exception of "special pensions"),.

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, having a different

destination than the payment of state military pensions, this would be unconstitutional.

In other words, if the legislator's intention was to include the military under the provisions of art.101 par.(2) letter c) of the Fiscal Code, considering that state military pensions only have a non-contributory part, the text is unconstitutional, violating the provisions of art. 139, paragraph (3) of the Romanian Constitution.

The calculation of state military pensions *differs, it is true, from the public pension system, but the difference is given by the specifics of the military status and the principles governing the legislation of the state military pension system, a system that is autonomous and independent from the public pension system.*

In our opinion, the pension calculation formula has nothing in common with the application of the contributory principle, as defined by the relevant legislation. Otherwise, in the public pension system there are major differences between the calculation formulas provided by the three laws in force.

The full payment of military pensions from the state budget should not lead to the conclusion that they are non-contributory.

Service pensions in the public system really **have two components**:

a) **one paid from the social insurance budget** – where the individual social insurance contributions were paid; this component is due based on the contributory principle (the pension fund was established on the basis of the individual contribution);

b) **one paid from the state budget** – for which individual contributions have not been paid, but are granted based on statutory rights (this component is indeed non-contributory).

These two components are highlighted separately in retirement decisions/pension vouchers.

In the case of state military pensions, the situation is totally different: they have a single component paid from the state budget because individual contributions to the pension fund were also paid here.

State military pensions are not supplemented with a non-contributory component paid additionally from the state budget as in the case of the above-mentioned service pensions. No law provides for such an assumption!!

As a consequence, the state military pension is fully contributory, the provisions of art. 101, paragraph (2), letter a) being thus applicable. To think otherwise would mean that all individual military contributions to the state budget are unconstitutional.