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GENERAL CONSIDERATIONS REGARDING THE AMENDMENTS BROUGHT BY LAW 310/2018 REGARDING THE APPEAL AGAINST THE CONCLUSION OF REJECTION OF THE INTERVENTION REQUEST

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ABSTRACT

The amendments brought by Law 310/2018 for the amendment and completion of the Civil Procedure Code, regarding the appeal against the conclusion of rejection of the interventionrequest are likely to raise some issues of practical application.Although, in the statement of reasonswhich was the basis for the elaboration of the above-mentioned law, reference is made to the need to correlate the Civil Procedure Codewith the Decisions of the Constitutional Court, it should be noted that, although significantly amended, the provisions of art.64 par.3 and 4 of the Civil Procedure Code, have not been the subject ofdecisions to establish somepossible unconstitutionalities.

KEY WORDS: *admissibility, intervention, expediency*

INTRODUCTION

On 12/21/2018, entered into force Law no. 310/2018 for amending and supplementing Law no. 134/2010 on the Civil ProcedureCode, as well as for amending and supplementing other normative acts. [1,2]

In the statement of reasons that formed the basis of the aforementioned law, reference is made to the need to reconcile the texts of the law in force with the Decisions of the Constitutional Court no. 473/2013, no. 462/2014, no. 558/2014, no. 485/2015, no. 839/2015, no. 866/2015 and no. 321/2017. [3,4,5,6,7,8,9].

Given that the decisions of unconstitutionality listed above didnot target the provisions of art. 64 paragraphs 3 and 4 of the Civil Procedure Code, clearly results that the amendment of these texts was generated rather by the expediency of solving cases by blocking situations encountered in practice to delay the causes by formulating some interventionrequests.

MATERIAL AND METHOD

The materials used in writing this paper consist of normative acts, web pages, CCR jurisprudence.The methods used are legal, namely the formal method, the historical method, the comparative method, the logical and sociological method, the analytical method.The use of these methods had the role of performing a systematic analysis of the information from the studied sources in order to elaborate the points of view and the conclusions.

RESULTS AND DISCUSSION

The problem of the application in time of the provisions of the civil procedure code, amended / completed by law 310/2018

Until the entry into force of Law 310/2018, the provisions of art. 64 paragraphs 3 and 4 of the Civil Procedure Codeallowed the person whose request for intervention was rejected as inadmissible, to attack it with an appeal or recourse, as the case may be.

In the sense of the old regulation until the settlement of the appeal on the conclusion of rejection of the request for intervention, the main request is suspended.The appearance of the amendments introduced by Law 310/2018 lead to the idea that the text in its initial version could be used for the abusive exercise of procedural rights in order to unjustifiably delay the cases.

In its current form, the person whose request for intervention has been rejected as inadmissible can appeal the decision only with the merits of the case.Before any other analysis, it should be mentioned that art. 64 para. 3 and 4 Civil Procedure Code, as amended by Law 310/2018 regarding the manner of exercising the appeal against the conclusion of rejection as inadmissible of the request for intervention, as well as the procedure applicable in such cases, applies only in the case of registered cases after the entry into force of the aforementioned law.This conclusion derives from the corroborated interpretation of the provisions of art. 24 and 27 Civil Procedure Code which gives relevance to the moment of starting the process and nowise to the moment of pronouncing the decision of rejection as inadmissible of the request for intervention.Thus, in the ongoing litigations on the date of entry into force of Law 310/2018, the conclusion of rejection as inadmissible is subject to appeal, or as the case may be, the recourse, with the application of the existing procedure prior to the amendment.

In case of admitting the appeal thus formulated, the provisions of art. 64 paragraphs 3 and 4 of the Civil Procedure Codestipulate that the pronounced decision is rescinded by law and the case will be re-judged by the court before which the request for intervention was formulated from the moment of discussing its admissibility in principle.

As far as we are concerned, we appreciate that for the particular situation in which the appeal formulated against the conclusion of rejection as inadmissible of the request for intervention to be admitted by the court of judicial control, the speed considered by the legislator will not be fulfilled. On the contrary, at least as regards the initial parties, the annulment of the decision that resolved the merits of the dispute between them will be such as to certainly extend the time required to obtain a final solution.

Another aspect that deserves to be mentioned is the one referring to the fact according to the provisions of ar. 65 para. 1 of the Civil Procedure Code, the intervener becomes a party to the process only after the admission in principle of his request.Not being a party to the case, the owner of request for interventionrejected as inadmissible will be able to appeal only the conclusion of rejection of his request and not the decision by which the merits of the case were resolved.Thus, in the eventuality in which the request for intervention will be considered admissible, the court of judicial control will find the decision by whichwere resolved the merits of the initial parties' as being annulled by law, even in the situation when they have expressly or tacitly agreed to this decision. [1].

Another possible problem generated by the new amendments is the one referring to the fact that, not being a party to the process, the holder of the request for intervention rejected as inadmissible will not be notified of the decision.It remains for the doctrine or jurisprudence to tell us what is the term for declaring the appeal for the holder of the rejected request for intervention and what is the beginning moment of this term.

However, being of strict interpretation, we appreciate that the resolution of all possible procedural situations to be made legislatively and not left on the shoulders of jurisprudence.We appraise that it would have been necessary to expressly mention the fact that not only the rejection decision of the request for intervention as inadmissibleis

communicated to the signatory party but also the solution pronounced in the case or, in the event that it contains personal data at least a document showing that the dispute has been resolved and that the decision was initially communicated to the parties at a certain date.

Another problem that could be generated by Law 310/2018 for amending and supplementing the Civil Procedure Code, regarding the appeal against the conclusion of rejection of the request for intervention, is given by a possible non-correlation between the provisions of art. 64 para.3 Civil Code. and the provisions of art. 63 paragraph 2 of the same normative act [2].

Practically, as long as the conclusion of rejection of the request for intervention as inadmissible can only be attacked with the merits, it means that this appeal does not regulate the situation of the accessory intervener who can register his request for intervention even in extraordinary appeals.Given that the decision by which the court of judicial control resolves the appeal is strictly motivated based on the analysis of criticisms of illegality and does not evoke the merits, it means that a request for ancillary intervention registered in this extraordinary appeal will be resolved by an unsustainable conclusion to be attacked.The situation is largely identical in the case of the other extraordinary means of appeal, respectively in case of revision and annulment appeal.

Another aspect worth notingis the one about the factthat the legislator did not understand that in the code of civil procedure to indicate explicitly and concretely whether the conclusion by which the court has ruled on the admissibility in principle on the request for intervention can be attacked only by its holder or by the parties in the case file.The clarification would have been necessarythe more so as there are concrete situations in which, for various reasons, there is the possibility that at least part of the file, if not all, may have an interest in solving the request for intervention together with the action that forms the object of the file.In such a situation, the decision pronounced in thewould also become mandatory for the intervener, who would no longer be able to later promote, separately, a new action against one or all of the parties to the original case.

Of course, the problem stated in the previous paragraph could be somehow deduced from the analysis / interpretation of articles 61-67 of the Civil Code, but we appreciate that, at least for reasons of accessibility, it would have been necessary for this clarification to have been made expressly by the legislator.

CONCLUSIONS

The amendments and completions brought to the Civil Procedure Codeby Law no. 134/2010 denotes a concern and a legitimate interest on the part of the legislator to reconcile the provisions of the Civil Procedure Codewith the jurisprudence of the Constitutional Court on the one hand, and on the other hand, an attempt to reduce the parties' possibilities to delay the solving of cases and to thus impair the speed that must govern the civil procedure. Even if the purpose of the amendments has been largely achieved, we appreciate that Law 310/2018 has a series of shortcomings both in terms of terminology and the possibility of generating effects contrary to those desired.

In terms of terminology, the provisions of art. 64 para. 3 does not explicitly mention whether the conclusion by which the court resolves the request for intervention can be appealed both by the parties in the case and by the holder of the request for intervention or, on the contrary, only by the latter.The lack of such specifications obliges to the analysis and interpretation of the general conditions for exercising the civil action.

The modification brought to the procedure of exercising the appeal against the conclusion by which instantly ruled on the admissibility in principle of the intervention may be able to generate a completely unfavorable situation to the initial parties which in a possible situation where as an effect of admitting the appeal formulated by intervener against the conclusion by which the request was rejected as inadmissible, they will be forced to resume

the process as an effect of the legal annulment of the decision pronounced in the case. Another possible deficiency of the current regulation is related to the lack of any mentions regarding the possibility of the intervener whose request was rejected in principle, to get acquainted with the date of pronouncing the decision on the merits.In the conditions in which the request for intervention was rejected, the intervener does not acquire the quality of party in the file nor the legitimacy necessary to appeal the merits.Thus, if the initial parties agree to the decision, the intervener is deprived of the possibility to appeal the conclusion, this becoming unappealable with retroactive effect. Another shortcoming of the current regulation is related to the fact that no distinction is made between the different legal regime of the main intervention and the accessories.If in the case of the main intervention the rule is that it can be done only before the first instance and before the closing of the debates on the merits, in the case of the accessory intervention, this can be done even during the trial, even in extraordinary appeals that do not evoke merits.The non-evocation of the merits in the extraordinary means of appeal raises the problem of applicability of the text of the law that regulates the possibility to appeal the pronounced conclusion on the admissibility of the request for intervention.

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GENERAL ASPECTS REGARDING ENVIRONMENTAL LAW RESPONSIBILITY

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ABSTRACT

If legal liability in all its forms has been regulated since the publication of the legislation, environmental liability is relatively new and, from the point of view of the authors, still not sufficiently and coherently regulated.

We continue to apply the rules and the legal regime of the "classical" common law liability, although the environmental damage (ecological damage) presents an extreme degree of danger and although in terms of environmental law the principle of restoring the parties to the previous situation and repairing in the nature of the damage often becomes impossible to apply.

KEY WORDS: *ecological damage, irreversibility, special legal liability, prevention*

INTRODUCTION

It is undeniable that the development of modern technology specific to recent years has brought with it a number of major advantages in almost all areas of daily life.

If until recently notions such as hydraulic fracturing, shale gas, greenhouse gases, nuclear energy, heat engines, synthetic oils, genetically modified plants, aviation, were not even known, now exists even the necessary technique for their implementation.

Unfortunately, it is equally undisputed that the same modern technology has an important negative effect consisting in the exponential growth of pollutants and thus in environmental degradation.

MATERIAL AND METHOD

The materials used in writing this paper consist of normative acts, web pages, treatises, specialized courses, ECHR jurisprudence.The methods used are legal, namely the formal method, the historical method, the comparative method, the logical and sociological method, the analytical method.The use of these methods had the role of performing a systematic analysis of the information from the studied sources in order to elaborate the points of view and the conclusions.

RESULTS AND DISCUSSION

In the contemporary society, influenced also by the technical-scientific revolutions, the social responsibility of the man receives a special significance.

Control by man of the machines, mechanisms and conducting scientific and technical research is gaining both national and global importance. [1]

Environmental law is a relatively new branch of law that appeared only later and as an effect of the great industrial developer specific to the last decades. For lack of industry, there are no pollutants and implicitly no real danger of environmental damage.

The technological momentum has boosted the industry and its development has brought with it beside undeniable benefits a series of challenges that humanity must face. [2]

Hydraulic fracturing, nuclear energy, greenhouse gases are everyday realities that cannot be ignored because their widespread use is proven to have a strong polluting effect on the environment generating climate change that risks becoming irreversible.

Environmental issues have a certain specificity that requires a different approach and cannot be regulated in terms of common law institutions.

1. If in the common law, works the rule of putting in the situation prior to the occurrence of the damage, in the matter of pollution the ecological damages are most of the times irreversible, which generates an objective impossibility to apply the previously stated principle.
2. If in common law, the identification of responsible persons is quite easy, at the occurrence of ecological damage can compete a number of factors even without a direct link (technical or legal) between them, which generates the problem of identifying responsible persons and their responsibilitylimits.

   Who is responsible for the deterioration of the ozone layer? - industrial economic agents, civil or military aviation, a certain state for not adopting an adequate legislative framework or the entire international community to which the same omission could be imputed.
3. If in the common law, the training of liability has in most situations the basis of commissive deeds, in the material of environmental law the ecological damages are susceptible to be generated also by omissive deeds.
4. Another specificity of environmental pollution is given by the fact that the passive subject of illicit activities are not only individuals but even the state and sometimes even the international community.

   The cuts in the Amazon forest affect not only the locals but, through the effect of changing climatic conditions, the entire world.

Specific environmental issues require a special regulation in which a primary role should be played by prevention, the sanctioning component, although important, must be put into thesecondary plan.

The special regulation must recognize the right of persons or non-governmental bodies to be actively involved in the decision-making procedure with potential impact on the environment.

Obviously, active involvement necessarily requires guaranteeing access to relevant environmental information, information in the absence of which the consultation of the population can be appreciated as being only formal.

Active involvement also implies the right of any person to express a point of view regarding an environmental issue and the correlative obligation of the authorities to analyze it.

Active involvement also presumes the right of any person to express his point of view regarding an environmental issue and the correlative obligation of the authorities to analyze it.

The right of third parties to notify the courts must be expressly recognized whenever they have information / evidence / simple suspicions regarding a potential ecological danger or about an inappropriate normative act.

In this context, should be noted the Decision no. 1195 pronounced by the Cluj Court of Appeal on 26.09.2019, which ruled that there is no relevant jurisprudence of the Strasbourg Court declaring inconsistent the Convention with judicial practice or legislation of a State party to the Convention by which the acceptance of the formulation of some actions in public interest was sanctioned.

In the considerations of the same judgment, it is also judiciously noted that the Aarhus Convention has the value of a minimum standard and that the signatory states can at any time ensure a wider access to justice according to their own legal norms.

The Court also noted that if at the last moment the Aarhus Convention could be invoked as a basis for restrictions regarding the right of access to the court in environmental matters,

this restriction cannot be opposed to Romanian courts because it is incident art.20 par. 2 of the Constitution which imposes in such a situation the prevalence of domestic law [7].

There is a need for a complete transparency of the legislative procedures in the field with the correct, complete, concrete and effective consultation of all the persons interested in the subject to be regulated.

The special regulations of the environmental law must absolutely forbid the secrecy of the content of some contracts for the valorization of the public property goods whose exploitation can generate ecological risks.

Special environmental law cannot be addressed without mentioning at least the international environmental context.

In 1972 in Stockholm under the auspices of the UNO, all countries present expressed concern about how human activity influences the environment and it was accepted for the first time that there was an indissoluble link between quality of life and quality of the environment.

The foundation of global climate protection is considered the United Nations Convention on Environment and Development from 1992 in Rio de Janeiro, where was discussed for the first timeabout the establishment of a new economic and industrial development strategy to ensure sustainable development [8].

Because the European Convention on Human Rights was signed long before industrialization and implicitly environmental issues, it does not contain express provisions regarding the right to a healthy environment.

This aspect was not enough to prevent the Strasbourg court from sanctioning the signatory states for not actively assuming the obligations to ensure an adequate legislative framework for environmental protection.

There are already two known cases of sanctioning Romania generated by the non-establishment of a legislative and administrative framework regarding the effective prevention of environmental damage [9].

And because, as I mentioned earlier, the right to a healthy environment was not expressly regulated in the Convention, the Strasbourg Court opted to find violations in terms of art. 8 of the Convention on the right to privacy, stipulating that the quality of life and well-being of the person generated by environmental issues may be considered as infringing privacy [10].

The procedure used by the ECHR is already known in the specialized doctrine as *protectionpar ricochet.*

CONCLUSIONS

- it is necessary to adopt a legislation that expressly and unequivocally regulates the objectification of liability and its foundation in all cases not on the idea of guilt as in common law but on the idea of risk.The change would generate an enormous benefit by being able to reverse the burden of proof and thus facilitate liability.
- express recognition of the possibility of introducing a preventive action before the occurrence of the damage
- unification of legislation on environmental law, the protection of forests and air being currently made by separate normative acts and which does not enjoy the establishment of the unitary principle.

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TOURIST LEGAL PROTECTION BETWEEN NON-EXECUTION AND RUINED HOLIDAY: NEW INSTRUMENTS OF EUROPEAN LAW.

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ABSTRACT:

This paper wold like to study the relationshio between the incorrect fullfiment and the ruined holidays in the light of the recent issues in the EU 2 ESTUDOS Dereito Vol.25, nº1:1-19 (Xaneiro-Xuño, 2015) legilsation and in the national legal sistem order. The paper analyse the role of the principle of conformity to contract into the tourist contract for the assessment of damages, aimed to improve the tourist protection into the internal market.

KEYWORDS: *vacation ruined, improper performance, quality, tourist contract, european private law.*

1. DAMAGES FROM RUINED HOLIDAYS: RECENT DEVELOPMENTS IN TRAVEL AGREEMENT.

Damage from a ruined holiday is the injury suffered by the tourist for not having been able to fully enjoy a holiday and/or the organized trip.

Holidays represent an opportunity for resting, amusement or time to celebrate an important moment of life (e.g. honeymoon), whose lack of enjoyment or alteration can cause stress and dissatisfaction (FRANCESCHELLI V., MORANDI F., 2007).[1]

The damages suffered represent the privation of the entire enjoyment of the journey as a moment of pleasure.

Being forced to suffer the psychophysical distress of the lack of fruition is accompanied by the failure, in whole or in part, of the scheduled activities.

But what do we refer about when we talk about the causes of damage from ruined holiday?

The main causes, without doubt, may be the excessive delays in flight departures, lack of departures for overbooking or cancellation of flights, lack of essential services in accommodation (water, electricity, etc.).

In addition, insufficient services "guaranteed in the agreement", divergences between the real holiday spot and the one represented in the leaflets, unacceptable hotel accommodation; lack of the tourist facility, poor services due to the negligence of the travel organizer and therefore avoidable by the latter.

Today new forms of damage are connected to these situations of discomfort: the new national tourism code identifies them as damages to people, damages to the luggage and assets, patrimonial damages (e.g., cruise cost, expenses incurred after the shipwreck), moral damages (GRAZIUSO E., 2011).[2]

The first regulations on this subject date back to the legislation applied in Italy since 1995 with Legislative Decree 111/95, but only with Legislative Decree 79/2011 the national legal system has made explicit mention of it.

The definition of damages for ruined holiday is mentioned in the art.47 of 79/2011.

The Code for Tourism art. 47, paragraph 1 establishes that <<In case of insolvency or wrong performance of the services included in the holiday package has minor importance under the art.1455 of the Civil Code, the tourist can claim compensation for the damage related to the holiday time spent unnecessarily and to the unrepeatable nature of the lost opportunity, in addition to the claim to the resolution of the agreement>>.

The innovation consists in the calculation of the damage in addition to an accident, directly related to an accident (food poisoning, smaller rooms or without the sight advertised), and taking into account that, due to such accidents and incidents, the customer could not enjoy the rest and relaxation expected.

Before the actualization of the Code, however, compensation for non-material damage was only granted in cases "provided for by law" as provided for by the art. 2059 C.C.. This meant that damage for ruined holiday could only be recognized in cases where the actual damage was a result of a violation of a right guaranteed by the judicial system.

Among the other innovations there is the duration of the right of compensation for the damage, prescribed in three years from the date of the return of the tourist from the holiday, except for the period of 18 or 12 months in respect of the non-performance of transport services included in the package, for which legislation applies the art. 2951 of the Civil Code (SANTAGATA R., 2009).[3]

The expectation that people have when organize a trip for leisure purposes has always been a significant burden and, since this is closely related to the imaginary that a subject has of a place, the power of evocation has an important role in the decision-making process. In fact today the sales techniques are all oriented on the images of what will be possible to find once you reach the goal.

Increasingly perfect photos that evoke pristine landscapes or, video, potential experiences that you will be able to experience, today are the tools used to stimulate a consumer to buy a holiday package.

Travel expectations does not include, however, only the package that a person wants to buy, but also the image of himself that he has decided to experience.

To the perception of how a subject sees it self projected in a holiday, one can easily trace the type of expectation and the type of imagined experience.

Tourism satisfaction, therefore, is not the judgment of a moment, but a process that begins when you leave and generally ends with the return home, But it can also continue for an indefinite time whenever that experience is involved.

A satisfied tourist becomes an ambassador of the experience preserved in memories but today, thanks to social networks, it can be amplified in a way that is often uncontrollable.

On the other hand, a distress can cause a great deal of disappointment both for the active party and for the product seller which will be exposed to negative advertising and in addition, must compensate for the damage caused to the holiday.

As a result of the adoption of the Consumer Code, compensation for damage caused by a ruined holiday has assumed greater importance, and above all legal and jurisprudential weight.[4]

The jurisprudence has taken many years to identify the right to obtain compensation for damages resulting from the inability to live a holiday period or for a holiday «ruined» by unforeseen events, difficulties and delays.

The real starting point was undoubtedly the elaboration and publication of the Tourism Code but even some additional rules of the Code itself.[5]

3

In the Consumer Code, not only was it clarified how the contract for the sale of a package tour and the requirements of the information brochure were concluded, but also the rules to follow for the disposal in case of impossibility of it. So the range of protection afforded to end consumers has therefore been broadened.

The art. 83 of the Consumer Code, provides and defines the various parties involved in the process of signing the agreement for the purchase of the package by the consumer, highlighting the rights and the tutelage of the latter.

Art. 84 recalls art. 2 of D.L. n° 111/95 focusing on the concept of tourist package and distinguishing it from the sale of a simple journey.

The regulation emphasizes that, in order to be able to deal with a tourist package, the concomitance of at least two elements between transport, accommodation and services (entertainment, excursions, guided tours and more) is necessary.

According the Consumer Code, it is possible to disregard the presence of the transport service which, instead, is necessary for the configurability of a travel contract under the CCV.

The details of the parts of the agreement, as well as the general information on the passport and visa conditions applicable to nationals of the Member State of the European Union, are described in detail, with some indications for the release, the regulatory health requirements and some formalities for the travel, and in addition, a booklet about the activities and phases of the journey.

Furthermore, the current regulations on the tourism market has been balanced and the consumer safeguard has also been strengthened.

The aim of the legislator is to operate in order to set clear reference points for a better coordination between the State and the Regions, within the sphere of their respective competences, reorganize and optimize the existing regulation.

The code has been structured in different regulatory interventions.

The first part is about the state legislation on the organization and market of tourism, actuating the principles of delegation provided by Law 246/2005.

However the second part adopted the directive 2008/122/EC on timeshare agreements, long-term holiday products agreements and resale and exchange contracts pursuing the mandate contained in Community law 2009 (Law 96/2010).[6]

It is surely important to implement a part of the directive 2008/122/EC about the modifications to the discipline of shared ownership (art. 2) contained in the Consumer Code (D.L. n. 206 of 2005) which extends the scope of the implementation, and extending the definition of a timeshare agreement and providing additional types of agreement.

For the consumer new arrangements have been fixed for the fullness of pre-contractual information, for the minimum agreement content and for the extension of the right of withdrawal, eliminating the financial outlay for the consumer in the case of withdrawal.

But the true revolution of the code is the express prediction of the refund for moral damage from ruined holiday.

2. RUINED VACATION, MORAL DAMAGE AND EXISTENTIAL DAMAGE.

The right to a holiday is an absolute value, as confirmed by the court of Reggio Emilia in its judgment 434/16.

The holidays, it has been emphasized by the court, represent a right, inviolable and indispensable, constitutionally guaranteed by art. 36 Cost., and must be considered not only as a period of rest from work, but also as a period in which it is certainly more possible for the worker to devote himself to family affections (Ferretti A., 2014).

The goals of the holiday (rest, leisure, cultural enrichment, escape from everyday life) are also recognized in the Constitution, and precisely in the art. 2, where the inviolable rights of man are guaranteed, and in art. 36, that guarantees to workers the right to weekly rest and to the indispensable annual paid leave; so the lack of the fruition should lead to an economical compensation (DI NAPOLI R., 2011).[7]

This interpretation may seem exaggerated, but if we analyze the cited articles in conjunction with art. 1174 c.c. which states that "the service which is the subject of the obligation must be capable of economic evaluation and must correspond to an interest, including non asset interest, of the creditor", we are able configure the damage from ruined holiday.

According to this interpretation, the damage could be understood as the loss suffered by the consumer/tourist due to the failure to obtain the benefits of the planned stay, influencing on the enjoyment and thus the psychological and subjective aspect.

Damage from ruined holiday, in this sense, must be considered from the non-patrimonial point of view, so an extra-contractual refund (ex-art 2059 cc).

In this case <<the ruined holiday damage can be understood as that injury suffered by the tourist for not being able to fully enjoy the organized trip as an opportunity for recreation and/or rest or, more specifically (…) can only be understood as non-monetary injury (not resulting in economic loss, either in terms of emerging damage or in terms of lost profit, if you want to adopt the classic concept of property damage), not corporal and temporary, figure, therefore, very close to that of moral damage>>*(*F. ROMEO, 2011*)* [8].

Even if it is understood as non-material damage, compensation still stems from the non-fulfillment of a contract, which raises a number of problems about the admission of its compensation.

The assertion that a ruined holiday can be subject to compensation does not mean that it is easy to obtain it.

The doctrine debated a lot and some particular issues have been defined, i.e.: starting from art.2059 c.c. moral damage is settled only in cases established by law; the majority of the cases established by law coincides with the hypotheses of damage arising from crime, ex art. 185p.c.p.; compensation for non-material damage in the case of a holiday contract shall be allowed only if the same failure also includes the details of a crime; ruined holiday damage, cannot be compensated as non-material damage when the failure to fulfill obligations does not include a criminal offence.

According to some scholars, the ruined holiday damage cannot be included in the property damage, because the failure to meet the recreational expectations arising from the conclusion of the travel agreement, constitutes a failure to fulfill a service which, on the basis of the contract, could be subject to economic assessment (BELLISARIO E., 2005).[9]

This type of interpretation has been developed because it is necessary to protect not only the consumer, but also all the actors, in order to avoid the case in which the tourist is not the counterparty's failure to fulfill its obligations and thus compensation.

For the sake of clarity, Reggio Emilia court judgment (2005) may be used as an example <<<Non-patrimonial damage is the genus within it is possible (but not necessary) to distinguish subjective moral damage (pretium doloris or doloris pecunia), biological damage (damage to the legal property "health", susceptible to medical examination) and the consequent damage to an interest of constitutional rank inherent to the person (traditionally referred to as "existential damage"); so ex-art. 2059 c.c. is refundable: any unjust injury of an interest inherent to the person, from which derive prejudices not susceptible to economic evaluation. If it is possible to use predetermined criteria (tables) when settling the various

types of damage, with special reference to life-threatening damage, liquidation can only take place on an equitable basis, considering and evaluating the aspects of the specific case. >>.[10]

Less complex is the imputation of moral damage as pointed out in a sentence of Locri's Curt that points out that "(...) diminished range (or worst enamel) of the achievable activities that the victim finds himself carrying out after committing tort, compared to what he could have done where the fact did not take place" or, with others words, "the objectively detectable worsening of one's condition of existence" or, again, "the damage inherent in the limitations to the possibility of interacting with the outside world, be it understood as human relations (e.g. acquaintance with friends and relatives), either as a relation to external reality (e.g. going to certain places), or as a limitation to the performance of activities (e.g. hobbies, sports, cultural activities)" and, furthermore, the "injury of the relevant sphere the activities of the person considering the quantitative and qualitative limitation suffered in the possibilities of interacting with the outside". [11]

It is possible therefore to affirm as the existential damage re-enters in the forecast of the art. 2059 c.c., whose limit would not operate as the property "holiday" is protected to art. 2 Cost. in the broad interpretation of which it enjoys today: the holiday would therefore be one of those activities in which the personality of the individual is manifested.

For an even more detailed interpretation, reference can be made to the judgment of the Third Chamber of the Court of Cassation.

The judgment in question will examine even more in detail the difference and application of the existential, moral and biological damage (LUNDQVIST B., 2014).[12]

With a judgment on September, 22nd 2015, n. 18611, the Cassation clarifies that the existential damage and the moral damage deserve an independent assessment with respect to the biological damage, and reiterates the inconsistency of a simple tabular assessment for the calculation of the sums due to repair the injury suffered by the victim.

At this point it is spontaneous to try to understand who is the subject called to refund in case of lack of "enjoyment" of the holiday.

According to the judgment of the Court of Cassation III section, judgment of 4 March 2010 n. 5189, the tour operator is obliged to compensate for the damage caused by a ruined holiday when the reality of the facts (sea polluted by hydrocarbons and dirty beach) does not reflect what is advertised.

Under the contract relating to an "all inclusive" package, the organiser, the intermediary, or the seller assume specific obligations, especially of a qualitative nature, with regard to travel arrangements, hotel accommodation, level of services etc., which are "exactly" fulfilled.

Therefore, if the service is not exactly performed, on the basis of an average criterion of diligence (art. 1176, paragraph 1 c.c.), there is a contractual liability, except where the organizer or retailer does not provide adequate proof that they have failed to fulfill their obligations, in which case the purchaser shall be responsible for proving the damage obtained, the etiological link and thus reversal of the burden of proof.

The Consumer Code identifies and outlines the parties involved in the contractual relationship for the organization of a journey: the travel organizer, the person who is obliged, in his own name and for a flat-rate fee, to procure to third parties tourist packages, or offering to the tourist, also through a system of communication to distance, the possibility to realize autonomously and to purchase such combination (TRIPODI-CARDOSI E.M., 2011).

The intermediary is the person who, even if not professionally and non-profit-making, sells or undertakes to procure tours packages to third parties for a lump sum

[10] Trib.le Reggio Emilia, sentenza n. 210 del 22.02.2005.

[11] Trib. Locri, sez. Siderno, 6/10/2000 n. 462).

payment or individual unbundled tourist services; the tourist understood as the purchaser, the transferee of a tourist package or any person to be named, provided that he fulfills all the conditions required for the use of the service, on whose behalf the main contractor undertakes to purchase a package tour without remuneration.

It is important to underline how the organizer can sell travel packages directly or through a seller or through an intermediary, this may mean that the organizer of the journey is liable for non-compliance with the traveller, in the event that he does not provide the service requested by the traveller and accepted, not disclosing that, already at the time of conclusion of the contract, the traveller's request was incompatible with the standards of the proposed package.

The impossibility of engaging in recreational activities can also be caused by trauma or illness caused by unjust activities and therefore a source of compensation (LA TORRE M.E, 2011).

3. DAMAGE CAUSED BY A RUINED HOLIDAY: COMPARATIVE CASE-LAW ANALYSIS

In jurisprudence, the European Court of Justice has established for the first time that damages caused by a ruined holiday are recoverable.

The judgment concerns an Austrian case of tourist intoxication caused by salmonella. This poisoning was caused by the food served in the club.

The illness had continued even after the end of the stay, manifesting with fever for several days, circulatory problems, diarrhea and vomiting together with states of anxiety. Many other customers of the club had become ill, presenting the same symptoms.

The judge on first instance only acknowledged to the tourist an amount for physical suffering («Schmerzensgeld») caused by the food poisoning and rejecting the claim of that amount based on compensation for the non-material damage caused by the lack of enjoyment of the holiday («entgangene Urlaubsfreude»).

That court held that, even if the unpleasant feelings and negative impressions caused by the disappointment were to be classified as non-material damage under Austrian law, they could not be the subject of compensation, since no Austrian law expressly provides for the compensation of non-material damage of this nature (TRIPODI M., 2011).

The Landsgericht Linz, on appeal, shared the point of view of the court about Austrian law, but considered that the application of art. 5 could have led to a different solution.

In this context, the Landesgericht cited the judgment of 16 July 1998 in Case C-355/96, Silhoutte International Schmied (Race. p. I-4799, paragraph 36), in which the Court declared that: even if a directive itself cannot create obligations for an individual and cannot therefore be relied upon as such, when applying national law, a national court is required to interpret the provisions of national law in the light of the letter and purpose of the Directive in order to achieve the chased result.

The referring court observed, moreover, the German legislature had adopted rules on compensation for non-material damage in the event of a bankrupt or seriously affected journey and the German courts did indeed recognize such compensation.

Considering that art.5 of the legislation was not sufficiently precise to enable an indisputable conclusion with regards at non-material damage, the Landersgericht Linz decided to suspend the process and submitted to the Court the following preliminary issue: " If the Art. 5 of the directive of the Council 90/314/EEC of 13 June 1990 on travel, holidays and tourist package, should be interpreted with the meaning that compensation is in principle due for claims for non-material damage».

The Italian jurisprudence has recognized the injury of the tourist's interest to fully enjoy the trip, resulting in the cause of non-patrimonial damage, in the face of very different defaults (MALAGOLI G., 2011) .

The Court of Cassation has only recently ruled on the merits of the judges whose first judgments date back to the mid-1990s.

Another interesting case of compensation for damaged holiday damage occurred in 2010 by the Supreme Court and concerned an accident suffered by a tourist.

In this case, the tourist during a trip in a motor boat on a river, suffered the amputation of some fingers of the left hand due to the collision with a sailboat.

For the purposes of compensation, the tour operator's failure to comply with the disclaimer provided for in Article 17 of the Brussels Convention, which excluded its liability in the event attributable to the consumer, or to a third party, the unpredictability or inevitability of the event, as well as the chance or force majeure.

To substantiate this decision the Supreme Court stresses that <<the company (the tour operator) is called, to answer for the legal consequences, including the compensation for non-material damage, the conduct of its employees and auxiliaries, which constitutes a crime and has been committed in the exercise of the tasks to which they are assigned >>(art. 185 P.C. , art. 2049 and 2059 C.C.).

This sentence had been preceded, by the Supreme Court with a sentence of merit for a case, in which however was recognized the damage from vacation ruined for the injury suffered from a woman during an organized excursion, specifying that the damage must be compensated even if the service was qualified as optional.

In another case that dates back to 2008, the Cassation stated that the use of the sea and the beach, although it does not constitute a tourist service in the strict sense, is a prerequisite for the utility of the package and an essential part of the tourist service.

Tourism purpose, in fact, is the important reason of the contract because it connotes the concrete cause and also the extrinsic presuppositions, like the fruition of the environmental attractions, artistic or historical services make relevant and useful the services offered by the tour operator.

There is, in fact, the obligation of the organizer to prepare alternative solutions or to refund the difference between the value of the services provided and those provided (according to art. 91, paragraph 4, cod. cons.)even when the services are not available as a matter of fact not attributable to the tour operator.

A very emblematic case is a reference to a pronouncement of the Criminal Court, recognizing the damaged holiday prejudice resulting from the crime of sexual assault suffered by a minor <<if the incident also occurred at the end of the holiday, the same must be considered ruined not only in its final part but also as a memory. >>.

The case-law analysis considered so far shows that in the first judgments it was stated that damage caused by a damaged holiday regardless of whether it was property or not >, in other cases, compensation was denied because non-material damage was deemed to be limited to the criminal consequences of the unlawful activities of Aquila>.

Other judgments have also shown that the damage caused by a ruined holiday was an exceptionally recoverable hypothesis in Italian law compared with that of the Community legal system, or an independent claim for damages (CUFFARO V., 2011).

In other cases, the case-law has ruled out non-material damage for reasons closely related to the chain of events.

Among the most interesting cases is the sentence of the small claims judge of Rome, in which it was excluded any compensation in the case of a slight delay in the arrival of the ship to the port of boarding, due to weather conditions and other minor inconveniences.

The judge also asked the traveller for a minimum of adaptability, especially for trips to far-away countries, of different culture and economy from the European one.

4. THE PROTECTION OF TOURISTS IN EUROPE: ITALIAN RULES AND ANGLO-SAXON RULES

With the term holiday damage the Italian and foreign jurisprudence intended to

define that prejudice suffered by the consumer/tourist for not being able to fully enjoy the organized trip as an opportunity for leisure and/or of rest, recognizing in such cases the possibility of compensation for non-material damage of a psychic, temporary nature.

For the purposes of the discussion, the European Treaty, after Lisbon (XIOL BARDAJÍ M., 2012), finally provides for tourism as a matter for the European institutions, establishing effective measures to support tourism within the Community.

The growing interest in tourism and the need to regulate its provisions in a uniform way throughout Europe have prompted the Community bodies to take action in this area.

In this sense, the legislation of the Council of Ministers of the European Communities of 13 June 1990 (No. 90/314/EEC) has regulated travel, all inclusive holidays. The main purpose of the Community directive is to standardize the regulation of organized travel at European level, thus filling a gap left by the Brussels Convention.

To this primary purpose, the legislative intention to eliminate points of imbalance still existing between the subjective position of the operator and the consumer of the tourist service in the private regulation of mutual relations of the contractual terms.

The Directive requires the organizer and/or seller party to the agreement to provide sufficient evidence of the policies they have taken out in order to ensure, in the event of insolvency or bankruptcy, the reimbursement of funds deposited and the repatriation of the consumer (Art. 7). In addition, in order to strengthen consumer measures, the Directive states that "[…] Member States may adopt or maintain stricter provisions for the purposes of consumer protection" (Art. 8).

The first European legislation in this field provided for the right to compensation for damages, property and person (ROSSI CARLEO L., 1995) in the event of failure or incorrect fulfillment of the obligations assumed by the sale of the package.

This is the expression of European legislation, and it was easy to include such vague and imprecise expression of damage that is not just property.

The EC Court of Justice itself interprets art. 5 of the directive 90/314/CEE, stating that <<it must be understood as meaning that the consumer has the right to compensation for the moral damage resulting from the failure or poor performance of the services provided during an all-inclusive journey >.

Although the directive has tried to harmonize the legislation on property and property damage, the approval still remains complex, because in many cases we are confronted with fixed and predetermined compensation systems and other systems in which global regulation prevails and is adapted to the case in question.

In the German compensation system, for example, compensation for property damage is calculated in a very precise way and it is possible to refer to the overall and actual situation of the injured person.

On the contrary, in Spain such compensation is awarded on the basis of criteria laid down in the legal table which takes only marginal account of the actual situation of the injured person.

5. THE COMPENSATION OF THE TOUR OPERATOR AND ITS PROTECTION IN ITALY AND ENGLAND IN THE EVENT OF DAMAGE FROM A RUINED HOLIDAY.

The law on compensation for ruined holiday damage is a very particular issue that finds different applications according to the country of origin of the consumer/tourist.

If on the one hand is enclosed the compensation for property damage, due to some error or lack (lost suitcase) different is the approach for the damage to be compensated for the problems related to the psychological or moral part.

In the United States, for example, the traveller is refund for the damage caused to the emotional distress caused by the conditions of distress, and distress caused by the failure of the tour operator, especially in cases of wedding travels.

The same type of compensation is also accepted in the United Kingdom.

In the United Kingdom, the courts claims for refund for moral damage, especially in cases where there has been no correspondence between the level of the hotel service offered and proposed with that actually offered and in those in which the use of the services paid failed due to broken means of transport».

In a well-known judgment, it is pointed out that the failure to obtain the what requested led to file an appeal by the plaintiff, which led to the judgment which can undoubtedly be considered, yesterday, as today, in the system of English Common Law as the leading case in matter of mental distress compensation following the breach of a tourist contract».

Holiday compensation claims have been considered an exception to the rule, according which damages for breach of contract cannot be claimed for mental distress and disappointment, on the basis of the assumption that the whole purpose of a holiday contract is to provide entertainment and entertainment.

An interesting case is what was submitted to the attention of the English Court of Appeals, where a couple had arranged a cruise trip and had not achieved what they had promised.

In June 2006, the Milner couple booked a trip to Queen Victoria's first world cruise, departing from Southampton on January 6, 2008 for a world tour, returning 106 days later.

They booked in advance to secure a cabin of their choice: a princess cabin, halfway to the starboard deck. Because of the bad weather, the floor slats in Mr. and Mrs. Milner's cabin flexed and vibrated causing a lot of noise.

According to what Mr. Miller said during the deposition for the judge, the noise and the nuisance prevented the two of them from sleeping for several nights, causing serious problems to Mrs. Milner's health.

To overcome these problems, the couple where assigned an inner cabin of lower class (an interior cabin without natural light on the lower deck, in which some of the comforts of the previous cabin were missing). In addition, clothing and personal belongings were left in the abandoned cabin.

After a stop in New York they returned to their cabin, but again in Los Angeles, the bad weather caused the same discomfort.

At the end of the trip they asked for a refund including compensation for the stress, anxiety, anguish, disappointment and loss of enjoyment to which they had been subjected, along with living expenses and unnecessary expenses.

During the hearing in their favor, the judge highlighted "high quality damage" for the failure to supply an extra luxury product and recognized them a full refund.

6. FINAL OBSERVATIONS

In the final analysis, it is interesting to see how, according to the mentioned legislation, the judgments have changed before and after the Tourism Code.

An interesting example before the introduction of the Tourism Code is the judgment of the Court of Monza, 22/06/2009, n. 1924.

The text states: Damage from a ruined holiday can only be considered as a moral injury if it is resolved in the significant damage of a constitutionally protected personal interest (inviolable right of the person) under three conditions: the interests harmed have constitutional significance; the damage to the interest is serious, in the sense that the offence exceeds a minimum threshold of tolerability; the damage is not futile, that is to say, it does not consist in mere inconvenience, that is, in the violation of entirely imaginary rights, such as quality of life or happiness (ZUNARELLI S.,1993).

After the Code of Tourism it is interesting to take into account the judgment of the Court of Naples, sec. XII, 18/02/2013, n. 2195 where: The all-inclusive travel agreement has the aim of realizing the interest of the tourist/consumer in the completion of a trip for

tourism or pleasure, so that all activities and services that are instrumental in the realization of the holiday purpose are essential (MALGIERI G., 2014).

In particular, the fact that the tourist/consumer is accommodated, for a part of the period in a place of lower quality than the one he booked, at the time of the purchase and, for the remainder of the travel period, at this property, but still under renovation, with many of the promised services (gym, spa and swimming pool, equipped beach) not yet completed, decreases appreciably the utility that can be derived from the stay in the resort, giving rise to the case of the holiday ruined.

An interesting sentence, and perhaps one of the most recent is the one of the Court of Treviso - sec. II civil - sentence n. 847, 11-04-2017.

The judgment is about the issue of holiday damage caused by indirect c.d.

Part of the jurisprudence tends to affirm with certainty the recognition of the non-material damage suffered by the family members of the tourist who is injured on holiday due to the fault of the tour operator or one of its auxiliaries, as not having been able to fully enjoy the holiday as an opportunity for recreation and rest, in accordance with one's expectations, is a waste of unnecessarily spent vacation time.

There is, therefore, a regular consequentiality between the two prejudices (physical damage of the husband and damage from ruined vacation for the remaining members of the family) within the meaning of art. 1223 C.C.

In this case, the damage caused by a ruined holiday for the tourist's companions who have been injured without being harmed, can be considered indirect from the point of view of the eventus damni.

CONCLUSION

To conclude our examination, we can say with certainty that the ruined holiday damage is one of the issues that still today fails to provide a linearity in the legislation.

If it is true that much has been done in recent years to protect consumers/ tourists, a lot remains to be done.

Until today, the jurisprudence is still not linear in the attribution of the damage and especially if the damage caused is directly attributable only to the tourist or even to the accompanying person.

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THE ADMINISTRATIVE POSITIONS IN THE EUROPEAN UNION

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ABSTRACT

The civil servants of the European Union represent the people who have been appointed to work in the permanent department of an institution of the European Union, according to a written document issued by an authority invested by the respective institution with such powers. Their juridic regime understood as the sum of all the rights and obligations they have in what concerns their relationship with the European Union and its institutions has been established by the European Community Civil Service Status adopted on February 29th, 1968[1], being amended several times. Therefore, the Regulations adopted by the European Union Council of March 22nd, 2004, at the proposal of the European Commission set forth even a new career system for the European public servants. The provisions of the status also apply for the people appointed by the community institutions, people that have been generically called "agents", which means that institutions such as: The European Economic and Social Committee; the European Committee of the Regions; the European Union Mediator or the European Data Protection Supervisor are assimilated, from this point of view, into the institutions of the European Union. The state forbids any sort of discrimination whatsoever, such as the discrimination based on sex, race, colour, social or ethnic origin, genetic characteristics, language, religion, political opinion or beliefs or any other opinion, affiliation to a national minority, wealth, birth, disability, age or sexual orientation. Another new aspect related to the enforcement of the status is that the non-marital partnership is regarded and treated in the same way marriage is. An extremely important significance for the activity and moral status of the European Union public servants is rendered to the European Code of good Administrative Behaviour. This document was proposed by the Eurpean Mediator and was approved of on September 6th, 2001, by means of a resolution of the European Parliament; it consists of a set of behaviour rules which the community institutions, the administrations as well as the public servants have to comply with, in what concerns their relationship with the public.

KEY WORDS: *public office and the civil servant in the european union*

CAP 1. PUBLIC OFFICE AND HOLDING PUBLIC OFFICE IN THE EUROPEN UNION

1.1. Administrative positions in the European Union

Each institution decides upon the authorities entitled to exert their relative powers stipulated by the Status when appointing public servants or agents. The public servant's deed of appointment must stipulate the date when such an appointment comes into force, date that cannot be prior to the one when he got into public office. The object of any appointment or promotion of a European public servant may only be a vacancy that corresponds to the terms stipulated by the Status. The staff of the institution must be informed about any vacancy within the institution. If no person is entitled to fill the position by means of transfer,

[1] R*egulations no. 259/1968 of Council* no. CELEX31968R0259(01)- regarding the European Community Civil Service Status (JO L 56 of March 4th, 1968, p. 1).

appointment or promotion within the same institution, the staff of another institution shall be notified about such vacancy and an internal contest shall be organized.[2] According to the nature and level of the public office to which they correspond, the positions are classified into two groups:

- the group of administrative positions, hereinafter referred to as "AD";
- the group of assistant positions, hereinafter referred to as "AST".

This is the most significant change operated by the Status, in the Council's amended form of 2014 in what concerns the career of European public servants.

- **The group of AD** positions includes **12 job titles** that correspond to the leadership, concept and study positions as well as the linguistic or scientific ones.
- **The group of AST** positions includes **12 job titles** that correspond to the technical and executive positions.

The minimal conditions required for the appointment in a position that corresponds to the two groups of positions are as follows:

a. For the AST positions:

- A level of higher education studies certified by means of a degree, or
- A level of secondary education studies certified by means of a degree that grants access to higher education studies as well as an appropriate professional experience of at least 3 years, or
- Professional experience or training with an equivalent level, only if required as such on job grounds;

b. For job titles 5 and 6 of the group of AD positions:

- A level of studies that corresponds to a full cycle of higher education studies of at least 3 years, certified by means of a degree, or
- Professional training with an equivalent level, only if required as such on job grounds;

c. For job titles 7-16 of the group of AD positions:

- A level of studies that corresponds to a full cycle of higher education studies, when the normal length of such studies is of 4 years or more;
- A level of studies that corresponds to a full cycle of higher education studies and professional experience of at least 1 year, when the normal length of such studies is of at least 3 years;
- Professional training with an equivalent level, if required as such on job grounds;

Below is a **descriptive table** of the different positions from the two categories of positions stipulated by the Status which can be used by each institution with the purpose of describing their own positions and the attributions thereof;

THE GROUP OF AD POSITIONS			THE GROUP OF AST POSITIONS
General executive (CEO)	AD16		
General executive / Manager	AD15		
Administrator who holds for example, the position of: manager/head of department / counsellor / linguistic expert / economic expert / legal expert / medical expert / veterinary expert / scientific expert / research expert / financial expert / auditor's expert.	AD14		
Administrator who holds for example, the position of: manager/head of department / counsellor / linguistic expert / economic expert / legal expert / medical expert /	AD13		

[2] See Fuerea, A., *Drept comunitar European*, Actami Publishing House, Bucharest, 2015, p.162

veterinary expert / scientific expert / research expert / financial expert / auditor's expert.			
Administrator who holds for example, the position of: Head of department / main translator, main interpreter, main economist, main legal adviser, main physician, main veterinary inspector, main scientific researcher, main financial manager, main auditor.	AD12		
Administrator who holds for example, the position of: Head of department / main translator, main interpreter, main economist, main legal adviser, main physician, main veterinary inspector, main scientific researcher, main financial manager, main auditor.	AD11	AST11	**Assistant who holds for example, the position of:** Personal assitant (PA), main commercial clerk, main technician, main computer expert
Administrator who holds for example, the position of: Head of department / confirmed translator, confirmed interpreter, confirmed economist, confirmed legal adviser, confirmed physician, confirmed veterinary inspector, confirmed scientific researcher, confirmed financial manager, confirmed auditor.	AD10	AST10	**Assistant who holds for example, the position of:** Personal assitant (PA), main commercial clerk, main technician, main computer expert
Administrator who holds for example, the position of: Head of department / confirmed translator, confirmed interpreter, confirmed economist, confirmed legal adviser, confirmed physician, confirmed veterinary inspector, confirmed scientific researcher, confirmed financial manager, confirmed auditor.	AD9	AST9	**Assistant who holds for example, the position of:** Personal assitant (PA), main commercial clerk, main technician, main computer expert
Administrator who holds for example, the position of: Translator, interpreter, legal adviser, physician, veterinary inspector, researcher, financial administrator, auditor.	AD8	AST8	**Assistant who holds for example, the position of:** Confirmed commercial clerk, confirmed documentarian, confirmed technician
Administrator who holds for example, the position of: Translator, interpreter, legal adviser, physician, veterinary inspector, researcher, financial administrator, auditor.	AD7	AST7	**Assistant who holds for example, the position of:** Confirmed commercial clerk, confirmed documentarian, confirmed technician[3].
Administrator who holds for example, the position of: Deputy translator, deputy interpreter, deputy legal adviser, deputy physician, deputy veterinary inspector, deputy researcher, deputy financial administrator, deputy auditor.	AD6	AST6	**Assistant who holds for example, the position of:** Commercial clerk, documentarian, technician, computer expert.
Administrator who holds for example, the position of: Deputy translator, deputy interpreter, deputy legal adviser, deputy physician, deputy veterinary inspector, deputy	AD5	AST5	**Assistant who holds for example, the position of:** Commercial clerk, documentarian, technician,

[3] See Mazilu D., *Drept comunitar*, Lumina Lex Publishing House, Bucharest, 2005,p.277.

researcher, deputy financial administrator, deputy auditor.			computer expert.
		AST 4	**Assistant who holds for example, the position of:** Deputy commercial clerk, deputy documentarian, deputy technician, deputy computer expert.
		AST3	**Assistant who holds for example, the position of:** Deputy commercial clerk, deputy documentarian, deputy technician, deputy computer expert.
		AST2	**Assistant who holds for example, the position of:** Classification agent, technical support agent, computer expert agent, Parliamentary bailiff.
		AST1	**Assistant who holds for example, the position of:** Classification agent, technical support agent, computer expert agent, Parliamentary bailiff.

It is very important to specify the Status according to which public servants who belong to the same group of positions are subject to identical recruitment and evolution conditions in their career[4].

1.2. Conditions necessary to comply with for holding public office in the European Union

The process of recruitment must provide the institution with the contest of the public servants that possess the highest qualities of proficiency, efficiency and integrity, recruited according to a geographical database, large enough to include all the nationals that belong to member states of the European Union, which means that no position can be reserved for the nationals of a determined member state.

In order to be appointed on the position of European public servant, a person must comply with the following conditions:

- to be a national of a member state of the E.U., with the exception of waivers given by the authority invested with such appointment powers;
- to benefit from his/her civil rights;
- to be in a position that corresponds to the recruitment laws enforceable in the military field;
- to provide ethical guarantees required for exerting his/her power in the respective position;
- he/she won a contest that had been carried out according to the provisions of the Status;
- complies with the physical aptitude conditions required for exerting his/her power in the respective position;

[4] See Deaconu N., *Constituirea Uniunii Europene* Lumina Lex Publishing House, Bucharest, 2009, p.112.

- to have good knowledge and to master one of the languages of the Communities as well as to have an intermediate level of proficiency for another language of the Communities, to the extent to which it is necessary to exert the power in such positions.

A vacancy can be filled in under the following terms: by movement, appointment, promotion or transfer, by inside contest organized by the respective institution according to the procedures set forth by the Status[5]. This procedure can be opened for the establishment of a recruitment reserve as well. Another recruitment procedure than the contest one, may be adopted by the authority entitled to appoint staff in senior positions (AD 14, 15 or 16) as well as, in exceptional situations, for the positions that require higher qualifications. For each contest, the authority invested with the power of appointment decides upon a jury that draws up the list with the candidates' aptitudes; then chooses from this list the candidate or the candidates that shall be appointed for the vacancies. The public servant recruited is ranked according to the first level of his/her degree. The authority invested with the power of appointment may, according to the candidate's professional experience, grant a seniority bonus of 24 months at the most.

Before being appointed to the position, the recruited candidate has to undergo a medical examination; the counselling-physician of the institution shall check whether he/she complies with the terms stipulated by the Status. If the medical opinion is negative, the candidate may request within 20 days since notification, for his/her case to be investigated by a medical board made up of three doctors appointed by the authority entitled to appoint from among the counselling physicians of the institution.

Each recruited public servant has to undergo a 9-month-training course before being tenured. In case he proves unskilled or unfit for the job, according to a specific procedure, the trainee may be made laid off by the authority invested with the power of appointment, either during the training period or at its end with a one-month notice period or they can extend this training period with six months at the most.

CAP. 2. THE EUROPEAN PUBLIC OFFICE INSTITUTION

2.1. Legal regulations regarding the public office in the European Union

According to the provisions of the Status[6], each public servant finds himself/herself in one of the following positions:

a). in activity; represents the position of the publc servant who exerts the attributions related to the position for which he/she was appointed or which he/she temporary holds;

b). transferred; represents the position of the tenured public servant who, by decision of the authority invested with the power of appointment and in the interest of the job, has been assigned to temporary hold a position outside his/her institution or, at his/her request, is made availabke for another institution or community organization;

c). on leave of absence on personal grounds; in exceptional circumstances and at his request, the public servant can be on unpaid leave, on personal grounds. The length of this leave is limited to one year but can be renewed several times, with the same duration, as long as the entire length during the career of public servant does not exceed 15 years. Such a limitation is not valid in case the public servant has to raise up a child with a mental or physical disability that needs supervision or permanent care or when the public servant follows the spouse who also works as a public servant or agent of the Community.

d). at disposal; represents the position of the public servant where measures have been taken in order to reduce the number of employees in an institution. The list of public servants in such position is established by the authority invested with the power of appointment, after the approval of the joint commission and after considering the proficiency, the efficiency, the conduct at the place of work, the family situation and the seniority of the

[5] See Mazilu D., *Integrarea europeană*, Lumina Lex Publishing House, Bucharest 2008, p.213.
[6] See Ţinca O., *Drept comunitar*, Ed.Academiei Publishing House, Bucharest 2008, p.243.

public servant. The public servants found in such positions benefit however, from certain rights such as:

- the right to benefit from seniority at work for 5 years at the most since becoming available;

- the right to priority for being reintegrated on any position included in the group of positions that corresponds to his/her qualification, for two years since dismissal, on condition he/she possesses the skills required by the respective position;

- the right to indemnity according to the provisions of the Status[7].

e). leave for the military service; represents a special position of the public servant integrated into a military formation for providing the legal service, constrained to a period of military instruction or called up. The public servant integrated into a military formation for providing the legal service shall not be remunerated anymore but shall continue to benefit from the provisions related to promotion. The public servant who must undergo a period of military training or who had to join the colours benefits from remuneration during this period but the amount of money is reduced in conformity with the military pay he gets;

f). prenatal or family leave; for each child, each public servant is entitled to **prenatal leave** for 1 month at least and for 6 months at the most, within a period of 20 years since the birth or adoption of the child. This leave can be doubled for the parents who have been isolated acording to the decision of the institution they belong to. During the leave, the public servant benefits from the social security regime and keeps getting the pension rights, the child and school allowance. He/She also preserves his/her position and his/her rights of promotion. The leave may also be taken partially (with half workload) situation in which the maximum length may be doubled. During this entire period, the public servant is entitled to a fixed allowance per month[8] (or 50% of this if considering half of the workload). If a medical certificate states that an ancestor or a descendant, brother or sister of the public servant is seriously ill or severely impaired the public servant is entitled to **family leave** for a total duration of nine months in the entire career. The public servant benefits from the same rights he/she has in the prenatal leave. The activity of the public servant ceases permanently according to the following provisions stipulated in the Status:

- **resignation**; he/she can resign only be means of a written document which unequivocally to set forth the public servant's desire of permanently terminate his activity in the institution. The appointment authority must take this decision within one month since receiving the resignation letter and they may reject it if a disciplinary procedure has been initiated against the public servant. If approved of, the resignation comes into force after three months at the most, as of the date suggested by an AD public servant in his/her resignation letter or one month at the most in the case of the AST public servant.

- compulsory (ex officio) resignation: the public servant may be laid off ex officio, in the following situations:

- he/she no longer has the citizenship of a member state of the European Union and did not receive any derogation in this respect (art 28 paragraph1 letter a);

- at the expiry of the transfer deadline, if he/she refuses for the second time, the position being offered on reintegration (art.39);

- at the expiry of the leave on personal grounds, if he/she refuses for the second time, the position being offered on reintegration (art.40);

- because of redundancy(art.41);

- in case of disability, if he/she can be reintegrated and refuses for the second time, the position being offered on reintegration (Annex VII, art.14 paragraph 2).

[7] See Leicu C., *Drept Comunitar*, All Publishing House, Bucharest 2006, p.244.

[8] According to the Status adopted in its form of March 2004, the monthly fixed allowance is of 804,36 Euro (or 1072,48 Euro for isolated parents)

- **retirement in the benefit of the job**; any member of the staff with higher education studies (AD14-16) may be withdrawn from the position in the interest of the job by decision of the appointment authority, this retirement not being regarded as a disciplinary measure. The public servant thus deprived of his/her position and who has not been appointed on another position shall benefit from an indemnity set according to the provisions of the Status (Annex IV).

- **professional failure;** each institution decides upon its own procedures which to determine, to administer and to solve, in lucrative and due time, the cases of professional failure. After running out of such procedures, the public servant that has to undergo the professional failure test may be laid off, demoted in an inferior group of positions but still preserving the job title, or in an inferior job title position;

- **retirement;** either by default, in the last day of the month when he/she turns 65 years old or, under exceptional circumstances, 67 years old; or at his/her request, at 63 at least or, in some cases less, but not earlier than 55;

- **honorific dignity**; the public servant who permanently terminates exerting the attributions of his/her position may be awarded an honorific dignity, either for his career or for his/her job title or for an immediately higher job title, by decision of the appointment authority. This measure does not involve any pecuniary advantage.

2.2. Duration of work for the European public servants

In what concerns the **duration or the working hours**, the Status stipulates that the active public servants are permanently available for the institution they work for. However, the normal working hours cannot exceed **42 hours per week** according to a timetable set by the authority invested with the power of appointment after having discussed it over with the staff committee.

On the other hand, according to the necessities of the job and to the normal requirements of labour security, the public servant may be forced to stay available to the institution, at the place of work or at home, even outside the working hours.

Any public servant, on request and with the approval of the appointment authority, may partially perform his/her job tasks, in the following situations:

- to take care of the 9-year old child, but not older than this;

- to take care of the child between 9 and 12 years old, if the working time reduction does not exceed 20% of the normal working time frame;

- to take care of the spouse, of an ancestor or descendant, brother or sister if they are seriously ill or disabled;

- to attend complementary training studies;

- if he/she turned 55 years old, during the last five years before retirement. The public servants do not have the obligation to work extra hours unless there is an emergency; night working hours, Sunday and holiday working hours must be approved of by the appointment authority. The total number of extra hours cannot exceed 150 hours in six months. It is interesting to mention the fact that the extra hours shall not be compensated for in what concerns the public servants belonging to the AD and AST 5-11 group positions. Those of groups AST 1-4 are entitled to benefit from a compensating resting period and even from a financial compensation.

The annual leave is a right of the public servants and it shall be granted annually for a period of 24 to 30 working days. Besides this, **a special leave** may be granted on request, under exceptional circumstances.

Pregnant women are entitled, according to a medical certificate, to take a **prenatal and postnatal leave** of eight weeks. This leave ranges on a period of 24 weeks in case of multiple or premature birth or in case of giving birth to a disabled child. The public servants whose ability to perform their job tasks is impaired as a result of an accident or disease, and they hold evidence in this respect, benefit from medical leave. Moreover, the public servant may be sent on leave by default, following a medical check-up carried out by the counselling-

physician of the institution. The public servants actually have to undergo a preventive medical check-up carried out either by the counselling physician, or by the doctor chosen. With the exception of the situations of accident or disease, the public servant may not miss work without the approval of the hierarchical superior. Unjustified absences are deducted from the annual leave and in case it has already been used up, the public servant shall lose the benefit of his/her remuneration for an equivalent period.

The holiday days are set according to a list mutually agreed upon by the institutions of the Eurpean Union, after having discussed it over with the Status Committee[9]. The Status of the European Union public servants includes other interesting provisions related to:

- marking (assessment by means of periodical reports), promotion according to the job title steps or promotion to a higher position (art. 44-46)
- the pecuniary regime and the social advantages of public servants (remuneration, social security, pension and disability allowance) (art. 62-85);
- the disciplinary regime of public servants (art. 86);
- ways of appeal that public servants may benefit from (art. 90-91);
- special provisions applicable to public servants that are scientific or technical employees of the European Union and to the public servants affected in third countries (art. 92-101).

CAP. 3. RIGHTS AND OBLIGATIONS OF THE EUROPEAN PUBLIC SERVANTS

3.1. Obligations of the European public servants

The Status of the European public servants stipulates their rights and obligations, using as a staring point the principle according to which they have to comply with their job tasks and to behave in the best interest of the Communities, without requesting or accepting instructions from any government, authority, organization or person that is not part of the institution they belong to. They impartially and objectively carry out the job tasks they have been entrusted, maintaining their loyalty to the Community.

It is also important to mention the fact that the public servant may not accept, from any government or any other external source that is not part of the institution he/she belongs to, without approval of the authority invested with the appointment power any sort of honorific award, medal, favour, donation, remuneration, irrespective of its nature, with the exception of those received for services performed before his/her appointment or for military or national services but only on behalf of these services. While performing his/her job tasks, the public servant may not deal with any business in which he/she has a direct or indirect personal interest, a familial or financial intersest meant to compromise his/her independence, subject to the measures taken by the instution they belong to, which shall be notified in what concerns such situations and which may especially exempt the public servant from the responsabilities of that business.

We mention some of the **obligations of the European public servants**, decided upon according to the provisions of the Status[10]:

- to refrain from any action or behaviour that might prejudice human dignity and his/her position;
- to refrain from any form of moral or sexual harassment;
- By **moral harassment** one should understand any abusive behaviour that manifests itself in a long, repetitive or systematic manner by: behaviour, words, actions, gestures and written things meant to prejudice the personality, dignity or physical or mental integrity of a person;

[9] See Jinga I., *Uniunea Europeană,realităţi şi perspective*, Lumina Lex Publishing House, Bucharest, 2009, p.344.
[10] See Fuerea A. *Istoricul constituirii şi viitorul Uniunii Europene,* All Beck Publishing House, Bucharest 2012, p.132.

- By **sexual harassment** one should understand a behaviour with sexual connotations that is undesirable for the person that is the subject of it, having the purpose or the effect of prejudicing the dignity or creating an intimidating, hostile, offending or embarassing environment. Moreover, sexul harassment is regarded as sexual discrimination;
- The public servant must ask for the approval of the authority invested with the appointment power if he/she is asked to perform an external activity, either paid or not, or to carry out a mandate outside the Communities;
- The approval shall be denied only if the respective activity or mandate is meant to hinder his/her from performing his/her job tasks or if it is incompatible with the interest of his/her institution;
- This obligation is also valid for the situation in which the public servant performs a lucrative activity because of a conjunctural, professional aspect or if he/she is proposed to candidate for public office;
- At termination of office, the public servant must comply with the honesty and prudence duties related to the acceptance of certain positions or advantages; if he is offered to perform a professional activity, either paid or not, within two years since termination of office, he has to inform the institution he belonged to about such events and decisions; if the activity he/she is offered is connected to the activity carried out within the institution in the last three years and risks to be incompatible with the legal interests of the institution, this can be forbidden;
- The public servant has to refrain from revealing unauthorized information acquired while in office, with the exception of that information that had already been made public, even after his/her termination of office;
- The public servant is entitled to free speech but only if he complies with the loyalty and impartiality principles; that is why, the person who intends to publish either as sole author or as coauthor, a text whose objective aims the activity of the Communities, has to inform the authority invested with the appointment power; the latter one can object in written form within 30 days; if no decision has been communicated within this deadline, it means there are no objections whatsoever;
- All the rights corresponding to the work performed by the public servants while in office are reserved by the Community related to such activities; therefore, the Communities rightfully benefit from the transfer of these work copyrights and the institution may grant bonuses to the authors;
- Public servants may not cite in the Court, under any circumstnces, the findings made while in office, without the approval of the authority invested with the appointment power. However, the approval may not be denied unless the interests of the Community justify it or if this denial may lead to penal consequences for the interested public servant; such an obligation remains valid even after termination of office;
- The public servant must have the domicile in the area where his job is or at a distance that shall not prevent him/her from exercising his/her job duties; this obligation also involves the immediate notification of the authority invested with the appointment power in case the home address changes;
- The public servant, irrespective of his/her position in the hierarchy has to help and advise his/her superiors; he/she is responsible for carrying out his/her duties[11];
- The public servant in charge with a certain department has to report back to his superiors everything related to the authority that had been bestowed upon him/her; he/she is also responsible for all the orders given. The personal responsability of the subordinates does not exempt him/her from his/her own responsability.
- If the public servant considers that the performance of a certain order may lead to serious consequences, shall inform his/her direct superior who, shall reply in written form if the notification had also been written. If the order is confirmed and the public servant

[11] See Deaconu N., *Constituirea Uniunii Europene*, Lumina Lex Publishing House, Bucharest 2009, p.178.

considers that such confirmation is not enough, he/she shall notify in written form the hierarchical superior authority. If the authority confirms the order in written form, the public servant has to execute it, on condition it does not represent an illegal manifest or one that is contrary to the security applicable norms. If the hierarchical superior considers that the order cannot be delayed, the public servant must carry it out unless it represents an illegal manifest or one that is contrary to the applicable security norms but, at the request of the direct hierarchical superior he/she must give the order in written form;

- The public servant must totally or partially fix the prejudice caused to the Communities, because of serious personal errors that he had committed while in office or while carrying out his/her job duties. The motivated decision is taken by the authority invested with the appointment power, according to the formalities decided upon from a disciplinary point of view. The Court of Justice of the European Communities is fully competent to decide upon such litigation;
- The public servant who, while in office or while carrying out his/her job duties, is in possession of important information that may presume an illegal activity, especially fraud or corruption that might prejudice the interests of the Communities or a behaviour that may represent a serious breach of the obligations of public servants of the Communities, has to immediatelly notify in written form the direct hierarchical superior or the general executive or even the general secretary or any person with an equivalent position or the European Anti-Fraud Office. The institution shall not prejudice in any way the public servant who conveyed such information if he/she was bona fide.

In what concerns the **rights of the European public servants**[12], the Status sets as rules with a value principle, that the privileges and immunities they benefit from are granted exclusively to the best interest of the Communities.

Subject to the provisions of the **Privileges and Immunities Protocol**, the individuals concerned are neither exempt from their private obligations nor from complying with the laws and police regulations in force. The free passes stipulated by the above-mentioned protocol are given to public servants with AD12-AD16 job titles and to the assimilated ones, but also to other public servants who can get them according to a special decision taken by the authority invested with the power of appointment if they are affected in a place situated outside of the territory of the member states.

3.2. The rights of European public servants

Some of the **rights stipulated** by the Status are:

- The right to solidary fixing by the Communities of the prejudices caused to the public servant because of actions mentioned above, to the extent to which the public servant does not represent, either on purpose or because of serious neglect, the cause of these prejudices and could not get the author's repair ;
- The Communities facilitate the professional furthering of the public servant to the extent to which he/she is compatible with the requirements of a good functioning of the services and according to their own interests;
- The public servants are entitled to association; they can be members of the labour union or professional organizations of the European public servants;
- The public servants are entitled to notify the authority invested with the appointment power about a relative request related to the problems of the public servants' Status;
- Any individual decision taken for enforcing the Status must be communicated in written form and without further delay to the interested public servant; the individual decisions related to appointment, tenured positions, promotion, transfer, establishment of the administrative position and termination of office are published in the respective institution and must be accessible for the entire staff as soon as possible;

[12] See, Fuerea A., *Drept comunitar european*, Actami Publishing House,Bucharest 2015, p.204.

- The individual file of the public servant (one file for each public servant) includes any information that might concern the administrative situation and any rapport regarding his/her competence, efficiency or behaviour as well as the observations formulated by the public servant in this respect. Each piece of information must be registered, numbered and classified without discontinuity and the institution cannot prevent the public servant from choosing against him pieces of information from the personal file if he had not been previously notified, in written form (under signature or registered letter) before their classification. There can be no specification in the file related to the activities and political, union, philosophical or religious opinions of the public servant, to his/her race, ethnicity or sexual orientation[13];
- Each public servant is entitled to know about all the data in his file and to have a copy of it; he/she is entitled to the same rights as far as his/her medical file is concerned;
- The personal file is confidential and may only be accessed in the administration office or on a secured IT support.

4. Essential points in the logic of the theme

a. The **Regulations** adopted by the European Union Council of March 22nd, 2004, at the proposal of the European Commission set forth even a new career system for the European public servants. The provisions of the status also apply for the people appointed by the community institutions, people that have been generically called ”agents”, which means that institutions such as: The European Economic and Social Committee; the European Committee of the Regions; the European Union Mediator or the European Data Protection Supervisor are assimilated, from this point of view, into the institutions of the European Union.

b. In what concerns the **duration or the working hours**, the Status stipulates that the active public servants are permanently available for the institution they work for. However, the normal working hours cannot exceed **42 hours per week** according to a timetable set by the authority invested with the power of appointment after having discussed it over with the staff committee.

CONCLUSIONS

The public servants of the European Union are persons appointed to a permanent position of an institution of the European Union, by means of a written document of an authority invested by the respective institution with such powers. Their legal regime regarded as a sum of the rights and obligations they have in relation to the European Union and its institutions, is decided upon by the ***European Community Civil Service Status***, adopted on February 29th, 1968, with subsequent alterations[14].

Therefore, the Regulations adopted by the European Union Council on March 22nd, 2004, at the proposal of the European Comission implements a new career system for the European public servants. The provisions of the Status also apply in the case of the individuals appointed by the community organizations, persons hereinafter generically refered to as „agents” which means that bodies such as: the European Economic and Social Committee; the European Committee of the Regions; the European Union Mediator or the European data Protection Supervisor represent from this point of view, part of the institutions of the European Union. The Status forbids any sort of discrimination based on sex, race, color, ethnic or social origin, genetic characteristics, language, religion or beliefs, public opinions or any other opinions, affiliation to a national minority, wealth, birth, disability, age ot sexual orientation. Another new aspect related to the enforcement of the status is that the non-marital partnership is regarded and treated in the same way marriage is. An extremely important significance for the activity and moral status of the European Union public servants

[13] See Leicu C., *Drept comunitar*, Ed.All Publishing House, Bucharest 2007, p.187.

[14] R*egulation no. 259/1968 of Council* no. CELEX31968R0259(01)- regarding the *European Community Civil Service Status* (JO L 56 of March 4th 1968, p. 1).

is rendered to the **European Code of good Administrative Behaviour**. This document was proposed by the Eurpean Mediator and was approved of on September 6th, 2001, by means of a resolution of the European Parliament; it consists of a set of behaviour rules which the community institutions, the administrations as well as the public servants have to comply with, in what concerns their relationship with the public. Each institution decides upon the authorities entitled to exert their relative powers stipulated by the Status when appointing public servants or agents. The public servant's deed of appointment must stipulate the date when such an appointment comes into force, date that cannot be prior to the one when he got into public office. The object of any appointment or promotion of a European public servant may only be a vacancy that corresponds to the terms stipulated by the Status. The staff of the institution must be informed about any vacancy within the institution. If no person is entitled to fill the position by means of transfer, appointment or promotion within the same institution, the staff of another institution shall be notified about such vacancy and an internal contest shall be organized.[15] According to the nature and level of the public office to which they correspond, the positions are classified into two groups:

- the group of administrative positions, hereinafter referred to as "AD";
- the group of assistant positions, hereinafter referred to as "AST".

This is the most significant change operated by the Status, in the Council's amended form of 2004 in what concerns the career of European public servants.

- The group of AD positions includes 12 job titles that correspond to the leadership, concept and study positions as well as the linguistic or scientific ones.

- The group of AST positions includes 12 job titles that correspond to the technical and executive positions.

The Status of the European public servants stipulates their rights and obligations according to the principle that they must comply with their job duties and to control their behaviour considering the best interests of the Communities, without requesting or accepting instructions from any government, authority, organization or person that is not part of the institution they belong to. They impartially and objectively carry out the job tasks they have been entrusted, maintaining their loyalty to the Community.

It is also important to mention the fact that the public servant may not accept, from any government or any other external source that is not part of the institution he/she belongs to, without approval of the authority invested with the appointment power any sort of honorific award, medal, favour, donation, remuneration, irrespective of its nature, with the exception of those received for services performed before his/her appointment or for military or national services but only on behalf of these services.

While performing his/her job tasks, the public servant may not deal with any business in which he/she has a direct or indirect personal interest, a familial or financial intersest meant to compromise his/her independence, subject to the measures taken by the instution they belong to, which shall be notified in what concerns such situations and which may especially exempt the public servant from the responsabilities of that business.

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[15] See Fuerea, A., *Drept comunitar European,* Actami Publishing House, Bucharest, 2015, p.162

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THE HISTORY OF THE POST MORTEM EXAMINATIONS IN HUNGARY

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ABSTRACT

Any death must be determined by a post mortem. One element of this is to determine that death has occurred, a decision which can be made by a doctor and by a paramedic. A further element of the post mortem is to determine the mode and cause of death. In terms of the mode of death, we distinguish between natural and non-natural deaths. The cause of death can either be declared immediately during the post mortem (run over by a train, stabbing injury, firearms injury, body severely damaged) or only after an autopsy has been carried out. It follows from the foregoing that in most cases the post mortem can only reveal the mode of death, i.e. we can distinguish between deaths caused naturally and unnaturally, in which case an official procedure is required to close the case. However, in the case of deaths caused by natural diseases, the necessary steps can be taken without the involvement of the authorities.
A post mortem is also important in the sense that we can deduce a possible crime from external injuries, wounds, and damage to the clothing worn by the deceased, so that the authority can be provided with a fresh trail in their attempts to solve the case.
At the end of the 19th century in Hungary, a law incorporating a completely new approach to a public health was introduced, which created regulations of a European standard, and at the same time raised the post mortem to a completely new, European level.

KEYWORDS: *hungarian coronary system, autopsy, extraordinary death, history of law, medical law.*

1. INTRODUCTION

In this article, we give a historical overview of the post mortem examinations in Hungary from the 12th century to the second half of the 19th century, and then follow the practice of the post mortem following its establishment in Law XIV of 1876, right up until the 50s and 60s of the 20th century, when the old post mortem was replaced by a new post mortem investigation.
We will examine the changes which occurred in the 20th century, and then outline the current regulations, showing how the initially modern, forward-looking death system for investigating cause of death has become more and more superficial as a result of continuous modifications.

2. INITIAL EXPERIENCES OF EXPERTS IN HUNGARY

In Hungary, the establishment of the first regulations relating to investigations into cause of death can be linked to the name of Moys-nádor, who, in 1270, determined the

amount of punishment for damage caused by a crime, based on the length of the wounds[1]. Otherwise, in the 11th and 12th centuries the task of carrying out the examination of corpses in connection with crimes was the responsibility of the judges, but the first experts in the current sense of the word could be said to be midwives.[2]

2.1.The roles of the barber's craft and barbers in investigations into cause of death

The word barber first appeared in written form in 1436, when it meant "the craft of caring for hair and beards".

About a century later, in the second half of the 16th century, the barber's trade already included "medical assistance and surgical" activities, and according to the Hungarian guild charters issued in 1557 and 1583, healing wounds was already part of the barber's craft[3]. The development of the barber's profession towards care for wounds is explained by the fact that at this time doctors performed only internal medicine tasks, so the barber could do external medical activities.

According to some sources, besides caring for and healing wounds, barbers also carried out post mortems[4].

The fact that the profession of barber spread much more widely than that of doctors was also facilitated by the fact that ordinary peasants could only afford the services of barber-surgeons. The barber was able to work with an appropriately equipped workshop and assistants after acquiring the right experience[5]. All in all, it can be stated that the barber's profession was initially a highly respected occupation, as King Sigismund ennobled his court barber in 1430 as a sign of recognition of his merit.

The Praxis Criminalis II, published by Ferdinand II in 1656, also contained several provisions on barbers and doctors[6]. The statutory provision required a compulsory surgical examination for the burial of the deceased, without which the body could not be buried, so the occurrence always had to be examined by a qualified surgeon, who also had to establish the location of any wounds, and give a description of their nature, as well as detect and accurately describe fatal injuries and effects. The test had to be carried out even if the culprit remained unknown[7].

During the reign of Maria Theresa, the powers of barbers were significantly reduced, as they were banned by national regulation from practicing internal medicine. By the decree issued in 1745, the Council of Deputies further narrowed the tasks of the barber, as this regulation precisely defined the tasks they could perform. From 1755 onwards, the rules for carrying out barber's activities were further tightened, as the precondition for the activity was the passing of the compulsory surgical exam. In 1761, membership of the barbers' guilds was already subject to an examination, thereby further restricting the operating conditions[8].

The end of the barber's occupation as an external medic and a healer of wounds and their return to caring for the face, teeth and beard is linked to introduction of the medical course established at the University of Nagyszombat (Trnava) on 12 May 1635, by Péter Pázmány, Archbishop of Esztergom. Regular surgical training began the 1770s, and from 1786, doctors were required to study surgery at the university, that is to say, the range of

[1] MAGYARY-KOSSA GYULA: Magyar Orvosi Emlékek II (Hungarian Medical Recollections II). Magyar Orvosi Kiadó Társulat. Budapest. 1940. p, 197.
[2] KENYERES BALÁZS: A törvényszéki orvostan tankönyve. I. rész. (The Medical Textbook for the Legal Profession, Part I) Novák Rudolf és tsa. Budapest. 1926, p. 17.
[3] SZULOVSZKY JÁNOS: A borbélytól a fodrászig (From the barber to the hairdresser) - História 2006. (28. évf.) issue 1, pp. 31-33.
[4] BOGDÁN ISTVÁN: Régi magyar mesterségek (Old Hungarian Professions). Neumann Kht. Budapest. 2006, p. 260.
[5] GOSZTOLA ANNAMÁRIA: A borbély-seborvosnál (At the barber-surgeon's). Lege Artis Medicinae. 1997. no. 7, p. 606.
[6] MAGYAR-KOSSA GYULA, op. cit., p. 193.
[7] KENYERES, op. cit., p. 17.
[8] SZULOVSZKY, op. cit., pp. 31-33.

activity of today's medical profession was established, and the barber had to abandon caring for and healing wounds. At that time, post mortems had already been made compulsory by royal and conciliary decrees, but in the absence of a sufficient number of doctors, for long time they could not be carried out even in large cities.[9]

2.2.Creating the basis for the modern post mortem in Hungary

The focus of the post mortem regulations was initially centred around apparent death and its problems. Apparent death caused considerable problems in the Monarchy in the age of Enlightenment. The problem was based on the fact that even medical science itself had not yet defined the exact concept of death and the conditions for its determination. The problem was that at this time, death was in most cases tied to the cessation of breathing, and the dead, or those perceived to be dead, were often not seen by a physician, so for a layman the death was difficult to separate from simple fainting. So there were a number of situations where a person considered dead had been nailed into a coffin almost immediately after falling unconscious, so that it could happen that an ill person could be buried alive. On the other hand, we cannot ignore the fact that both Christian and Jewish traditions around death respected the will of God, and therefore they explicitly forbade cutting open and examining the dead.

It is logical, therefore, that in the Enlightenment era, absolute rulers and the slow-growing public health bureaucracy were first and foremost concerned with the risk of apparent death and its recognition. Maria Theresa and Ferenc I issued several decrees calling on their subjects to revive the undead. Early regulation in Hungary is linked to the name of Maria Theresa, who initially in 1769 and then again in 1775 made it mandatory to wait 48 hours after the death; only after this time could the dead be buried. However, the provisions were initially not adhered to in practice, partly due to the above-mentioned religious reasons and, partly to the absence of conditions relating to the medical concept of death and how to establish it.

The first comprehensive rule on post mortem investigations in Hungary was published in 1826, according to which the duties of the coroner included the detection of violent death, the recording of deaths and the reporting of epidemics. In 1841, István Széchenyi proposed the establishment of independent houses of the dead, in which the deceased would be laid until the appearance of the unmistakable sign of death, the decay of the body.[10]

In Hungary, the beginning of the bureaucratization of death appeared in the era of absolutism, i.e. between 1849 and 1867, and extended into the second half of the 19th century. At that time, death and the regulations related to it were removed from the jurisdiction of the Church, which had enforced them according to its religious convictions, and were placed under the state administration, which had authority over the churches. Following this, public health laws and regulations developed the most general framework of rules related to death, and so, for example, the liturgy itself was based on legal provisions. Of course, the fact that in this age one of the important issues of medical science became the definition of the essential criteria for determining the concept and occurrence of death cannot be neglected either.[11]

Unfortunately, the appearance of the rules relating to post mortems initially had no effect on practice, as there were cases where unqualified individuals examined the dead and there were also places where the 48-hour observation of the dead person was not observed.[12]

[9] KÁDÁR LÁSZLÓ, BALÁZS PÉTER: Temetés és haláleset kapcsán követendő eljárások dilemmái a modern közegészségügyi igazgatásban (Dilemmas relating to the procedures for burial and death in modern public health administration). Egészségtudomány, LIII. évfolyam, 2009. no. 3.

[10] PESTI HÍRLAP (Pest News) 1841.(03.03) Tavaszelő (Spring Number) 3. no. 18. Szerda Vezércikk (Wednesday leading article)

[11] HANÁK PÉTER: A halál Budapesten és Bécsben: a nagyvárosi halál elidegenítése a múlt századvégen. (Death in Budapest and Vienna: the estrangement of death in the metropolis at the end of the last century), Budapesti Negyed. VI. évfolyam. 1998. no. 4, pp. 123-138.

[12] Budapesti Hírlap (Budapest News) 1853. no. 9, 11th January 1853, p. 42.

At the 1863 general assembly of Hungarian Physicians and Examiners of Nature held in Budapest, the participants drew attention to the shortcomings and deficiencies of the post mortem system. So a unified post-mortem was still not operating properly. Clearly, the earlier instruction of 1826 was still not applied in practice.[13]

3. THE POST MORTEM AT THE END OF THE 19TH CENTURY AND IN THE 20TH CENTURY IN HUNGARY

In 1876, a law on the organization of public health was drafted,[14] Chapter 12 of which contained the procedural rules for dealing with the dead and dead bodies, and also made provisions for burial and cemeteries. The law required that it be ascertained whether death had actually occurred, and to prove or rule out whether death had occurred as a result of a crime.[15] Section 110 of the Act imposed a compulsory post-mortem in the event of death, and banned anyone from being buried in the absence of a written declaration of death by the coroner. In the event of an epidemic, a forensic autopsy should be carried out on corpses, so that epidemic or contagious diseases could be recognized. The autopsy was also mandatory if the authority considered it necessary for some reason.[16]

The rules of a truly modern post mortem came into force on January 1 1877, with Decree no. 31.025 issued by the Minister of the Interior. This decree and the Public Health Act jointly defined the procedures and rules to be followed in the event of death, as well as the actions to be taken in the event of apparent death, extraordinary death, and the public health responsibilities associated with burial. The decree authorised any doctor or surgeon qualified to practice in the country to become a coroner if he or she had passed a coroner's exam or obtained other qualifications for the practice of post mortems. Those coroners who had already pursued their activities prior to the entry into force of the decree, could become a coroner without medical or surgical training if they had been working as an official coroner for at least two years, and their service was performed impeccably. It is important to mention that even though they could not become coroners, local and community doctors could also perform investigation into cause of death. The law defined those qualified to carry out post mortems so broadly for the simple reason that there were not enough coroners available in the country at this time.

According to the decree, the post mortem had to be started immediately after the notification of death. In the case of suspicion of apparent death, the physician or the surgeon was required to begin resuscitation activities; if the examination had not been initiated by a medical coroner, resuscitation could only begin when the doctor who had been notified appeared on the scene. If the suspicion of apparent death did not prove to be well-founded, the coroner had to make a decision on the question of the extraordinary nature of death. The extraordinary causes were partly covered by the previously mentioned decree on investigation into cause of death, and partly by other provisions.

It was considered an extraordinary death under the Regulation in the following cases:

"1. If during the examination of the corpse, suspicion or signs of violent death can be detected (suicide, murder),
2. if the individual has died suddenly
3. if bodies were found
4. if death occurred due to a disease that usually develops as a contagious epidemic,
5. for unborn foetuses, regardless of their age and development;

[13] TÓTH GYÖRGY: Halottkémlés Hazánkban a XIX. – XX. században. (The Coroner's Inquest in Hungary) Hadmérnök. XII. évfolyam 3. szám., September 2017, p. 307.
[14] 1876. évi XIV. tvc. a közegészségügy rendezéséről (Law XIV of 1876 on the public health system)
[15] 1876. évi XIV. tvc. a közegészségügy rendezéséről 109.§ (Section 109 of Law XIV of 1876 on the public health system)
[16] 1876. évi XIV. tvc. a közegészségügy rendezéséről 110.§ (Section 110 of Law XIV of 1876 on the public health system)

6. and deaths of children under 7 years of age without medical treatment."[17]

In 1876, Decree no. B.M. 31.025 of 1876 was the first to regulate the post mortem in a comprehensive manner, as the legislator extended the scope of those authorised to carry out post mortems, laid down the conditions for becoming a coroner, and organized the procedure to be followed in the event of death.

In the case of judicial and police investigations of the dead, the special rules of decree no. 78.879 of 1888, which included general rules formulated in decree no. 78.579 of 1888 further authorised the application of decree no. 31.035 of 1876, and also authorised the establishment of premises suitable for storing corpses and performing autopsies. The decree stipulated that the corpses would either be taken to the nearby hospital or, if the hospital was not within reach, to the morgue created in the cemetery, and that the autopsy would be carried out here; it also included a detailed list of the compulsory equipment for the autopsy rooms.

On January 1 1900, Act XXXIII of 1896 of the Code of Criminal Procedure entered into force.[18] Sections 240-243 covered post mortems and autopsies. The Criminal Procedure Code provided that investigation into cause of death and autopsy should be carried out when there was a suspicion that someone had died as a result of a crime or misdemeanour, and that it was also possible to exhume an already buried body if in the opinion of the expert present more useful information could be gained from an examination and autopsy. The investigation into cause of death and autopsy had to be carried out by two medical experts and not by a physician who had treated the deceased for an illness in the period prior to death. The attending physician was required to appear before the investigating judge and provide information on the course of the illness before the autopsy.[19]

In the era after World War II, Health Ministry Instruction no. 8200-5/1954 stipulated that "the coroner shall examine the deceased within 12 hours of the announcement." The investigation had to cover whether death had actually occurred, the cause of death, whether the death occurred as a result of the crime, and whether death could be associated with an infectious disease.[20]

Health Ministry Official Notice no. 32 523/1961 required the coroner to examine the entire corpse in all cases, in an undressed condition. The post mortem thus provided not only the possibility of noting the condition of the corpse, but also enabled conclusions to be drawn on the cause of death. The decree confirmed the previous Health Ministry Instruction no. 8200-5/1954 to the coroner that the post mortem must extend to an examination of whether the death had occurred as a result of a criminal offence. Of course, most of the time, there was only a suspicion of this. In cases where the cause of death could clearly not be established, or when external injuries were detected on the body, and the circumstances on the site of death indicated a violent act, such as a crime, suicide, or accident, the death had to be classified as an extraordinary death. In this case, the coroner was subject to reporting obligations to the competent police authority in relation to the death and could not issue a death certificate,

Act no. II of 1972 on health affairs separated the post mortem investigation and the regulations which had governed it up to that point, established the concept of the post mortem, and the establishment of the cause of death, and separated the two concepts from each other. From that point, the post mortem and its accompanying documentation became the exclusive competence of doctors.

Ministry of Health decree no. 5/1984 contained the necessary activities related to the investigation into cause of death and extraordinary death which had been described in Act II

[17] 1876. évi 31.025 számú Belügyminiszteri Rendelet (Interior Ministry Decree no. 31.025 of 1876)

[18] The first codified criminal law procedure was unique in relation to the post mortem, as the subsequent procedural laws no longer contained the rules relating to the post mortem; none of the Acts - Act III of 1951, Act no. 8 of 1962, Act no. I of 1973, nor Act 19 of 1998, which is still in force – contain provisions relating to the post mortem.

[19] 1896. évi XXXIII. tc. 240-241. § (Sections 240-241 of Act no. XXXIII of 1896)

[20] 8200-5/1954. Eü.M. sz. utasítás 21.§ (1) (Section 21 of Instruction 8200-5/1954 of the Health Ministry)

of 1972 on health care. The decree clearly established the post mortem as a purely medical task and prescribed a range of competent medical investigators for each type of death. It also contained a detailed description of the requirements related to autopsies. This regulation had previously included instructions relating to extraordinary deaths, but had not laid down detailed rules.

Law CLIV of 1997 (hereinafter referred to as "Eü.tv") on health affairs introduced new concepts related to death and re-regulated the provisions on the post mortem. Chapter 12 of the Eü.tv contains provisions for how to proceed in cases of death. Section 216 of the Act contains the concepts of death, clinical death, brain death, perinatal death, early or middle-aged foetal death, and accident. These definitions were not included in the earlier Act II of 1972. In addition, the Eü.tv also extended the task of establishing death to paramedics, as well as doctors. Another innovation was that Eü.tv introduced the concept of the coroner's expert and made it possible to use him/her in cases of extraordinary death, in order to help general practitioners. Unfortunately, this innovation only existed in theory, since in practice the use of advisers has not yet been introduced, even today.

The detailed rules were laid down by the legislator in Combined Article 34/1999 BM-EüM-IM, which included the provisions of the Health Act concerning the dead and the procedures to be followed in the event of extraordinary death. As a police norm, ORFK Order no. 1/2006 was published, regulating police procedure to be followed in the event of an extraordinary death, which the procedure contained in ORFK instruction no. 24/2014 followed.

Furthermore, during this period, on March 15 2014, Section 218 of the Eü.tv, which had previously distinguished natural and extraordinary deaths, was also modified. The amendment abolished the main category of extraordinary death, and instead - in addition to the notion of natural death - introduced the concept of non-natural death, subdivided into two subgroups of extraordinary deaths and deaths resulting from criminal activity.

The 2007 amendment of Act XIX of 1998 on Criminal Procedure determined the conflict of interest of experts working in the police force, and was soon followed by amendment of Government Decree no. 282/2007 which radically transformed the practice of the post mortem in Hungary; the Forensic Medical system disappeared, which meant that post mortems involving extraordinary deaths were subsequently carried out mainly by general practitioners and doctors on duty. Official and judicial autopsies were carried out by the Judicial Expert and Research Institutes (ISZKI), and by the National Centre for Expert Research (NSZKK) and by the Hungarian Medical Institutes of the Hungarian Universities, a situation which continues to this day.

Through the Combined BM-EüM-IM Decree no. 34/1999 which entered into force in 1999 the Eü.tv regulated the procedures to be followed in the event of death, as well as those for extraordinary death, a situation which continued until 2013. The introduction of the legislative changes and the introduction of a major category of non-natural deaths in the intervening period also made it necessary to amend the provisions of Decree 34/1999, which was amended by Government Decree no. 351/2013.

4. CONCLUSIONS

All in all, it can be concluded that the post mortem has faced a number of problems over the past nearly eight centuries in Hungary. Initially, the absence of a proper treatment of apparent death was not only obvious to legislators, but also to the general public. This problem was overcome by the modern, forward-looking regulation of the late 19th century. On the basis of the what has been discussed above, it can be stated that the late 19th century Hungarian coronary system can be regarded as a forward-looking, pioneering regulation, with particular reference to Decree No. 78.889 of 1888, which precisely defined the autopsy techniques to be performed for each examination, including a precise description of the type of incision and the provision of autopsy equipment. As we have seen, after the Second World

War, new rules were created, which were not necessarily forward-looking; indeed, taking into account the abolition of the coroner's system, the restriction of the conditions for obtaining a court-ordered post mortem may give rise to several concerns. In the absence of guidelines or protocols, GPs and physicians on duty do not have the appropriate guidance to carry out a post mortem, which can be a source of many errors. Moreover, the fact that the procedure for the dead has remained essentially unchanged over the last 150 years cannot be ignored.

It can be stated that the Hungarian autopsy rate - which is 35-37% - is the highest among European countries. This high rate goes completely against international trends. The reason for this high rate of autopsy is that in the case of illness-related autopsies, it is possible to maintain some pathology departments in existence through funding for autopsies. In recent times, there have been significant changes in cases of extraordinary deaths - not necessarily in the right direction -, but in many cases the ordering organization regulates the autopsy. (The question arises as to whether this regulation is practically applied in appropriate cases.) Of course, it may not always be possible to agree with this provision, but through a proper and adequate experience of post mortems and co-operation with the ordering organization, a new, modern foundation for the procedure can be developed in the future, rather than relying on the survival of a procedure very similar to that of the current police doctor system.[21]

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GENERAL PRINCIPLES OF COOPERATION IN REGARDS TO INTERNATIONAL CRIMINAL LAW

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ABSTRACT: *This paper will present the general principles of cooperation in international criminal matters, crimes that are usually the cause of collaboration between states by their nature and. The chosen practical case presents a situation that is unfortunately too common in Romania, namely, a criminal group organized in Romania that forced a number of women to practice prostitution on the territory of other states through manipulation, threats and violence.*

KEY WORDS: *international law, human trafficking, prostitution, international criminal law, criminal law.*

INTRODUCTION

The cooperation of states in criminal matters is an undertaking of a legislative, political and judicial nature through which they assume the responsibility of assisting each other in cases of violation of criminal law beyond state jurisdiction and in most cases are serious violations of human rights through the lens of international law

1. PRINCIPLES OF COOPERATION IN CRIMINAL MATTERS

The cooperation of states in international criminal matters can be seen in a narrow sense as a number of legal situations in which two or more states assist each other in resolving criminal cases. Cooperation in this area is based on the principle of legal aid, the principle of "aut dedere, aut iudicare" and the principle of "non bis in idem".

"Judicial assistance in criminal matters is a principle of international judicial cooperation. Legal aid is requested when a State is unable to initiate an investigation or procedure on its own and needs the assistance of another State in this regard, for example, to hear witnesses or to monitor criminals moving outside the territory of the requesting State. During a criminal trial, the judicial bodies of the state in which the trial takes place shall receive the procedural documents necessary for settlement from another state."[1]

Broadly speaking, international criminal assistance is an institution of criminal procedural law that encapsulates a number of laws and activities of both national and international nature in order to assist the requesting state or states involved in a criminal investigation into certain facts that are committed in the territory of a state other than the one in which the perpetrator is located or acts which took place in the territory of several states.

[1] Anastasiu Crişu, *Drept procesual penal* ediţia a-2-a (revizuită şi actualizată), Editura C.H. Beck, 2007, Bucureşti.

All actions that fall under the umbrella of legal aid made by or towards Romania must comply with the requirements imposed by art. 172 of Law 302/2004.[2]

These are the following:

a) The name of the judicial institution requesting assistance and the name of the institution which is requiring assistance;

b) Objectives and reasons for the request for assistance;

c) Legal qualification of the acts;

d) Identification data of the accused, defendant or convict or of the witness or expert, as the case may be;

e) The legal classification of the committed deeds and a summary of the committed deeds;

f) If necessary, documents will be attached to support the request;

g) All judicial paperwork that is attached will have to be certified by the court because these acts are not regulated in a super legalized way.

The legislative processes that make up the legal aid institution are:

a) The International rogatory letters are a form of legal assistance which consists in the empowerment of a state by another state to carry out certain processes of a legal nature towards the resolution of certain criminal cases by proxy;

b) Videoconferencing is the procedure by which the authorities of a State may obtain statements from witnesses or experts in cases where it would be inconvenient or impossible for them to be present in the territory of the requesting State to testify before the law.

c) In cases where the Romanian state considers that it could help another state with information that could lead to a criminal investigation or to the request for legal assistance, it may transmit information spontaneously. The Romanian State may impose certain conditions on the use of information;

d) At the request of another state, the Romanian state may execute a supervised delivery in order to facilitate a criminal investigation. Delivery will be made in accordance with Romanian law and if the Romanian state requires a supervised delivery, the present rules will apply in the same manner (delivery will be made by the requested state in accordance with its laws);

e) In the case of undercover investigations, several states may agree to mutual assistance. These States must concretely agree on the forms of assistance and the methods by which they will cooperate in the investigation;

f) Joint investigation teams can be set up through legal aid for the purpose of conducting an international criminal investigation in which several states are involved and must act in a coordinated and organized manner;

g) Cross-border surveillance may be carried out in situations where another state conducts a criminal investigation and a person who took part in the act investigated by the foreign authorities is on the territory of Romania. This surveillance must be allowed by the Prosecutor's Office attached to the Romanian Supreme Court and the Border Police authorities. Surveillance can only be allowed for certain serious acts such as murder, robbery, deprivation of liberty, trafficking in human beings and so on.

h) The interception and recording of conversations and communications is allowed if the pursued persons are on the territory of Romania and the requesting state requires technical assistance to intercept the communications of people who have committed criminal acts on the territory of the requesting state. The requesting State must have issued an interception request and prosecution warrant in regards of the criminal act, the warrant must specify information on the offender, state the reasoning of the interception, the duration of the interception and sufficient technical details to comply with the request;

[2] Legea 302/2004 privind cooperarea judiciară internațională în materie penală, publicată în M. Of. Nr. 411 din 27 mai 2019.

i) Confiscation of property may be requested by another State in the event of the commencement or conduct of the investigation provided that the confiscated property or information is directly related to the act;

j) The appearance of relevant witnesses or experts on the territory of the requesting state may be solicited or the Romanian state may request their appearance. The requesting State must transmit the necessary documents relevant to the criminal procedure it`s undertaking. The State has 40 days before the appearance of the witness or expert.

Another basic principle of cooperation is "aut dedere, aut iudicare ". This Latinphrase is roughly translated as "either extradite or trial" and is manifested in practice through the transfer of court proceedings. The expression itself is used to indicate the right of a person found guilty of a crime committed in the territory of a State other than his State of origin to choose the country in which one of the 2 States he will serve his sentence.

If the transfer of the procedure serves the good administration of justice or facilitates the social reintegration of the convicted persons, in certain cases provided by the criminal law the Romanian judicial authorities may request the relevant authorities from other states to perform preliminary procedures or continue them or even refuse a convicts request to serve his sentence in Romania due to the nature of his crime.[3]

It must be noted that the transfer of criminals and general application of all the mentioned principles must abide to the sovereignty of the Romanian state and the sovereignty of any other state that is involved in the transfer of judicial procedures[4]

A final principle to be mentioned when discussing cooperation in criminal matters is "Non bis in idem" which translates to "not twice for the same thing", this principle is manifested by the impossibility of criminally convicting the same person for the same criminal act by two different states or convicting the same person twice for the same deed.

2. CRIMINAL OFFENCES OFTEN ENCOUNTERED IN THE FIELD OF INTERNATIONAL CRIMINAL COOPERATION

Now that the principles of judicial cooperation have been introduced, it is necessary to look at certain criminal acts that are often the subject of international cooperation in criminal matters, given their nature, these offences are founded in the Romanian Criminal Code[5].

The trafficking of people consists in the recruitment, kidnapping or reception of a person for the purpose of exploitation by coercion, abuse of authority, abduction, deception, by taking advantage of the person's inability to defend himself or to express his will or by exploiting vulnerability of the person. If a person serving as a civil servant commits the crime of trafficking in persons in the exercise of his function he may be punished by imprisonment from 5 to 12 years. If a person who has authority over the trafficked victim accepts money or other benefits to allow the offender to commit the act, he can be punished with imprisonment for a period of 3 to 10 years. This criminal act cannot be justified by the consent of the trafficked person.

Enforcing forced labor can be punishable by imprisonment from 1 to 3 years. This act consists in forcing a person to perform work against his will or to do compulsory labor and is generally connected to trafficking as most people that are in the situation have to perform some sort of activity.

Organizing a prostitution ring is considered a criminal offence in Romania. Practicing prostitution is understood as providing sexual services in order to obtain patrimonial benefits for oneself or for someone else. The creation of a prostitution ring is punishable by imprisonment for 2 to 7 years and the banning of certain rights. If the person was determined by coercion before or during the period in which it prostituted itself, it will be punished with

[3] Noul Cod Penal actualizat în 2020, Partea Generala, Titlul I, Capitolul 2, Secțiunea 2, art.9 lit. (1).
[4] Art. 3 din Legea 302/2004.
[5] Noul Cod Penal Partea Specială, Titlul I, Caputilul VI – Infracțiuni contra libertății persoanei, Capitolul VII – Traficul și exploatarea persoanelor vulnerabile, Capitolul VIII – Infracțiuni contra libertății și integrității sexuale.

imprisonment between 3 and 10 years and deprivation of rights. Forcing a minor to part take in prostitution activities leads to an extension of the prison sentence from 3 to 10 years and a half (from 4 years and 6 months to 15 years).

The exploitation of beggars is defined as the determination or coercion of a person, whether a minor or an adult, who suffers from a physical or mental disability to resort to the mercy of the public to obtain material aid or goods for himself or for someone else. The deed is punishable by imprisonment for between 3 months and 6 years. If the act was committed by a member of the victim's family or was carried out by coercion, the punishment is between one and 5 years.

Now that the theoretical elements and the current legislation regarding Romania have been presented, we are going to analyze a practical case, in this legal case we can observe the principle "aut dedere, aut iudicare", more precisely, we observe how a Romanian court transposes a sentence asgiven by a court in the United Kingdom.

In this case a person sentenced to 15 years in prison by the Harrow Crown Court (the hierarchical equivalent of a Tribunal in Romania). The person named X was charged and found guilty of[6]:

- trafficking of human beings, regulated by the Law of Sexual Offenses 2003, which finds the corresponding punishment in the Romanian legislation through art. 210 Romanian Criminal Code. (two separagraphte charges)

- organizing prostitution activities to obtain personal benefits, punished by section 53 paragraph. (1) of the Law on Sexual Offenses 2003, having a correspondent in the Romanian legislation in the form of the crime of organizing a prostitution ring, regulated of art. 213 Romanian Criminal Code.

- 5 individual rape offenses, regulated by section 1 paragraph (1) of the Law on Sexual Offenses of 2003, which find their correspondent in the Romanian legislation in the crime of rape, regulated by art. 218 Romanian Criminal Code.

- the use of a false document with illegal intentions, provided by section 4 of the Law on Identity Documents 2010, which has a correspondent in the Romanian legislation in the form of the crime of use of forgery, regulated by art. 323 Romanian Criminal Code.

In the first instance, a procedural error was committed in violation of Article 42 paragraph (1) of Law no. 302 published on the 26th of June 2004[7], this article confers material jurisdiction in cases of transcription of criminal sentences to the Court of Appeal in whose district the extradited person resides or the district in which the criminal has residence. The Arad Court declared itself incompatible and transferred the case to the Arad Court of Appeal. The Arad Court of Appeal transcribed the sentence resulting in a sentence of 12 years from which 2 years were deducted (period in which the defendant served his sentence in a penitentiary in Great Britain), this was the maximum punishment attributable to the perpetrator in the basis of art. 218, paragraph. 3. let. (c) and (e) of the Criminal Code. Defendant X challenged this decision citing some perplexities regarding the procedure for transcribing the sentence; he argued that he should be convicted on the basis of 5 separate charges, not on the basis of 9 charges for which he was found guilty in the sentencing of the Harlow Crown Court. This case came before the High Court of Cassation and Justice (the Romanian equivalent of the UK`s Supreme Court) for settlement. After the High Court of Cassation and Justice analyzed the evidence presented and the claims of the defendant decided that this appeal is unfounded given that the defendant had 5 different victims resulting in 5 separate charges that added to the other acts reached a total of 9 criminal actions judged under the regime of the competition of crimes.

CONCLUSIONS

[6] Sexual Offences Act 2003.

[7] Art. 42 alin (1) Legea nr. 302 din 26 iunie 2004 (*republicată*) privind cooperarea judiciară internațională în materie penala.

Although the theory supporting international cooperation in criminal matters seems to be effective, clear and an important tool in regulating and stopping international crime, the reality of the problem is much grimmer.

According to the statistics present in the Case Study on Trafficking of People[8] for the purpose of their exploitation published in 2015 (the most recent statistical study on the subject) at that time in Romania, a member country of the European Union, there was the largest number of internationally trafficked persons.

It is also pointed out that there are problems at the national level in the field of human trafficking. Although the jurist can easily get lost in the totality of the theory relevant to any subject, in the subtleties of the laws and estimates of social revenge decided in the supposed wisdom of the judiciary, it is necessary to remember that, as jurists, regardless of our role in the legislative ecosystem we do not operate in the realm of statistics or numerical estimates typical of economists and physicists. We operate in a realm of individual pain and the precise solutions needed to maintain social order. In a journalistic investigation in 2019, ProTv news[9] managed to present the reality of judicial cooperation from the perspective of the Romanian state.

This investigation focused on human trafficking between Romania and Italy, more precisely, it focused on the defects of the police and judicial system that facilitates through its shortcomings the trafficking of minors for the purpose of pimping. Because prostitution is legal in Italy, it is difficult for Italian authorities to arrest pimps. The journalistic investigation showed evidence that the Romanian authorities are not adequately prepared or equipped to deal with criminal networks, networks that were compared by the carabinieri (Italian police officers) interviewed in the investigation with the Italian mafia which mainly consists of various criminal groups with hundreds years of history and hierarchy.

A more worrying fact presented in the investigation is the fact that the Romanian authorities are facing well-trained criminals who have developed new ways to avoid or fool the judicial or police system. We can see testimonies from some victims of these networks about the treatment they suffered at the hands of these criminals describing horrible scenes of abuse such as "punching, ripping hair from the head, sword hits" or, "robbed, raped and left alone in a random forest."

The journalistic investigation reveals that between 2015 and 2019 there were no changes to address and streamline systems for combating international crime and to facilitate cooperation in criminal matters with other states. On the contrary, the situation has become grimmer than in the past, transforming the realm of individual pain suffered by victims and precise solutions into a realm of statistics lacking humanity or empathy with inefficient and aged solutions that are in grave need of updating and reinforcing.

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[8] Study on case-law relating to trafficking in human beings for labour exploitation Final report, anul 2015, p. 23.

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BRIEF CONSIDERATIONS ON THE EXTENT IN WHICH THE IMPLEMENTATION OF THE UNION IDENTITY ELECTRONIC CARD GUARANTEES RESPECT FOR FUNDAMENTAL RIGHTS

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ABSTRACT: *Considering the increased mobility within the EU, on the one hand, but also the intensification of the fight against terrorism by strengthening external borders, on the other hand, the European Commission has launched the "2016 Action Plan" with the sole purpose of combating identity fraud. In order to facilitate freedom of movement within the Union, Member States, acting in accordance with their own legislation, must issue and renew identity cards or passports to Union nationals attesting their nationality.*

In support of the above-mentioned plan, the Union co-legislator adopted Regulation (EU) 2019/1157[1]*,, according to which the renewal of identity cards or residence permits results from the need to harmonize the security levels that these documents confer on Union citizens or on their family members, considering the risk of forgery or fraud, criminal activities that endanger the freedom of movement. The provisions of this legislative instrument fully respect the fundamental rights of Union citizens as enshrined in the Charter of Fundamental Rights of the European Union*[2]*. Moreover, the application of the union norm respects the right of citizens regarding the confidentiality of personal data.*

At the level of 2021, the electronic identity card is considered to be "a key to authenticate the citizen in digital platforms that mediate the relationship of the Union national with the institutions of the state of origin or the host state, online".

KEYWORDS: *union citizen, family member, free movement, identity card, residence permit, biometric data, storage.*

INTRODUCTION

Article 21 TFEU facilitates the right of every citizen of the European Union to move and reside freely within the territory of the Member States.

In the same sense, Article 45 (paragraph 1) of the Charter of Fundamental Rights of the European Union provides that "every citizen of the Union has the right to move and reside freely within the territory of the Member States…"

[1] Regulation (EU) 2019/1157 of the European Parliament and of the Council of 20 June 2019 on enhancing the security of Union citizens' identity cards and residence documents issued to Union citizens and to their family members exercising their right to free movement.

[2] Ioana Nely Militaru, *Protection of Fundamental Rights in the European Union*, International Conference, "Perspectives of Business law in the Third Millenium" 8 November 2019, ninth edition, Bucharest, Section III. European Union Law. International Law, Volume 8, Issue 2, 2019

Currently, the framework rule on the right to free movement[3] and residence in the territory of the Member States for citizens of the Union and of their family members is Directive 2004/38 / EC[4].

According to Article 3, the provisions of this Directive "shall apply to any citizen of the Union who travels to or resides in a Member State other than that of which he is a national and that of members of his family."

The stay on the territory of the EU is carried out in three ways, in relation to which, the framework norm identifies necessary documents and adequate conditions to be fulfilled, as the case may be, by the union national or his family members with or without union citizenship:

a) stay up to three months;

b) stay after three months;

c) permanent residence.

Regardless of the type of stay identified above, freedom of movement implies the right to enter and leave recognized to nationals and their family members on the territory of EU member states, with a valid identity card or passport. A valid passport is required for family members who do not have union citizenship.

Member States are also required to issue "non-national family member residence permit" to non-national family members. This document confers the right of residence[5] under Article 10 paragraph (1) of the Union framework rule.

Following the acquisition of a permanent residence pursuant to Articles 19 and 20 of Directive 2004/38 / EC, nationals and their family members shall acquire on a permanent basis premises for permanent residence.

I. REGULATORY SCOPE OF THE REGULATION (EU) 2019/1157

In order to standardize and secure the documents attesting the identity of the union citizens either in the country of origin, referring to the identity card, or in the host union state, situation in which we retain the residence permit issued to both the national and his family members, Regulation (EU) 2019/1157 was drafted.

This union normative act applies:

- identity cards issued by Member States to their own nationals[6];
- residence permits issued in accordance with Article 8 of Directive 2004/38 / EC to Union citizens residing for more than three months in an EU host Member State;
- residence permits issued in accordance with Article 19 of Directive 2004/38 / EC to citizens of the Union certifying their permanent residence in the EU host Member State;
- residence permits issued to family members without Union citizenship, in accordance with Article 10 of Directive 2004/38 / EC (we refer to family members accompanying the national with a recognized stay of more than three months);

[3] Ioana Nely Militaru, European Union Law, Chronology. Springs. Principles. Institutions. The internal market of the European Union. Fundamental freedoms, 3rd Edition, revised and added, Universul Juridic, Bucharest, 2017

[4] In support of a genuine area of freedom of movement for Union nationals, three directives were adopted in 1990 with a view to facilitating this right for the various categories of unemployed, namely Council Directive 90/365 / EEC on the right of residence of employed or employed persons or self-employed and who have ceased their professional activity; Council Directive 90/366 / EEC on the right of residence of persons under study and Council Directive 90/364 / EEC on the right of residence (for nationals of Member States who do not enjoy this right under other provisions of Community law and for their family members)

[5] In accordance with the provisions of Article 11 paragraph (1) of Directive 2004/38 / EC, the residence permit recognized for family members who do not have union citizenship, "is valid for five years from the date of issue or for the period provided for the citizen of the Union, if this period is less than five years "

[6] According to art.2, this regulation does not apply to identification documents issued provisionally with a validity period of less than 6 months.

- residence permits issued to family members without Union citizenship in accordance with Article 20 of Directive 2004/38 / EC (referring to family members accompanying the national with a recognized stay of more than three months)

The Regulation does not require Member States to introduce such documents, unless their own national law regulates this and on the other hand, nor does it affect the competence of Member States to issue under national law other documents which do not fall within the scope of the union rule.

However, regardless of the specific approach of each Member State, the framework rule provides that the movement in Union space can only be done using an identity document with biometric data, thus ensuring the prevention against electronic fraud. Citizens of Member States that refuse such a document are not restricted in their free movement in Union space, as they will have the alternative of a biometric passport.

Biometric technology brings advantages in the process of identifying the person by allowing the use of various types of images by taking the anatomical and behavioral characteristics directly or with the help of technical and scientific means connected to the system[7].

The validity of identity documents is important in the process of construction and maintenance of a space in which the safety of the person is felt on the one hand by the participants in criminal proceedings, and on the other hand by community members[8].

a) National identity cards

Regardless of the issuing Member State, the electronic identity card includes:

- On the front, the country code of the state, consisting of two letters framed in a blue rectangle and surrounded by a circle of 12 blue stars;
- A storage medium[9] comprising two biometric elements, respectively, a facial image of the holder and two fingerprints[10]. We specify that for the collection of biometric identification elements, Member States apply the technical specifications for the uniform model of residence permit for citizens of non-EU states.

Regarding the validity period of identity cards, we specify that it is between five and ten years, being stipulated three derogatory situations, respectively:

- In the case of minors, identity cards with a validity of less than five years can be issued;
- In the case of persons in "special and limited circumstances", identity cards with a validity of less than five years may be issued;
- In the case of persons aged 70 years or more, identity cards with a validity of more than ten years may be issued.

Regardless of the means by which identity is protected in the legislation of some states by criminalizing the facts that harm public confidence in the process of investigating crimes, it is important to know where the legislator placed the crimes that protect identity, to analyze

[7] Elena-Ana Iancu (Nechita), *The role of identity in the process of forensic identification* (bilingual edition, ro-eng) in the volume Security of the person and the construction of social capital, Universul Juridic Publishing House, 2019, p.637

[8] Idem, p. 638

[9] The storage medium must have sufficient capacity to guarantee the integrity, authenticity and confidentiality of the data. See in this respect Commission Implementing Decision C (2018) 7767 of 30 November 2018 laying down the technical specifications for the uniform model of residence permit for third-country nationals and repealing Decision C (2002) 3069.

[10] According to art.3 paragraph (7) of the regulation, "Children under 12 years of age may be exempted from the obligation to submit to fingerprinting. Children under 6 are exempt from the obligation to undergo fingerprinting"

the constituent elements of crimes, the essential requirements formulated in relation to various elements, as well as the penalties provided by law[11]

b) Residence documents for EU citizens

With regard to documents to be issued by a host Member State, the Union regulation shall regulate separately according to the quality of the applicant:

- Union national applicant
- Applicant family member without union citizenship.

Thus, we identify a first situation established by article 6, which regulates the minimum requirements inserted in the document issued to the *Union national applicant*:

- The title of the document in the language of the issuing state and in at least one other official language of the EU;
- The statement that the document is issued to a citizen of the Union as defined in Directive 2004/38 / EU;
- Document Number
- Last name and first name, date of birth of the holder;
- The quality of union citizen of the applicant with the identification of the type of stay (over three months - art. 8 of Directive 2004/38 / EU, permanent residence - art. 19 of Directive 2004/38 / EU)
- Issuing authority;
- The country code of the state, consisting of two letters framed in a blue rectangle and surrounded by a circle of 12 blue stars.

For the applicant family member without union citizenship, regardless of the period for which the residence permit is requested (over three months or permanent residence) he is issued a document with similar mentions in the case of the union national, to which is added the title "Residence permit "Or Permanent Residence Permit" which indicates that "these documents are issued to a family member of a citizen of the Union in accordance with Directive 2004/38 / EC. For this purpose, Member States shall use the standardized code "EU Family Member Art.10 DIR 2004/38 / EC or "EU Family Member Art.20 DIR 2004/38 / EC in the data field, as mentioned in the Annex to Regulation (EC) No 1030/2002 as amended by Regulation (EU) 2017/1954".

c) Responsible authorities, monitoring and reporting

Article 9 of the Regulation stipulates the obligation of each Member State to designate ***a central authority, called - contact point*** - which represents the extension of the Member State both in relation to the European Commission and to other Member States from the perspective of collaboration on relevant information and assistance services. of the European Union included in the single digital portal (gateway) **[12]**.

With regard to the issue of the collection of biometric identification data, at the level of each Member State, this will be done eminently by the ***authorities responsible*** for issuing identity cards or residence permits following regulated procedures at the level of each Member State. The collection of this data is done with a well-defined purpose, namely to be integrated on the storage medium which provides a high degree of security.

[11] Iancu Elena-Ana, *Theoretical and Practical Aspects Regarding the Investigation of the Criminal Offense of False Testimony*, in Athens Journal of Law, 2020, Volume 6, Issue 4, October 2020, p.323 https://www.athensjournals.gr/law/2020-6-4-1-Iancu.pdf https://doi.org/10.30958/ajl.6-4-1

[12] Regulation (EU) 2018/1724 of the European Parliament and of the Council of 2 November 2018 on the establishment of a single digital portal (gateway) to provide access to information, procedures and assistance and troubleshooting services and to amend the Regulation (EU) No 1024/2012 (OJ L 295, 21.11.2018, p. 1)

With regard to the use of such stored data, this shall be done in compliance with the Union and national law of each Member State, only by ***authorized staff*** of both the responsible national authorities and the Union agencies, in order to verify, as appropriate:
- Authenticity of the identity card or of the residence permit;
- The identity of the holder.

We note that States will ensure that these procedures respect the rights and principles of the Charter and the Convention for the Protection of Fundamental Rights and Freedoms.

In the implementation activity, the responsible authorities at the level of each member state have the obligation to periodically provide information regarding the data collection, based on the monitoring program established by the European Commission.

Two years and eleven years after the date of application of this measure (2 August 2021), the Commission, in turn, will present to the European Parliament and the Economic and Social Committee a report on the state of implementation, the impact of the application of these provisions, in particular on how fundamental rights and personal data have been protected.

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In application of the provisions of article 9 paragraph 1 of the Regulation, the Directorate for Population Records and Database Administration, *named D.E.P.A.B.D. as a contact point* for Romania, with the following attributions[14]::

- Ensures the cooperation with the relevant institutions of the European Union in order to use the single digital portal (gateway);
- Represents the body responsible for issuing identity cards;
- Meets the notification obligation of the European Commission and the member states;
- It constitutes and updates, at least once a year, the list of competent authorities that have access to the biometric data registered in the storage medium. The list is published on the website of the D.E.P.A.B.D.

II. IDENTITY DOCUMENTS ISSUED ON THE ROMANIAN TERRITORY, IN THE LIGHT OF THE GOVERNMENT EMERGENCY ORDINANCE NO. 97/2005 REGARDING THE EVIDENCE, DOMICILE, RESIDENCE AND IDENTITY DOCUMENTS OF THE ROMANIAN CITIZENS, MODIFIED AND COMPLETED

What is the identity card?

Article 12 paragraph (3) of this GO provides that "Identity card means the identity card, the simple identity card, the electronic identity card, the temporary identity card, the temporary identity card and the identity card, which are in validity. "

[13] See Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of individuals with regard to the processing of personal data and on the free movement of such data and repealing Directive 95/46 / EC (General Data Protection Regulation)

[14] See in this sense art.3 and art.4 of Decision no.295 of March 10, 2021 regarding the approval of the Methodological Norms for unitary application of the provisions of the Emergency Ordinance no.97 / 2005 regarding the evidence, domicile, residence and identity documents of Romanian citizens, as well as for establishing the form and content of identity documents, proof of residence and real estate card.

What does an identity document prove?

The identity document proves the Romanian citizenship and, as the case may be, the domicile in Romania. We mention that regarding the residence, its proof is made with the document called "proof of residence" which will accompany the identity card, the simple identity card or the electronic identity card.

The electronic identity card, as well as the identity cards issued and valid until August 1, 2021 constitute travel documents in the space of the European Union.

What does an electronic identity card give in addition to another identification document?

In accordance with the provisions of article 13 paragraph (4) of the GO, the electronic identity card allows the holder to authenticate in the computer systems of public or private institutions using the electronic signature, in accordance with the law.

According to the above article, Romanian citizens are issued identity documents:

a) starting with the age of 14, until the date of ensuring the technical infrastructure necessary for the issuance of the electronic identity card;

b) starting with the age of 12, until the date of ensuring the technical infrastructure necessary for the issuance of the electronic identity card. "Optionally, an electronic identity card can be issued before the age of 12, at the request of one of the parents, the legal representative, the designated person from the public service or an accredited private body for social protection of the child, temporarily or once for all separated by the parents, where the minor is, or of the person to whom the child was placed" [15].

What are the categories of people who can apply for an electronic identity card?

- Romanian citizens residing in Romania;
- Romanian citizens domiciled in Romania temporarily in another EU member state, who may request the issuance of the electronic identity card from the diplomatic missions or consular offices of Romania;
- Romanian citizens domiciled in another EU member state can request the issuance of the e-identity card with the mention of the state of domicile, any community public service of evidence of persons but also diplomatic missions or the Romanian consular office in the state where he establishes his domicile.

Both the electronic identity card and the simple identity card are issued:

a) With a validity of six years, for persons aged between 12 and 18 years;
b) With a validity of ten years, after reaching the age of 18;
c) With unlimited validity, after reaching the age of 70.

From the date of ensuring the technical infrastructure necessary for the issuance of the electronic identity card, the Romanian citizens have the possibility to request the issuance, as the case may be:

- an electronic identity card, which gives the possibility of freedom of movement in union space;
- of a simple identity card, a document valid only on the Romanian territory. Those who opt for a simple identity card can travel to the EU with a valid passport.

Regarding the content and structure of the electronic identity card, we are of the opinion that the provisions of Regulation (EU) 2019/1157 are reiterated in article 17 of Government Ordinance 97/2005 amended and supplemented, in the sense that "Electronic identity card contains data in printed and in format inscribed by special techniques, data in electronic format as well as customization and safety elements. The electronic format includes the data from the printed format and biometric data of the holder, consisting of the facial image and papillary impressions of two fingers.

[15]See in this sense art.12 of the Government Emergency Ordinance no.97 / 2005 on the evidence, domicile, residence and identity documents of Romanian citizens, amended and supplemented

Regarding the issue of biometric data, various opinions were issued, in the sense of supporting or not these elements on the e-identity card. We are of the opinion that their presence is opportune because it competes in verifying the authenticity of the document and the identity of its holder.

Moreover, the confidentiality of the data is ensured by the fact that the verification of the authenticity of the document and of the identity of its holder is done only by an authorized personnel. The latter cannot use the data at will because the biometric data stored in order to personalize the electronic identity cards in SNIEP is kept until the date of collection of the document by the holder, but not more than 90 days from the date of its completion. Within this term all the information stored in the databases is deleted through the automatic and irreversible procedure.

CONCLUSIONS

The implementation of the electronic identity card at EU level aims, on the one hand, to simplify and debureaucratize procedures at Member State level, thus ensuring the creation of an appropriate framework available to the EU national to facilitate access to "e-government" services and in relations with third parties involving "electronic services". The use of such an electronic document in the citizen-civil servant relationship is an integral part of the concept of "e-government", i.e. the reform of the administration, a successful process in countries such as Italy, Belgium, Germany, Croatia, Netherlands, Portugal, Spain, Czech Republic.

On the other hand, this process of legislative harmonization introduces minimum security standards and standards regarding the format of identity documents recognized to union nationals but also to their family members without union citizenship, an approach that provides a consolidated level of security against identity fraud. Thus, the inclusion of security elements such as biometric data has as its sole purpose the possibility given to the authorities to verify whether a document is authentic, and to establish with certainty the identity of a person.

Also, considering the technological evolution, referring mainly to the multitude of services offered to the citizens of the EU member states in the fields of e-government, e-administration, e-identity, e-health, it is expected that the electronic document will provide the holder access to all these services.

Last but not least, the presence of such a document will facilitate the simplification of the exercise of the right to free movement in EU space, given that taking as a benchmark labour mobility, many Romanian citizens residing in a host state have requested embassies or consulates novels analyzing opportunities for issuing identity documents to children under 14 years.

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