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TABLE OF CONTENTS

Section I. Juridical Sciences

Section II. Administrative Sciences

Section III. Master Students

AGORA International Journal of Juridical Sciences, http://univagora.ro/jour/index.php/aijjs
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THE LAW OF THE DIGITAL ECONOMY IN THE EVOLUTION OF THE DIGITIZED SOCIETY

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Abstract: *The evolution of society leads to an increasingly comfortable way of life in which human activities are replaced by digitized processes. People sell and buy through the digital processes provided by the Internet, pay/receive consideration for products or services and works transacted through digital banking transactions. Most of the time operators, legal entities under private law or natural persons do not benefit from real protection and guarantee from the state. The economic, commercial, financial processes in the digital economy have no borders and are carried out most of the time with unknown legal subjects, without real or identifiable identity. Through this work we will try to bring to the discussion of researchers about the importance of law in the digital economy. The authority of states does not manifest itself on the Internet to offer protection to economic factors that operate online. The Internet is ubiquitous in every economic activity, but the regulation of the conduct of legal subjects, their civil or criminal liability for acts criminalized by civil or criminal law is on the horizon of the very distant future*.

Keywords: *Digital economy; the right of the digital economy; artificial intelligence; artificial intelligence law; AI; digitized society;*

INTRODUCTION

Cyber security activities are evolving, but cross-border cooperation on security in the virtual environment is still not at the highest level. The European Union cautiously approaches the regulation of subjects in the field of "digital economy" and "artificial intelligence". There are many "variables" and "potential consequences" of the use of digital space for the economy. This use of the digital space for actions and activities with an impact on the economy is what we define as "digital economy". The regulations of the digitized market and the "artificial intelligence" complex at the European level are insufficiently covering all economic, social and cyber risks. Therefore, the complex of legal rules regarding rights, obligations and active and passive guarantees defines "the right of the digital economy".

Research premises: The evolution of the economy from traditional to digitized.

Commercial law legal relations in the digital economy involve legal subjects that can be suppliers of products, services and works and buyers or beneficiaries. Financial banking institutions through which the price of products or services is paid are also subjects of law that actively and definitively participate in the digital economy. The economy had several stages in its evolution in which human resources, material resources, financial resources put together generated products that the market needed through transformation. Buyers, end users of works, services, and products, are subjects of law in the economy.

The modernization of the means of production, the specialization and education of the workforce, as well as the development of banking and tax procedures led to the modern economy of today. Geo-political strategies have also allowed the removal of barriers to the protection of the economy of the states through the customs system between the states, of products and services. This is how the concept of the world economic market was created. In order for the international market of goods to function, the World Trade Organization was established, which imposed rules of fair competition. The development of trade generated the development of transport through different means of transport (road, rail, air, river and sea). This is how the economy that we all know and that we can define as the traditional economy has worked.

In parallel, the economy uses a banking industry, which guarantees consideration in a currency recognized by both parties, which can be divisible and fractional, in relation to the value of the transaction (works, services, products). The banking industry manages the guarantees of the transfer of value from one legal entity, the seller or service provider, to another legal entity, the buyer or beneficiary. These economic-financial transactions and industries are assisted by the public administration. The public administration provides the right economic framework, ensures safety over the economic environment, including taking care of the social well-being of the human resource. For this benefit, the public administration provides funds through the imposition of fees and taxes. Thus said, the framework for the manifestation of the economic market and the economy, in general, costs. The consideration of safety systems translates into the collection of taxes, fees and contributions from all economically involved legal subjects. Taxation is done both on the economic phenomenon, which generates added value, but also on the application of certain taxes on the economic assets owned by natural or legal persons.

The fiscal law scheme supports the state or union of states to have budgetary funds for administration, representation, military, social, economic infrastructure, critical and strategic infrastructure, and medical, educational, cultural assistance expenses for citizens. So, the conventional/traditional economy has legal subjects known as service providers, goods suppliers, and customers, who can be natural persons, legal entities or public entities. The legal object is the traded good, the service or the work provided. All this manifests itself under a state authority that ensures conditions and safety in the legal relations in the economy. The economic surplus value is taxed and constitutes the main income of the state budget.

The use of digital technologies, tools made up of computers, computer programs, data communication networks, data archiving servers has generated an important mutation of economic processes in the digital environment. Thus, we can talk about tools that ensure the functioning of a digital economy. The digital economy in relation to the classic economy has additional elements of greater complexity, of which we mention: more complex and wider civil liability reports; geographical territoriality limited only by digital tools (computer/telephone; internet access; digital data transmission networks; servers, etc.

The territoriality of the digital economy. The classic, traditional economy takes place within the borders of a country or union of states and is protected by fiscal barriers formed by customs duties and excises. The digital economy has great complexity. Digital services and products are transferred around the world via the borderless Internet. There are legal subjects, producers/servⁱce providers that are not territorially located and identified in the territory of

some states as legal entities under private law. Traders sell and buy, theoretically, according to the documents through complicated economic circuits, to avoid overtaxing/overtaxing the economic activity. Basically, the products have a simplified circuit and, in most cases, stationary, but documents are completed to justify the reduced taxation. The goods do not follow the route indicated in the accompanying or transport documents. In the last period, the Romanian state has implemented in the IT system the centralized highlighting of transport invoices at the level of the fiscal authority. The electronic transport invoice is intended to synchronize goods transport activities with the commercial elements of sale and purchase in order to reduce tax evasion through non-payment of value added tax and, in the case of imports, customs tax. Starting from 2024, the digital control over taxation is stricter by introducing the obligation to report invoices in the governmental digital environment through the "e-invoice" processes. The future is changing the knowledge elements of the economy, public and private finance, trade and transport through the digitization of processes.

The question that arises: *doesn't a state control over the private economy lead to a dictatorship of those who coordinate and control everything through digitization?*

Also entering the digital economy equation are software manufacturers, telephone and data network administrators that support the Internet and provide real-time connections and speeds for information. The performance of these digital systems has constantly increased and determined the transformation of computer programs into programs that can work for the programmed purpose, autonomously, with decision-making capacity. The programs are known as robots or bots. This complex is defined as *artificial intelligence*.

Specialists say that the evolution of the digital economy will increase performance and implicitly profitability, efficiency and return on invested capital. In this economic performance artificial intelligence will have a large weight in relation to the human resource. The transfer of certain work processes from human to "soft computer" will free up the workforce in absolutely all areas and all levels of organizational decision-making and execution.

Opinion leaders, financial analysts, tax experts and other messianic people tell us how dramatic it is to have an economy in recession, an economy without an accelerated growth rate, but without presenting the overall situation of society. Economy and Society are inextricably connected. The economy was and must be at the disposal of society as a whole. An economic growth approved and praised by messianic "economists" but which does not bring an increase in the standard of living and a more efficient administration of public space is not to be appreciated. Social differences impact the course of economies on a planetary level. Goods produced cheaply in some countries sold at a profit on the qualified markets of the West and in the North American continent have created and are creating: an accessible market for cheap products and layoffs for employees. In the context of a digitized economy, services will migrate from developed countries to developing countries or countries that subsidize the economy to attract investors.

Basically, legal relations in the digital economy are internationalized and capital migrates in order to maximize profit. The consequence of these complex processes will be catastrophic for some states that no longer have the opportunity to produce cheaply, with declining demographics and an aging population.

Research methodology

The research is based on observing the application of legislation in the economic processes that take place on the Internet. We reported these cases to the digital economy lawsuits and noticed that the legislation is incomplete or missing in this area of the digital economy.

Recent developments are damaging the balance between the economy and society under the influence of process digitization, high-performance software described as "artificial intelligence" and innovative insurance products and legal relationships. There are many actors in the digital spectrum who may have professional or legal civil liability, contractual liability, but in reality, they will not answer because they are anonymized by the virtual reality, which is different from the physical reality. They are economic operators in the virtual environment, who do not have a Statute of association and representation of the legal person under private law and do not have a physical headquarters. These people with the status of merchants in the electronic environment offered by the Internet do not have a real bank account for transactions and most of the time they direct their capital accumulations in cryptocurrencies.

Many transactions are not taxed so that the role of the state as a regulator and protector of the markets is diminished. In the future, markets will self-regulate independently of the states' strategy. The economic market of the Internet, growing, will dominate the economy through the domination of society through social networks that create the premises of the consumer *"educated"* and directed by social control *"a priori"*.

Our research cannot provide answers in conclusions, but it can create a basis for technical discussions for researchers with the theme: *"Digitalized economy and society to where?" How will legal norms be created to protect the consumer, the producer, the trader and the state in its interests?*

Our research comes against a background of the evolution of legal science in the behavioral relation of society that uses digitized economic processes.

References and research in the specialized literature

The law of the digital economy is not a well-known branch of law, but it will assert itself due to the accelerated evolution of legal relations in the digital economy. The migration of the economy towards the digital sphere and influence brings new *"legal case"* with unknown factors in legislation. The internationalization of procedures and processes creates a global economy with the common denominator of profit and Internet use. In contrast, comparatively, we have legal systems with different legislation in the global territorial geography where electronic commerce operates. The jurisdiction of the law is limited by state borders and by bilateral, trilateral agreements or treaties, etc.

Thus, the specialized literature does not dedicate thorough research for a legislation in the digital economy. It is true that there are specific legislative references for artificial intelligence and digitization at the political level of each state or union of states. The European Union is an assumed and recognized leader in the field of regulations for potential consequences of the implementation of digitized processes. The European Commission has put into public debate many legislative projects to properly regulate the use of digitized processes.

In the year 2000, the European Union proposed the Digital Services Act (DSA). A year later, in 2021, the proposal for a Regulation of the European Parliament to establish harmonized rules on artificial intelligence (Artificial Intelligence Law) and to amend certain legislative acts

of the union appeared. In the Romanian domestic law, the proposal was approved by Decision no. 110/2021, Official Journal no. 902 of 2021. The proposed regulatory framework for **artificial intelligence** has the following specific objectives:

- ✓ ensuring that AI systems introduced on the Union market and used are secure and comply with existing legislation on fundamental rights and Union values; ensuring legal certainty to facilitate AI investment and innovation;
- ✓ strengthening governance and effectively ensuring compliance with existing legislation on fundamental rights and safety requirements applicable to AI systems;
- ✓ facilitating the development of a single market for legal, safe, and trusted AI systems and preventing market fragmentation.

In parallel, cyber security legislation is being developed to prevent and allow state control over economic processes and society. Thus, through the *Law on cyber security and defense of Romania,* the general objectives are to ensure the resilience and protection of networks and IT systems that support defense, national security, public order, administration, and the economy. In exercising their powers, public institutions and authorities will cooperate with the private sector, academia, professional associations, and non-governmental organizations. The law allows for active collaboration between the authorities and the private sector for the achievement of increased security against cyber risks.

Situations and case studies

The current researches are specifically oriented towards the analysis of situations regarding electronic commerce. The digital economy has a broader and more complex spectrum, including e-commerce.

Another dimension of research is in the area of personal data protection through the use of internet transactions. It is a niche of sociological research and the substitution of persons through the fraudulent use of personal data.

Some researchers (Bania, 2022) are analyzing the effects of the Digital Markets Act (DMA), a regulation of the European Union that establishes obligations for IT platforms to protect fairness and contestability in digital markets. Based on the principle of the rule of law, the Digital Markets Act can override the legislative instruments of the states of the union that pursue legitimate interests other than fairness and contestability. Other studies (Freitas et al., 2023) challenge **behavioral economics**. A new field of study in economics because it is important to bridge economic concepts and human behavior, from a psychological perspective, seeking to challenge the traditional concept of economics, as people do not always make rational decisions and that your choices are influenced by a range of factors including emotions, cognition, social and digital context.

These mentions of researchers' concerns are only a few, randomly marked, from which we infer that the digitalization of society and the economy generates topics of debate on risks and shortcomings.

Results and implications

In summary, we can say that the Digital Economy Law is in the process of being formed. The digital economy takes over processes of the traditional economy, and disputes between professionals become more complex.

The complexity of the disputes is given by the inclusion of new legal subjects that contribute to the mechanisms of the digital economy. We refer to software manufacturers, hardware manufacturers, traders, providers of data transfer and archiving solutions, implicitly information encryption. Operators providing cyber security protection of systems cannot be excluded. The digital economy complicates disputes between professionals due to the complexity of civil, malpractice and criminal liabilities. The subject of litigation ranges from claims for material and moral damages through the use or failure of computer systems, information leakage, economic secrets and up to intellectual property rights.

The damages produced by "robots" and "bots" will have a complex connotation in legal relations. The executive and decision-making processes of "artificial intelligence" used in the digital economy are based on programming algorithms, for which the software creator is responsible. At the same time, it can be a responsibility of the user of the robotic platform who sets certain technical parameters incorrectly. A liability of the provider of data transfer solutions via wire, radio or satellite networks cannot be excluded. For data transfer networks we can have two general situations: the risk of loss or theft of data and information and the risk of blocking the system from the operator to the robot. Another element that competes in the production of damages is the archiving of data on physical servers, rented or virtual servers in the Cloud. Information can be lost or corrupted if it is not properly secured and encrypted.

The digital economy contrasts with the general interest of society in evolution. Jobs are lost, human activities disappear and there are hardly any solutions for the unemployed citizens. They become a burden on the state administration and the local administration, which will generate other sociological consequences and social compliance.

The growth of the digital economy will be exponential. Profit is made by using minimal resources. At the same time, the profit made without costs also affects the fiscal resources related to the state budget. Budget revenues will be reduced due to the disappearance of fiscal vectors (tax on income from salaries and related contributions; tax on economic assets; other taxes and fees, etc).

CONCLUSIONS

The implementation of procedures in the digital economy is inevitable. The acceptance of the "digital economy" by the population is a fact based on a natural process in which social networks have played and will play an important role. The convenience of the citizen, the geographical area where we can buy or sell products or services are two defining elements in the choice of transactions of the digital economy.

People readily accept the transition to the digitized economy due to its association with social media friendly software that creates addiction. Citizens do not see any inconvenience regarding the transition from the traditional economy to the digital economy.

The digitized economy has risks. The major risk in the digital economy is to lose control over economic decisions, which influence society, politics and economic resources. States will lose influence to the detriment of large companies that use artificial, digitized systems in the production, execution, marketing and sales processes.

The dependence of the human factor on computer programs and on virtual socialization is another factor that raises signs of attention.

Pension and social security systems will be revolutionized by the digital economy. Economic processes no longer need physical human labor. It is necessary to find innovative solutions that ensure balance and social well-being. Being excluded from economic processes, people no longer contribute to the development of society and can no longer claim pensions, health insurance and social insurance. People must have an active social definition of community life. At the same time, the state has the obligation to protect citizens and ensure their right to education, the right to health, the right to social assistance. The population that will no longer have salaried status will have to be reoriented, re-professionalized for a social definition of *"professionally active person"*.

Some researchers (Rahman, 2021) have penciled in possible measures to take to the problems created by the installation of digitized systems (AI*): (1). Create a vibrant and rigorous welfare system for the unemployed based on their education and skill levels. (2). Tax bots and businesses that use large numbers of bots. (3). Hold AI owners, managers, and developers accountable, always providing benefits to those using human labor. (4). Always prepare a mechanism to stop malfunctioning AI.*

We ask ourselves the question*: What will be the sectors of activity eligible for positions and economic functions occupied by people?*

We ask ourselves the question*: What will be the selection and financing criteria for these costs now included in the state budget?*

As I stated, the structure of enterprises is fundamentally changing. From *"companies with hundreds of employees"* contributing to the turnover and related profit, we reach *"companies without employees",* but with digital technology and "complex and complete robotics", which will generate a very high productivity with financial values of exponentially large profits. This profit made without costs, will be recorded in the charge of several entrepreneurs who founded the company, associates or shareholders, as the case may be. Only these taxes remain to be directed to the state budget, without contributions to the pension and social insurance or health budgets.

For the last 30 years, economics professionals, fascinated by their own models of mathematical statistics and solving an equation in economics that positions the value of production, trade, sales in relation to the population, have had before them the prioritization of economic growth and profit. In this value judgment, the human definition of citizen did not matter. In the analysis of the citizen, economists and political decision-makers found the solution of compensatory social payments for the population not integrated into work. Thus, deprofessionalization and the abandonment of work began.

These are elements that can be a starting point for serious debates on the digital economy. Of course, the digital economy has positive, serious effects on the development of society, with a significant impact on our lives. At the same time, the negative effects reverberate on the population. It remains in question to what extent technological progress can be controlled and tempered competing with the social progress of humanity.

We believe that the evolution must be doubled by a system of regulation of the field with well-articulated legislation that will bring rights for the new digital technologies and the digital economy, but also obligations and solutions for the entire society affected by the digital revolution. International law must be affirmed and in this field of the digital economy that is omnipresent in all geographic regions, regardless of political influences.

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THE PRESIDENT OF ROMANIA - THE RELATIONSHIP BETWEEN ELIGIBILITY CONDITIONS AND INCOMPATIBILITIES

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Abstract: *Along with the eligibility conditions, the one who exercises the position of President of Romania is also subject to some incompatibilities. The eligibility conditions are required to be fulfilled on the date of submission of the candidacy, and the states of incompatibility must cease after the elections, until the beginning of the exercise of the mandate.*
Keywords: *President, President, Constitution, Candidacy, Eligibility, Incompatibility, Parliament*

INTRODUCTION

The position of the President of Romania is incompatible with any belonging to a politic party. The position of President of Romania is incompatible with any membership of a political party. At the same time, the President of Romania, during the exercise of his mandate, cannot perform any other public or private function.

The appointment of the President is made by uninominal majority voting in two rounds. In the first round, the candidate who obtained the absolute majority, i.e. at least half plus one of the votes of the voters registered in the electoral lists, is declared elected. If none of the candidates has achieved this majority, the second voting round is organized, between the first two candidates established in the order of the number of votes obtained in the first round, and the candidate who obtained the highest number of votes will be declared elected. So, even only a relative majority.

This system leads to a designation, and if the designation occurs in the first round, the representative character of the presidency is peremptory, imposing that respect based on legitimacy sought through this way of electing the head of state. The opening of the second round, necessary of course after the failure of the first, attracts at least two consequences, not negligible: the first is the postulation of a President as the representative of the nation through the relative majority of its members with the right to decide, which will diminish considerably the moral authority of the President and will be a continuous source of ambiguities and reluctance and the second, the constraining of the electoral body to bipolarization, despite the diversity of aspirations and wills of its members.

1. Eligibility conditions

In principle, access to the position of President of Romania cannot be restricted to any Romanian citizen who enjoys the right to vote and has reached the age of 35, respecting the conditions provided by the Constitution and the law. This universal vocation of the Romanian citizen to accede to the highest position in the state is circumscribed by some eligibility, substantive and formal conditions, which must be fulfilled at the time of submitting the candidacy.

1.1. Background conditions

1. to be a Romanian citizen

According to Law no. 21/1991, any person can also hold a citizenship other than the Romanian one, so we can ask ourselves if the one who has several citizenships is entitled to run for the position of President. The text of article 16 of the fundamental law gives us a positive answer to the question raised, since public, civil and military positions and dignities can be occupied by persons who have Romanian citizenship and domicile in the country.

The nuance of the terminology on public functions and dignities is explained by the legislator's intention to determine as precisely as possible the scope of applicability of the principle. Thus, the mission of deputy, senator, head of state, minister is, however, something else than a public office, both in terms of occupation, as well as in terms of the size of the attributions and, of course, in terms of termination. For constitutional law, such a distinction is not purely terminological, but substantive, because dignitaries are not simple civil servants.

Public dignity is par excellence a category of constitutional law, this main branch of law that is individualized in the entire legal system not only by its regulatory object, but also by the specifics of the notions and legal categories with which it operates. Without proceeding to rigid delimitations, we find that public functions and dignities are indisputably connected, but without being confused.

The condition imposed to have Romanian citizenship must be correlated with the provisions of the Romanian law that allows dual citizenship.

The amendment brought by the Constitution revision law is of major importance. In the old version, the text allowed access to public positions and dignities to those who only had Romanian citizenship. Considering the reality of Romania's integration into the European Union, it was considered that the prohibition of access to these functions and dignities of Romanian citizens who also have another citizenship is no longer justified.

2. to be a Romanian citizen residing in the country

By virtue of this eligibility condition, the Central Electoral Bureau is obliged not to accept the candidacy of the Romanian citizen domiciled abroad, because Article 16 of the Constitution establishes the obligation of domicile in Romania. Although it has the appearance of an incompatibility, this condition, by reference to Article 37 of the Constitution, represents an eligibility condition.

The condition of domicile in the territory of the country is a natural condition. It is practiced in most constitutional systems, the domicile being, along with citizenship, a guarantee of personal attachment to the country in whose governance the candidate wishes to participate.

An addition, with deep legal significance, was brought on the occasion of the revision of the Constitution. Thus, a new sentence was added to paragraph 3 in the sense that the Romanian state guarantees equal opportunities between women and men for the occupation of public, civil and military positions. This is how part of the evolution of the principle of equality is expressed at the constitutional level. The legislator will have to identify the most suitable legal formulas so that this text does not remain only at the declarative level (Ioan Muraru, op. cit., page 23).

3. to be a Romanian citizen who benefits from the right to vote

Regardless of the age at which he is running, the Romanian citizen who wants to access the supreme office in the state must benefit from the right to vote, i.e. not be prohibited from exercising it, either as a result of a judicial decision to place it under prohibition, or of a definitive criminal conviction to the complementary penalty of the prohibition of the exercise of electoral rights.

4. to be a Romanian citizen who has reached the age of 35

The Central Electoral Bureau is empowered to refuse the candidacy of persons who have not reached the age of 35 or who do not reach this age by the day of the elections.

5. not to have already fulfilled, twice, the position of President of Romania

This condition is intended to stop any tendency of people to take over the supreme magistracy in the state for life or to allow the accumulation of dictatorial tendencies in the exercise of the position. According to Article 10 of Law 370/2004, persons who have been elected twice as head of state cannot be candidates (Article 10 of Law 370/2004).

The text deviates from the constitutional provisions by the fact that the prohibition is aimed at the fulfillment of at most two mandates. But, the text of the law refers to the election, which can only be prior to the exercise of the mandate. There is thus the possibility that a person was elected twice, but did not fulfill two mandates; this situation can occur if, after the confirmation of the results of the election by the Constitutional Court and until the exercise of the mandate, the elected person resigns or refuses to take the oath prescribed by the Constitution.

6. not to be prohibited from joining political parties

The Central Electoral Office will reject the candidacy of people who cannot be part of political parties, either by virtue of Article 40 of the Constitution, or by virtue of organic laws, which regulate the status of certain legal categories: the Court of Accounts, the Statute of civil servants, the Legislative Council.

This last condition must be interpreted in the sense that, if the candidate is part of a category indicated in the fundamental law, he must renounce the quality that constitutes an impediment to candidacy. The motivation of the constitutional text is relatively obvious and relates to the need to have free and fair elections.

Given that the listed are constitutional conditions of eligibility, their fulfillment must be verified very carefully, starting from the proposal and registration of candidacies in the elections. Any disregard of these conditions leads to the nullity of the election, therefore the registration of candidacies must be done only with careful verification of the fulfillment of the legal conditions.

1.2. Form conditions

Some of these formal conditions can be considered as preselection criteria for potential candidates, contrary to the democratic principle of general vocation to this position. However, they are necessary. This is the only way to observe the real meaning of elections, which are not a pretext for communicating opinions, but a means of appointment to elective positions. Only in this way can numerous, improvised and fanciful candidacies be prevented, as well as the danger of distortion and devaluation of the presidential campaign.

1. submission of candidacy by a political party or by a political formation registered in the elections

Political parties can propose alone or together with others a candidate for the supreme office in the state. In order to make political parties have a clear choice regarding the candidate they support in the elections, the law prohibits any political party from proposing more than one candidate in the elections. This condition is valid both when a party proposes a candidate in the elections by itself, and when it proposes together with other parties such a candidate. The mixed solution, to propose several candidates, is not allowed by law.

Candidate proposals for the election of the President of Romania are submitted to the Central Electoral Bureau, at the latest 30 days before the date of the elections.

Proposals are made in writing and will only be accepted if:

a) are signed by the leadership of the party or the political alliance or their leaders, who proposed the candidate or, as the case may be, by the independent candidate;

b) include the first name and surname, place and date of birth, marital status, residence, studies, occupation and profession of the candidate and the specification that he meets the conditions provided by law to be a candidate;

c) are accompanied by the declaration of acceptance of the candidacy, written, signed and dated by the candidate, by the declaration of assets, by an authentic declaration, on one's own responsibility, according to the criminal law, regarding membership or non-belonging as an agent or collaborator of the security bodies, as political police, as well as the list or lists of supporters, whose number cannot be less than 200,000 voters.

The list of supporters is a public act, under the sanction provided by art. 292 of the Criminal Code. The list or lists of supporters must include the date of the elections, the first and last name of the candidate, as well as the first and last name, date of birth, address, name, series and number of the identity document and the signature of the voters who support the candidacy. At the end of the list, the person who drew it up is obliged to make a declaration on his own responsibility to attest to the veracity of the supporters' signatures.

The candidacy proposal is submitted and registered at the Central Electoral Office in 4 copies, one original copy and 3 copies. The original copy and a copy are kept at the Central Electoral Bureau, another copy is forwarded to the Constitutional Court, and one, certified by the president of the Central Electoral Bureau, is returned to the applicant.

The Central Electoral Office brings to public knowledge, through the press, and displays, at its headquarters, the candidate proposals it has received, within 24 hours of registration. Up to 20 days before the date of the elections, the candidate, political parties, political alliances and citizens can challenge the registration or non-registration of the candidacy. The appeal is submitted to the Central Electoral Bureau, which forwards it together with the candidacy file, within 24 hours, to the Constitutional Court for resolution.

The Constitutional Court resolves the appeal within 48 hours of registration. The solution is final and is published in the Official Gazette of Romania, Part I. The day after the expiry of the deadline for resolving appeals, the Central Electoral Bureau communicates the final registered candidates to the constituency electoral offices, in the order in which they were submitted.

2. the declaration of acceptance of the candidacy - must be accompanied by the declaration of wealth, by an authentic declaration, on one's own responsibility, according to the criminal law, regarding the membership or non-membership as an agent or collaborator of the security bodies, as the political police.

2. The ratio between eligibility conditions and incompatibilities

The provisions of the 84th Article of the Constitution have a double importance. The first situation refers to citizens who are in a state of incompatibility with the exercise of the position of President of Romania and who candidate for it. The second situation concerns the incumbent President, who is running for a second term.

In the first situation there can be people who occupy, by the virtue of their political affiliation, different public positions in the state: president of the Chamber of Deputies, of the Senate, prime minister. These persons, by the nature of the function they exercise, can create inequalities between the candidates in the elections, either through the demagogic and populist measures that they can influence, or through preferential access to the mass media communication or other means of propaganda. Juridically, nothing prevents these people from applying for such a position, being known that in the public law any limitation of exercising a fundamental right can only be the work of the law. On the other hand, from a moral and political point of view, ceasing to exercise a public function, during the electoral campaign, represents a solution that places the candidate above any doubts.

The second situation, which concerns the double candidacy, presidential and parliamentary, no constitutional or legal text prevents this. In the electoral practice until now, this procedure has been used. This double candidacy can only be used if the presidential and parliamentary elections are concurrent. If the parliamentary elections take place before the presidential elections, the President of Romania can run for the parliamentary elections. In all cases, after the elections, the President must resign from the position that he has because it is inadmissible to cumulate the mandate of President of Romania with the mandate of deputy or senator. These possible controversies were solved by Law no. 373/2004, which provides in art. 5 that the incumbent President of Romania, on the date of the election of the Chamber of Deputies and the Senate, if he is in the last 3 months of his mandate, can run as an independent candidate on the lists of a political party, political or electoral alliance to obtain a deputy or senator mandate. If he is elected as deputy or senator, the President of Romania is obliged, after validation, to choose between being a deputy, a senator or being a president (Law 373 of 2004).

The independent candidate, registered on the list of a political party, is considered in a doctrinal opinion as being "bizarre or electoral fraud" (Ioan Deleanu, quoted work., page 297). This possibility inserted in the legal text was contested at the Constitutional Court (Decision no. 339 from September 17, 2004).

In essence, the critique of unconstitutionality formulated by the 51 deputies regarding the provisions of article 5 paragraph 7 of the Law for the election of the Chamber of Deputies and the Senate consists in the assertion that, under the conditions in which the President of Romania can run as an independent candidate on the lists of a political party, political alliance or an electoral alliance in order to obtain a deputy or senator mandate, "cannot maintain the neutrality and equidistance" necessary "to fulfil its constitutional responsibility of mediating between the state powers, between these ones and society ".

It was also argued that as a candidate on the list of a political party, even as an "independent", The President of Romania will be involved in part, will be identified with the party on whose lists he is running, with the doctrine, the political and electoral program, with the message and the political-public action of that party, with his election campaign actions". At the same time, the authors of the notice of unconstitutionality, in conjunctions with the provisions of art. 84 paragraph 1 of the revised Constitution, regarding the incompatibility between the function of President of Romania and quality of being a member of a political party, with the provisions of art. 37 paragraph 1 and art. 40 paragraph 3 claimed that the President "is restricted - by virtue of this function – also the right to be elected on the list of a political party".

In our opinion, examining the text of the law criticized, by reference to the provisions of the Constitution invoked by the authors of the notification as being violated, there is no incompatibility between these.

The constitutional provisions invoked by the authors of the exception do not prohibit, neither explicitly nor implicitly, the possibility that the incumbent President of Romania, on the date of the election of the Chamber of Deputies and the Senate, if he is in the last 3 months of his mandate, to run as an independent candidate on the lists of a political party, of a political or an electoral alliance for a deputy or senator mandate.

The problem that is being raised is whether, under the terms of the criticized law, the President of Romania has the right to be elected or not, as provided by art. 37 of the revised Constitution. One of the conditions provided by Article 37 paragraph 1 of the Constitution, republished, for the fundamental right to be elected, is correlated with the right of association. From the corroboration of the provisions of art.37 paragraph 1 and of art.40 paragraph 3 of the Constitution, republished, it is clear that the right to be elected is forbidden to the judges of the Constitutional Court, to the Ombudsmen, magistrates, active members of the army, policemen and other civil servants established by organic law, who may not be part of political parties.

It was found that the President of Romania is not provided between the categories of citizens, established limitatively by the two constitutional texts, which are forbidden the fundamental right to be elected, although, during his term of office, he cannot be a member of a party (Constitution of Romania, art.84 paragraph.1)

By virtue of the principle that the exceptions are of strict interpretation, it cannot be considered that the situation provided for in Article 84 paragraph 1 of the Constitution which establishes a temporary political incompatibility for the President of Romania, could, in the absence of a constitutional provision, to have the consequence of banning the right to be elected for the President of Romania, given that he does not become a member of a political party.

Only by a forced interpretation - by adding to the constitutional norms -the situation stipulated in the text of the criticized law could be converted into the incompatibility provided by art.84 paragraph 1 and in the prohibition of the right to be elected established by art.37 paragraph 1 corroborated with art.40 paragraph 3 of the revised Constitution, as stated in the complaint of unconstitutionality. Such an interpretation, which would disguise a genuine creation of a constitutional norm, is contrary to the principle of supremacy of the Constitution, provided by Article 1 paragraph 5 of the Fundamental Law, as well as the constitutional and legal status of the Court, which prohibits him from being a positive legislator.

Moreover, the invoked text of Article 80 paragraph 2 of the revised Constitution, does not have the content shown by the authors of the complaint, only partially, and does not concern relations between the President and political parties. In reality, the text refers only to the role of the President of Romania within the state. The question of how the President exercises this role is related to the extent to which the President fulfils his obligations, the ethics of exercising the presidential mandate, which, in case it is seriously violated, entails the constitutional responsibility of the holder of this mandate.

The issue raised by the authors of the complaint could also be raised regarding the situation in which the President of Romania would run for a second successive term, as provided in Article 81 paragraph 4 Of the revised Constitution. However, it cannot be conceived to prohibit the President from running for office on the lists of a political party, political alliance or electoral alliances for the second successive term of office, whereas, thus, the text in question would become inapplicable, devoid of content. The Constitutional Court found that the provisions of Article 5 paragraph 7 of the Law on the election of the Chamber of Deputies and the Senate do not contradict the provisions of the Constitution and rejected the exception of unconstitutionality.

CONCLUSIONS

The Constitutional Court is forbidden, in its capacity as guarantor of the supremacy of the Constitution, provided by art.142 paragraph 1 of the revised Constitution and according to the provisions of art.2 of its organic law (Law no. 47 / 1992), in the exercise of constitutionality control, to amend or supplement the provisions subject to control. Moreover, the Court is forbidden to proceed, even by a necessary act of interpretation, to the modification and completion of constitutional provisions, operations subject exclusively to the strictly regulated regime of constitutional review.

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EUROPEAN UNION AND EUROPEAN IDENTITY. THEORETICAL APPROACHES IN JURIDICAL LOGIC

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Abstract: *In today's discourse, the concept of identity is profoundly contested, traversing socio-political movements like Black Lives Matter to intricate international law scenarios, such as Ukraine's identity contested by the Russian Federation. Central to these discussions is Europe, particularly post the 2016 Brexit referendum, which initiated a deep reflection on Europe's and the European Union's (EU) core identities. The myriad, spontaneous debates coalesce into a formidable challenge regarding European identity. A generic approach to this identity conundrum is to reference the values articulated in Article 2 of the Treaty on EU. However, this comes with complications. First, the current identity debate emerged precisely within the ambit of Article 2. Secondly, referencing David Hume's philosophical distinction, it is crucial to differentiate between the normative aspirations in European law ("what ought to be") and the prevailing reality ("what is"). Given the increasing discussions on identity, it is essential to bypass simplistic explanations and delve deeper. The pivotal questions surrounding Europe, its inherent identity, and the very essence of the EU might require an alternative analytical lens. This article intends to embark on a journey reflecting on European identity with a nuanced perspective from juridical logic, aiming to move beyond commonplace interpretations.*

Keywords: *principle of identity, European identity, EU identity, European law, juridical logic, Brexit, becoming European.*

1 INTRODUCTION

When delving into a concept as intricate as European identity, it becomes imperative to root our analysis in what identity is, beginning from overarching and firm fundaments that set the very preconditions for thought. Thus, if we are to think the problem of European identity, we must first address the issue of identity from its most secure grounds. Since logic is often conceptualized as a form of meta-cognition - essentially, "thinking about thinking" (Codrea, 2023, p. 11), the foundational principles of logic serve as the most expansive guidelines that direct the process of thought, irrespective of its specific content. These principles are intricately woven into the syntax of both cognitive processes and linguistic expression, forming the paramount framework that determines validity.

The principle of identity implies that in the same time and under the same relation, any logical form (notion, logical proposition, inference) within an act of thought and any object of thought are identical to themselves: A is A.

Aristotle is the one who firstly characterized identity as such: “The word Similar, Identical, is used firstly in a casual, fortuitous sense (…) Besides the Similar, the casual Identical, there is the Identical in itself, which is used in as many senses as One in itself has. Because Identical in itself is said about things whose material is one, either as a species, or as a number and also about things whose substance is one. From here, it clearly derives that

identity is a sort of unity, a unity of existence of a plurality of that which results from considering many things as one, like when we say that a thing is identical to itself, in which case the same thing is considered as two things. (…) Because the contingencies of one thing must be the contingencies of the other." (Aristotel, 1963, Organon IV, VII. 2, 152a); "Or, to search why a thing is itself means not searching for anything, because it is necessary that the existence itself of a thing to be self-evident. But the fact that a thing is itself is a matter of a singular reason and a singular cause for everything else." (Aristotel, 2021, VII, 1041a, p. 305)

Gottfried Wilhelm von Leibniz is the one who phrased the principle of identity in a clear manner: "The primitive truths of reason are those which I call by the general name of identical, because they seem only to repeat the same thing without giving us any information. They are affirmative or negative. The affirmative are such as the following: Each thing is what it is, and in as many examples as you please, A is A, B is B. I shall be what I shall be. I have written what I have written. And nothing in verse as in prose, is to be nothing or a trifle. The equilateral rectangle is a rectangle. The rational animal is always an animal. And in the hypothetical: If the regular figure of four sides is an equilateral rectangle, this figure is a rectangle. Copulatives, disjunctives, and other propositions are also susceptible of this identicism, and I reckon indeed among the affirmatives: non-A is non-A. And this hypothetical: if A is non-B, it follows that A is non-B. Again, if non-A is BC, it follows that non-A is BC. If a figure having no obtuse angle mail be a regular triangle, a figure having no obtuse angle may be regular." (Leibniz, 1916, pp. 404-405)

From a syntactical perspective, the principle of identity postulates that for logical reasoning to be considered valid, it must engage solely with rigorously defined concepts. This sentiment finds resonance in Aristotle's observation: "it is impossible to think if you are not thinking of a certain thing. Therefore, a word has to have a meaning, and a strict one." This necessitates that such concepts maintain a consistent alignment with tangible entities in the empirical world. On a semantic plane, the principle of identity mandates that when a logical proposition is affirmed as true, a direct correspondence must be established between the declaration and its representation in reality. In ontological terms, this principle emphasizes the intrinsic self-consistency of an entity, suggesting that an object is invariably equivalent to itself, and if it exhibits a specified characteristic, then it undeniably possesses that characteristic. (Codrea, 2023, pp. 42-43)

But the identity principle, a fundamental pillar of logic, a pillar for thinking itself, already anticipates in its explanations certain difficulties, more in Aristotle than in Leibniz: it implies immobility, because that which belongs to an ever changing reality and is caught in thinking must not change. If that immobility is an actual impossibility, identity is restricted to mere truisms or tautologies which do not say anything about reality since we left out the changes, modifications, transformations. If we accept an ever changing reality, the consequence is *res de re non predicatur*: there is nothing we can say about things in reality.

However, if affirming identity, A is A, does not express properties of things in reality, nor affirming something about existence, nor the identification process, then it must indicate a sort of resistance: there is a something about the object in reality which we think about, which has a core that exists in spite of the ever changing reality of contingencies, incidents, accidents. Identity therefore presupposes selection and fixation: A is A, not in the sense that A exists, but in the sense that A still is, A remains as A and not something else, in spite of A

changing. (Botezatu, 1997, pp. 28-29) We can easily substitute here the object of thinking, A, with Europe or EU.

Nevertheless, in logic itself the principle of identity encountered many issues: for example the logician Soul Kripke, who elaborated in 1960 the non-classical logic of relational or frame semantics, states that 'The fact that a certain object has a specific property, necessarily or contigently, depends entirely on the manner in which it is described. If an object has the same property in all possible worlds it depends not only of the object itself, but also of the way in which is described. A possible world is given by the descriptive conditions which we associate with it." (Kripke, 2021, pp. 55-56). "Indeed, the necessary and sufficient conditions for identity in order for it to not become circular are very rare in each case. To be honest, mathematics is the only case that I know in which these conditions are given even within a possible world. I do not know other conditions for the identity of any other objects in reality – be it material or human beings". (Kripke, 2021, pp. 58-59)

So we wanted to make sure we start approaching the problem of identity from the most secure grounds, from logic itself, and from one of its broadest and firm principles, the one of identity, and we ended up in a web of issues such as change, core or essence as a fixation and resistance in time in spite of becoming, and not ontological objects that simply exist but linguistic means through which such objects receive, are given, are attributed identity through descriptions.

2 The Ship of Theseus, Leibniz, Hobbes and Alan Gilbert's contingent identity

The Ship of Theseus, rooted in Greek mythology, provides a profound contemplative backdrop against which we can explore issues related to identity and continuity over time. Theseus, the legendary Greek king and founder of Athens, is renowned for his daring escapade where he saved Athenian youth from the clutches of King Minos, subsequently retreating on a ship to Delos.

Plutarch, the renowned ancient historian, offers a detailed account of this ship's subsequent fate: "The ship wherein Theseus and the youth of Athens returned from Crete had thirty oars, and was preserved by the Athenians down even to the time of Demetrius Phalereus, for they took away the old planks as they decayed, putting in new and stronger timber in their places, insomuch that this ship became a standing example among the philosophers, for the logical question of things that grow; one side holding that the ship remained the same, and the other contending that it was not the same." (Plutarch, 1960, 23.1)

This narrative subsequently evolved into a philosophical conundrum. As the Athenians replaced the deteriorating wooden parts of the ship with new timber, it raised an intricate question about identity and persistence: Does an object retain its original identity if its constituent components are replaced over time? The Ship of Theseus, as noted by Plutarch, became emblematic of this debate, with philosophers divided — one camp asserting that despite the replacements, the ship's identity remained intact, while the other argued that it had transformed into something fundamentally different. This ancient thought experiment continues to fuel modern discussions on the philosophy of identity and the nature of objects in flux.

Plutarch underlines here the problem of identity as the relation that a thing bears only to itself in the context that things change in time. If we transpose this form to the problem of

identity of Europe and of the EU we can see there are several political organizations which include the word `European`: The Organization for European Economic Co-operation founded in 1948 and which became in 1961 by the Organization for Economic Co-operation and Development, currently with 38 states, The Council of Europe, founded in 1949 currently with 46 states, The Organization for Security and Co-operation in Europe currently with 57 states, The European Free Trade Association, founded in the 1960 currently with 4 states.

All of these international political organizations include some of the European states but not all, and also states from other continents. Are these organizations European and if so, what makes them European? If they are as such, in what sense are they European? Is it the name they give themselves, is it the member states they include, is there something else?

We can look further at the beginning of post-war European construction: European Coal and Steel Community, founded in 1952 with 6 states, European Economic Community and European Atomic Energy Community (Euratom) founded in 1958 and all the political changes that came through treaties such as the 1986 Single European Act, the 1985 Schengen Agreement and 1990 Convention Implementing the Schengen Agreement. In what sense are these European?

We can even look closer and more focused on the EU at the gradual enlargement of the European communities and the subsequent integration of more and more states and even at the 2020 Brexit: was the EU of the 1992 Maastricht Treaty less European than the EU revised by treaties such as the 1997 Amsterdam Treaty, the 2001 Nice Treaty or the 2007 Lisbon Treaty? But can we speak of the same EU in this whole process? So there are three questions regarding identity in front of this avalanche of political and legal changes:

1. What is Europe? – meaning What is the identity of Europe?
2. What is it that is European? – meaning What are those properties that make Europe what it is?
3. What is the identity of EU?

In this puzzle, Leibniz might help with his “principium identitatis indiscernibilium”, the principle of the identity of indiscernibles, which states that “things qualitatively undistinguishable are absolutely identical” (Leibniz, 1916, p. 332) meaning that any two things are identical if they share all of the same properties. Applied to the Ship of Theseus, the solution is this: at the very moment the first plank was replaced it was not the same ship anymore. If the parts were not all original, with each new plank, the ship acquired a new property and as such, a new identity. Therefore, if we follow Leibniz, there is no such thing as a single Europe, neither in history nor in the present. It is logical impossibility, because Europe as broadly as we might define it – in cultural terms – is ever changing, it is just like the Ship of Theseus with its parts always changing. It also implies that there is no single European identity from the proposal of Robert Schuman of founding the European Coal and Steel Community to the current EU. Each step in the post-war European construction implied a series of discrete, separate identities, since not only the parts of these European Communities changed, more states joining them, but these Communities themselves have different goals, scopes and institutions.

Even closer in time, the EU of the 1992 Maastricht Treaty is different from the EU of the 1997 Amsterdam Treaty, the 2001 Nice Treaty or the 2007 Lisbon Treaty not only because it does not include all the original states, since the integration of new member states

continued and is still a political goal, but even the institutions themselves have changed. More recently, the EU after the 2020 Brexit is not the same as EU with United Kingdom (UK) as a member, it does not have the same identity. Let us complicate things even further, and assume the position of Thomas Hobbes: what if all the old replaced planks of the Ship of Theseus would be recovered and used to build a ship similar to the Ship of Theseus which now has all the planks replaced. Would we then have two identical ships? (Gallois, 2016, p.29) This would translate in a general dissolution of the current EU on the Brexit model, and a re-configuration of the same European states in an exact similar EU. But would it be the same? The answer is no: these political entities, no matter how similar they seem, do not share the same identity. So if we follow Hobbes and Leibniz and their perspectives on identity we might have to ask if there is a limit to how much something can change and not lose its identity.

A thought experiment proposed by Alan Gibbert delves into the perplexing interrelationship between similarities and its implications for identity, offering illuminating perspectives for an aspirational trajectory of European integration. (Inman, 2018, pp. 351-366) Envision a scenario wherein a sculptor procures a mass of clay, nominally designated as 'Europe'. From this substrate, a statue is carved, christened as the 'European Union'. This raises the salient question: Are the constructs of 'Europe' and 'European Union' congruent in essence? At a prima facie level, one might posit an affirmative, grounded in their shared material composition. Despite overt transformations, the clay invariably informs the entirety of the statue, and no fragment of the statue stands devoid of this clay. This engenders a concept of "contingent identity". (Jubien, 1993, pp. 37-40) Drawing a parallel, it suggests that the EU is wholly enveloped by Europe, with no constituent element of Europe existing beyond the purview of the EU. However, a potential deconstruction of the statue, regressing it to its elemental clay, results in the cessation of the statue's existence, contingent on its delineated form, symbolic of the 'European Union'. Conversely, the malleable essence of 'Europe', unshackled by formative constraints, persists. While in an idealized context the clay and statue might be construed as identical, given their shared material essence albeit with different forms, their identity is challenged by the potential non-coexistence of one in the absence of the other. Applying this conceptual framework to the European paradigm, while it may be accurate to state that the EU is integrally European, the claim that Europe is entirely encapsulated by the EU is not wholly accurate in contemporary contexts. This viewpoint is further corroborated by Article 49 of the Treaty on the EU, which underscores the potential for the Union's continued enlargement. This article stands as testament to the distinction between the geographical and cultural entity of Europe and the political structure of the EU, indicating that Europe's identity is not solely defined by its Union membership.

3 The problem of fungibility and European implications of Brexit

A way to avoid the uncomfortable solution of Leibniz is to explain how identity endures over time, because, as stated before, since everything changes, just like the Ship of Theseus, objects might eventually stop being what they are and become something else. Logically, we have to make a distinction between essential and accidental properties. Essential properties are the core elements necessary for something to be that thing that it is, while accidental properties are those elements that can change, appear or disappear without

making it a different thing. That which makes Europe unique constituting its core, its identity are essential properties we can call "European", and we can separate these from all the other properties Europe has, which change in time and are accidental. However, is this separation even possible? If so, is it a neutral act? Would it not have inevitable political consequences of excluding those who do not possess the "European" properties strictly defined at a specific moment in time?

If we look at the EU, there must be something that endures in time in this political project. At this point we can ask a thorny question: if we think of 2020 Brexit – is/was the United Kingdom (UK) essential or accidental for EU? If we look in the history of European construction, through all the integration waves of different states, those states were accidents before being integrated and became essential to the EU identity once they became members? It is not self-evident at all what exactly is an accidental property and what is an essential one and it is not at all self-evident at all when exactly in the process a property becomes accidental or essential and thus, the more something changes the more difficult becomes the task of establishing its identity.

We can agree that something stops being the same when it loses its essential property, but when exactly does that happen is a matter of perspective. When it comes to defining the identity of Europe cultural anthropology generally indicates the broad frames identified by Paul Valery: Greek thinking, Roman law and Christianity as essential properties, as fundamental European (Valery, 1919, p. 321-337). But all these core properties are subjected themselves to change, they are all extensive processes of cultural transformation, they constantly become and in this process of becoming they also detached from territory. We can just take for example Christianity: it is precisely Christianity as a cultural process that allowed for a general secularization and opened up the cultural process of Modernity. The same happens with all these European traits – they allow for a counter-reaction against themselves, they interact with each other, they become something different in very unpredictable ways, making it impossible to pin down to a specific trait. It was the task of an antiquated cultural anthropology, particularly evolutionist, starting from Enlightenment to the early 20th century, to identify an 'Other', to construct 'Otherness' in order to coagulate a fixed European identity (Codrea, 2013, pp. 73-76). This essentialist approach is made obsolete by the very process of European integration allowed by Article 49 of the Treaty on EU, which implies precisely this: there is no definite, homogeneous delimited Otherness, but differences within a shared European identity. Therefore, a culture can become in order to integrate the values in Article 2 of the Treaty on EU and meet the other criteria, and so does EU in order to integrate that culture. This does not make volatile, but rather sets in a flux, in a constant dynamic the very notion of identity of Europe. The fundamental consequence is that the identity of Europe is becoming itself: however paradoxically it may appear, Europe is becoming Europe, since what it is that makes Europe unique, that which is European, is also constantly becoming. In this sense which does not settle for an easy, essentialist answer with a fixed set of properties which could very well be found or agreed upon and would sacrifice transformation in order to have a static identity, we all are, from individuals to states and the EU itself, becoming-European.

However, in all the broad traditions of European thinking there is a strand which rejects the very idea of essential property: from Heraclitus to existentialists in continental

thinking, to later Ludwig Wittgenstein in Philosophical investigations in the analytical tradition, and Richard Rorty in the pragmatic tradition. Heraclitus was the first who formulated this idea with a major impact on European thought and thinkers like Friedrich Nietzsche, Martin Heidegger, Georges Bataille, Michel Foucault, Gilles Deleuze, Jacques Derrida and the postmodern thinking in general: "you cannot step in the same river twice", meaning that nothing is identical to itself because both you and the river are in constant change. (Drozdek, 2020, pp. 27-43) Back to the Ship of Theseus: it was not the same not only when it arrived with all its original parts changed, but it was not identical from the very first time anything about it changed. So is it important if identity endures over time, does it even make sense to speak of identity if it is not resistant to time? Why is it so relevant if things endure? Well, it is if you want to know if you are in time, within a personal or collective history, the same you think you are. However, thinking you are identical and actually being the same are different things.

In the realm of political architecture, the notion of a consistent and enduring identity holds paramount significance. Within the framework of European private law, there is the compelling concept of "fungibility," defined as the quality of being interchangeable among objects of similar classification. To elucidate, currency within this legal paradigm exemplifies "fungibility"; it is perceived not in terms of its tangible manifestation but rather the abstract "value" it symbolizes. When entities are esteemed based on their distinct characteristics, they depart from this "fungible", replaceable status. (Beaudreau, 2006, pp. 205-223)

The edifice of the EU is constructed upon the foundational principle of the "non-fungibility" of the identities of its member states. Consider a hypothesis wherein, upon its departure from the EU, the UK is substituted by a different state. Even if this hypothetical arrangement adheres to legal stipulations and secures the endorsement of member states, it would precipitate a transformative shift in the EU's composite identity. It is precisely the inherent "non-fungibility" of each member state that permits the EU to resonate with its emblematic credo of "unity in diversity" as opposed to a mere doctrine of interchangeability.

When evaluating the UK solely from an economic perspective, especially within the confines of the European market, its characteristic of "fungibility" becomes evident. This suggests that, in the economic realm, the UK's value and role can be interchangeably utilized or substituted with other entities, underlining the commoditized nature of nations within the integrated market system. The notion of "fungibility" underscores the fluidity and versatility of economic relations, where national distinctions may become secondary to economic functionalities. It is within this analytical context that I postulate the UK's interpretive misstep in relation to the EU: the UK anchored its intrinsic, "non-fungible" identity upon predominantly "fungible" economic paradigms. While the embryonic stages of European integration, as envisaged by luminaries like Schuman and Monnet, were rooted in economic collaboration, they strategically circumvented the quagmire of identity discourse, especially given the post-war European milieu where identity bore politically volatile undertones. Indeed, the deepening of economic ties across European nations fostered the emergence of a shared European identity, anchored in the transformative journey of "becoming European." The tumultuous events and shifting alliances of the 20th century made it untenable for any single state to claim an unchallenged, politically neutral primacy over this evolving identity. Instead, the collective experiences, challenges, and aspirations of the continent have shaped a

composite identity that transcends nationalistic bounds, reflecting a shared European destiny.

Therefore, the regression of UK on a static identity paradoxically grounded on "fungibility as a non-fungible trait" was possible only through a fallacious populist rhetoric: the Ship of Theseus is the same with all the planks replaced.

4 The Lacanian „stade du miroir" and its implications on European identity

Going to the level of perception of individuals, groups, member states, of EU itself and of Europe as a whole, the identity problem becomes even more complex. The same three questions have to be rephrased:

1. What is Europe? – meaning What is perceived to be the identity of Europe?

2. What is it that is European – meaning What are those properties that are perceived to make Europe what it is?

3. What is the identity of EU – meaning what is it perceived as the identity of EU?

There is this very interesting notion in Lacanian psychoanalysis called "stade du miroir" (looking-glass phase) which may prove useful in trying to answer these questions reconceptualised from the level of perception. Jacques Lacan noticed that newborns do not have any perception of themselves as a whole. It is not an ontological problem, it is not a question regarding the existence of the child, because she/he is, exists, just like Europe or EU, but a matter of perception. She/he sees only uncoordinated fragments of her/himself, parts of his legs, toes, hands, palms, fingers, and internally perceives only the motion of body parts as autonomous. So the conscience of the unity of all the uncoordinated movement of his body parts, the image of the self as a whole, as an unity of all that autonomous fragments comes not from within, but from the outside: in the moment when for the very first the time the child sees the reflection of herself in the mirror. This moment generates a conflict between the perception of the fragmentary body and the unity that is reflected, which the child resolves by accepting the unifying image of the self. (Diatkine, 2002, pp. 19-20). It is the external reflection in the mirror that unifies all the internal fragmentary subjective perceptions and offers, from the outside, the possibility of the internal perception of identity, of self, which is then gradually internalized and adopted as the identity of the self. For Lacan, this phase of the mirror is essential for the constitution of self-identity through identification. However, it generates two consequences: on the one hand, the mirror shows both the future of a possible unifying coordination of what was perceived as autonomous and fragmentary, but on the other hand, it is also the moment when the subject becomes alienated from herself by gaining an awareness on the fact that the fragmentary, conflicting identity held before was the product of "méconnaissance", ignorance. (Evans, 2005, pp. 272-274)

The perception of the identity of Europe and EU can be approached in a similar way. Looking from space to Earth, we can identify this sub-continent as a territory we discover it is called Europe. We can see that all the international organizations which have `Europe` or `European` in their names cover this territory. We can also see that geographically, the territories of these organizations do not overlap. So we can observe there is not a fixed limit to what is called Europe. If we cannot see a limit, this does not mean limits do not exist: they are established by international law and in the founding treaties of each organization: by law, the limits of `Europe`, and `European` as a property, lie at the borders of the most extremely geographically located member state of each international organization. So there are

fragments overlapping in what we call `Europe`, autonomous entities or loosely coordinated organizations which do not offer the perspective of a whole, but a distinct approach on what Europe is. If we look for a mirror at this point, it is easy to find in the history of Europe: Goethe, Leibniz, Nietzsche etc. spoke of the identity of Europe long before any internal conscience existed at the level of either states or individuals. If we are to narrow our post-war European identity reflected later by the pioneers of EU, those who held the mirror were Aristide Briand, who was the first who elaborated in 1929 an official project of a federal EU proposed at the League of Nations, in 1946 Winston Churchill who advanced the proposal to establish the United States of Europe, based on post-war Franco-German reconciliation, Robert Schuman, Jean Monnet, Konrad Adenauer, Paul-Henri Spaak, Alcide De Gasperi, Joseph Bech, Johan Willem Beyen, Sicco Mansholt, Walter Hallstein, Altiero Spinelli who also saw Europe as becoming into a political Union. There are also symbols of EU representing its identity in relation to the identity of Europe: the European flag, the European anthem, the 2004 Treaty establishing a Constitution for Europe which was unratified also due to a semantic confusion and an illogical fixation on static identity, the Charter of Fundamental Rights of the European Union of 7 December 2000, as adapted at Strasbourg on 12 December 2007 and recognized in Article 6 paragraph (1) of the Treaty on EU the same legal value as the treaties, the European citizenship introduced by the 1992 Maastricht Treaty, the Unified European civil code which the European Parliament demanded in 1989, 1994 and 2000 and which started with the Lando Commission elaborating the Principles of European Contract Law (PECL) published in 3 parts, in 1995, 1999 and in 2003, followed by the Common Frame of Reference with the hope that the creation of a unified European contract law would be achieved by 2010.

But just as the mirror is external to the child, so are these reflections of the whole external to the ones that sometimes cannot, fail or refuse to internalize this identity. It is very interesting that none of the pioneers of the EU used a fixed identity for Europe but rather the idea of unity which implies becoming towards the values which ended up fixed by law in Article 2 of the Treaty on EU. They all started from fragments, a torn up post-war Europe, and grounded Europe on becoming and reflected back this identity to what Europe actually was like in reality at that particular time in history. The mirror showed the becoming-European, a process which is still unfolding.

5 Identity as becoming and European law

But what are we to understand from the identity of Europe as becoming-European and how does this interact with law? Going back to logic and what Kripke argued, that ‘The fact that a certain object has a specific property, necessarily or contigently, depends entirely on the manner in which it is described. (…) mathematics is the only case that I know in which these conditions are given even within a possible world. I do not know other conditions for the identity of any other objects in reality – be it material or human beings’ we can agree that the identity of Europe and EU is not mathematics. But if logic encountered these troublesome issues with the very core principle of identity, if logic as thinking about thinking is tangled in this sort of unsettling issues and cannot escape language, even more all of this applies to law.

Law is also part of the linguistic means through which we organize the world: from the most basic norm to the most complex ones. My definition of law here is very simple:

power filtered through text. The power exerted through law has specific attributes, which are very well known in legal scholarship (national, European or international), but it is power nevertheless, and it is always power that fixates identity. In order to establish a political identity, European law needed first to set limits, but the mirror was set on becoming-European so European law had the paradoxical task to fixate and not immobilize: to be flexible and regulate how those limits extend and appropriate that which is external, that which becomes European and is part of Europe changing Europe itself. The proper illustration for the relation between European law and becoming-European as identity is Article 49 of the Consolidated Version of the Treaty of EU which states that: "Any European State which respects the values referred to in Article 2 and is committed to promoting them may apply to become a member of the Union." What does European mean here? It is not related to geography, but to culture, and culture is becoming: Cyprus was unanimously recognized as European, and Turkey also was recognized as such, however, in 1987 the application of Morocco was rejected. Also there is a debate whether some EU member states like Hungary or Poland are in a process of becoming un-European (Bernhard, 2021, pp. 585-587). It is Article 2 that orients becoming-European even among member states, and it is legally possible through the interpretation of this article to admit an identity of Europe in spite of geography: "The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail."

But through power in general, be it by law or not, it is also possible for an identity to be established, fixed, set, in spite of its becoming. This is very obvious in the constitutions of member states which fix an eternal eternity as an offshoot of the legal and political notion of sovereignty. Therefore it is not necessarily that the object in reality has or not a core that resists becoming, it is the other way around: though law, the object in reality has to resist becoming in a certain sense because it was fixed in a given, attributed identity. It is through law that the selection and the fixation takes place and a legal identity is applied to objects in reality such as human beings and groups of people, which, in return, have to be in that way determined by their attributed essence or core, even if they, in reality, are not. If European law allows becoming by its very nature incorporating flexible limits from primary law to its very motto, „unity in diversity", national law cannot help but pose obstacles in order to preserve a fixed identity which constitutes its ontological ground.

The state is bound to territory, hence the importance of the physical geography for the state – borders are the limits which separate one state from another, within the borders there is the essence, the core, the identity of people attributed by the state (Deleuze, Guattari, 2013). It bears no importance if people themselves perceive their own identity as it is attributed through law by the state, because law operates with the normative and not the descriptive: it always prescribes what and how reality should be and not how it is or even in spite of what it actually is. (Kelsen, 2000, pp. 102-105) The very strictly limited legal borders which situate a state on a map, allowing for a specific national identity to be constituted and attributed as different from any other, are physical lines drawn in history in a physical cartography based on a real geography.

However, in now days EU, the notions of geography, cartography and map, even though did not disappear, are detached from the physical, which is not to say that as such they become less real; on the contrary, in a sense, they are more real now than they ever were since they correspond to a reality in a constant flux. In which sense they are more real? In the sense that the free movement, the mobility European law makes possible, turn physical borders into non-physical signs, and as such, they become closer to the ever changing reality we inhabit. The physical does no longer have primacy within the Union: there is no material geography anymore in the foreground other than perhaps aesthetic, but rather a plurality of geographies, and thus, not a single cartography but rather a multitude of cartographies which do not produce a single map but rather multiple maps. The very idea of an internal map of the EU has now days a psychological nature, and as such, it is about internal cartographies and the internal geographies. It is an emotional, affective geography made possible by European Law. For example, psychologically, some Eastern European member states as a psychological reality have collectively as neighbours member states such as Italy, Germany, Spain, France, rather than their actual geographical neighbours. Each European citizen has this very internal geography of Europe which is more real than the actual geography or actual borders drawn on maps.

When it comes to subjects of law as individuals, we speak of identity of persons – established by internal norms and subscribed to the legal notions of citizenship and nationality. But only if we perceive ourselves as belonging to a certain group that perception becomes part of our identity. Otherwise, it is just labels attributed from outside by law. The EU also uses the legal notion of European citizenship, recognized first in the 1992 Maastricht Treaty, with the possibility of the European Court of Justice to provide legal protection to subjects of European law (Banard, Leinarte, 2022, pp. 24-44). This concept of European citizenship is also bound to territory. So there are two complementary legal notions which relate to territory, cartography and maps: national citizenship and European citizenship. From a legal perspective only, the latter implies the first in order to fixate identity: it is through national identity that one is attributed European identity, as it is stated in Article 20 (1) of the Treaty on the Functioning of the European Union. But at the level of perception, it can very well be the other way around as it is often the case: “I am firstly European and only secondly a citizen of the state X”. And if we accept there is no such thing as fixed identity, and thus all personal, national and European identities become, it is not even relevant what that identity is in a specific point in time: you would only use a static image in the process of becoming (Bergson, 1998, p. 251). You can simultaneously have different identities, and not only different, but contradictory as well, since each is coupled with specific roles and occupy specific positions within an internal taxonomy. As Michel Foucault phrased it, “I don't feel that it is necessary to know exactly what I am. The main interest in life and work is to become someone else that you were not in the beginning" (Foucault, 1988, pp. 9-15). So individuals, nations and EU they all become European, and as such, as Friedrich Nietzsche argued, they become precisely what they are (Nietzsche, 2012) and this is only made possible through law, especially Article 2 of the Treaty on EU which speaks of values: Europe is bound to become European through values and not essential cultural properties. Becoming European starts from territory but is nevertheless detached from it since values are not bound to territory: they cross borders and also if they are to fail, they do so between borders.

6 Conclusions

The discourse on European identity and the role of the EU in shaping this identity poses a complex intersection of legal, philosophical, and historical perspectives. At the heart of this discourse lies a foundational query: what signifies the "becoming-European" and how is it entwined with legal stipulations? Juridical logic can help navigate through a labyrinth since identity itself rests heavily on descriptors, casting doubt on concrete definitions of identity for non-mathematical entities like the EU.

Legal constructs, particularly European law, have historically been instrumental in shaping societal norms and identities. Law, as I construe it, is the manifestation of power through textual means and this power both dictates and reflects identity. By defining political boundaries and asserting an ever-evolving European identity, European law acts as an agile tool that acknowledges both rigidity and flexibility. A salient illustration is Article 49 of the Treaty of the EU, which anchors the basis for state membership within the EU on values, not just geographical markers. It underlines the significance of values such as human dignity, democracy, and equality, hinting at a European identity that transcends mere physical boundaries.

Member states, in their essence, are bound to territory, providing a concrete national identity and yet, within the EU, there is a gradual transition from rigid geographical boundaries to a more fluid understanding of space and identity. European citizenship, as postulated in the 1992 Maastricht Treaty, serves as an embodiment of this evolving understanding. The intertwining of national and European citizenships suggests that identity, both at an individual and collective level, is not static but in a state of continuous flux as Michel Foucault emphasized the fluidity of self-identity. Foucault's notion, coupled with Nietzsche's understanding of “becoming”, underscores the dynamic nature of identity – constantly evolving, molded by influences both internal and external.

Conclusively, while definitive answers regarding European and EU identity remain problematic, it is evident that the intricate dynamic between law, culture, and history continuously shapes and reshapes the understanding of 'becoming-European'. The conceptualization of Europe and EU's identity in juridical logic is both complex and elusive, suggesting that it may best be understood through processes, evolving paradigms like "becoming". Yet, to further nuance this intricate discussion, I draw upon Jacques Lacan's reflection: "What I realized in my history is not the past definite of what was, since it is no more, or even the present perfect of what has been in what I am, but the future anterior of what I shall have been for what I am in the process of becoming".

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NAVIGATING THE NTF LANDSCAPE: INTELLECTUAL PROPERTY CHALLENGES AND OPPORTUNITIES

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Abstract: *This article delves into the dynamic realm of Non-Fungible Tokens (NFTs) and the significant ramifications they have on the protection of intellectual property. By analyzing the convergence of non-fungible tokens (NFTs), smart contracts, and blockchain technology, this this article aims to explores the legal ramifications and potential advantages that emerge from the utilization of NFTs for the commercialization and exploitation of intellectual property. The article provides an examination of the legal aspects of NFT transactions, encompassing details such as ownership transfer, copyright, trademark, and patent considerations, in addition to the complexities of minting and ownership transfer. The necessity for precise agreements to delineate the scope of intellectual property rights conveyed is emphasized in the article, which also stresses the significance of transparency, due diligence, and clarity. Moreover, it underscores the convergence of common law principles and NFT transactions, prompting inquiries regarding the conveyance of intellectual property rights and emphasizing the need for exhaustive investigation. In light of the ongoing transformation of digital ownership on the NFT market, the article emphasizes the need for a cautious and well-informed strategy to tackle legal intricacies, promote openness, and cultivate trust within the NFT ecosystem.*

Keywords: *NFTs, intellectual property, law, smart contracts, blockchain, ownership, rights, digital assets.*

INTRODUCTION

Similar to other technical breakthroughs in the past, especially the digital dissemination of music, NFTs are stretching the boundaries of intellectual property law. The use of NFTs as a tool for commercializing breakthrough IP assets and exploiting existing IP portfolios has grown more productive in recent years. Notwithstanding this, the reaction to NFTs under intellectual property law has trailed behind their popularity.

NFTs create particular issues for individuals engaged in the development (minting) and monetization of intellectual property as well as IP owners, since many NFTs validate the creation of digital artwork, video, and other forms of media. Most of the time, such assets are protected by intellectual property rights, which, as a general rule, enable exclusively the owner of the IP to dictate the commercialization of the asset. Minting, selling or purchasing an NFT without first legally licensing or otherwise securing its underlying intellectual property rights may result in significant implications, including the possibility of infringement lawsuits. These costs can vary based on the intended application of the NFT.

LEGAL FOUNDATIONS OF NFT TRANSACTIONS

Legal literature (Reuters, 2023) describes smart contracts as technology that embeds computerized instructions in the NFT to digitally facilitate, verify and enforce its terms without any third-party interaction.

When an NFT passes through, the smart contract that surrounds it automatically executes itself and transmits ownership, as well as payment, at the moment of the transfer. Because non-fungible token transactions (and any future transfers) are tracked and made publicly accessible on the blockchain, ownership of NFTs may be readily verified (Reuters, 2023). The code that is embedded inside the NFT just detects the underlying asset, defines where it is kept, and verifies that it is legitimate.

As digital assets that evidence title, NFTs may exist independently from the underlying intellectual property asset that they are used to validate. For instance, the buyer is shown to have legitimate ownership of a certain digital media file after purchasing a collection of NFTs from the NBA Topshot website, which has video excerpts from illustrative moments in the history of sports. Even if it is possible to find copies of the films online, having an NFT validates that a person is the owner of a particular clip, which increases the content's worth on the market. Even though many people have access to the video clip, the original copy still has significant value on the collectors market.

NFTs may also be used to represent the digital ownership of a tangible item (such a piece of real estate, for example). Tokenization of tangible assets is a more recent use of non-fungible tokens that enables enhanced asset liquidity while also maintaining a record of ownership that is both visible and safe.

The process of releasing an NFT on a blockchain in order to enable its purchase is known as minting. First, a minter will build a wallet on a marketplace in which they may keep newly created NFTs. After the money has been received by the marketplace, the NFT will be connected to the actual asset, that will be kept in a different location. After this step, the NFT that represents the rights to the asset in question is published and subsequently deposited in the wallet of the minter. Transfer of the NFT is possible from that location. Because IP owners possess particular rights, for instance the authority to use, trade, and duplicate the underlying IP resource, the IP protections linked with it may restrict who may mint or circulate it as an NFT. These exclusive rights include: the right to use the IP asset, the right to sell the IP asset and the right to replicate the IP asset (Bainbridge, 2012).

In most cases, the transfer of ownership of an NFT does not result in the transfer of any intellectual property rights associated with the underlying asset. As a result, the most important question that a stakeholder should ask is whether or not the underlying asset is covered by intellectual property laws and, if it is, whether or not the rights to preserve it are transferred along with the NFT. The law governing intellectual property (“IP”) confers some exclusive rights on the IP owner, such as the authority to reproduce and disseminate the work in question. Even while the purchaser of an NFT that covers a work that is subject to the aforementioned rights is granted the right to possess their copy of the work, this does not automatically provide the purchaser exclusive

rights to the work itself (Reuters, 2023). However, the buyer is permitted to show the work and may later transfer or trade their copy via the use of a license. When it comes to NFT transactions, licenses may be created either via the explicit wording of the sales conditions or, in certain cases, through the relevant legislation. Nearly all of the conditions of NFT licenses include the direct transfer of rights from the owner of the intellectual property to the purchaser.

INTELLECTUAL PROPERTY RIGHTS AND NFTS

After determining whether or not the underlying asset is protected by intellectual property law and minting the NFT, the person selling it is obliged to explicitly identify the extent of any intellectual property rights that are part of the transaction. If this is not done, the rights of the owner of the intellectual property may be harmed, and the marketplace, the buyer, or both may be held liable for infringement. The vast majority of creators do not transfer any exclusive intellectual property rights associated with the underlying item to a buyer (Reuters, 2023). In most cases, purchasers are only granted a restricted license for the NFT that allows for personal usage.

However, the creator may explicitly transfer these and other intellectual property rights, such as the capacity to mint new NFTs and edit the underlying asset, via an assignment, a permit, or some other kind of stated agreement. This might include the power to modify the underlying product. It is not apparent if this technique fulfills the legal criteria for a proper IP rights assignment; nevertheless, certain platforms do provide authors with the ability to disclose these rights inside the listing description of NFTs. In order to be legally enforceable against other parties, assignments of intellectual property rights must often be lodged with the relevant register (either at the United States Patent and Trademark Office ("USPTO") or the Copyright Office).

It is fairly unusual for the intellectual property ("IP") owner to maintain some extra interests in the underlying asset, such as royalty payments or future resale fees (Reuters, 2023), alongside their present rights to use the IP in the domain of non-fungible tokens. Keeping supplemental interests is a common habit. However, if the transfer of these rights is not specifically specified or if the parties involved fail to ascertain the degree to which the underlying asset is protected by intellectual property, misunderstandings may occur. When the NFT transaction fails to properly represent or reflect exclusive intellectual property rights linked to the underlying asset, the situation becomes very unclear. This uncertainty in intellectual property rights transfers inside NFT transactions might lead to misunderstandings and lawsuits. Without adequate clarity and transparency, both the IP owner and the buyer may have different interpretations of the NFT and the underlying asset. To avoid ambiguity, all parties participating in NFT transactions must produce precise agreements and paperwork that properly explain the extent of the intellectual property rights being transferred. Determining the scope of the IP owner's rights, any extra interests held, and the buyer's entitlements are all part of this process. Potential disputes and ambiguities may be reduced by guaranteeing openness and accuracy in the transfer of intellectual property rights. To protect their respective interests and prevent ambiguity in the transfer process, both the IP owner and the buyer must have clear communication and a thorough grasp of the terms and circumstances regulating the NFT transaction. As the NFT market evolves, established methods

and standards for defining intellectual property rights in NFT transactions will be critical in encouraging transparency, allowing easier transactions, and fostering confidence within the NFT ecosystem.

The terms of transferring ownership rights for an NFT are spelled out in the smart contract that is integral to the coding of the NFT (Levi et al., 2022). The terms of the smart contract cannot be changed, and it goes into effect immediately when a certain set of circumstances has been satisfied. The NFT is used to execute smart contracts and its execution takes into account ownership changes of the NFT. This might result in the triggering of occurrences like the payment of buyback royalties or fees. As the underlying item is not kept on the distributed ledger, the agreements regulating the transfer must additionally cover duties in the event that the NFT buyer is unable to display or acquire the digital file in any other way.

If a person or business wants to mint NFTs encapsulating copyrighted content but does not hold the copyright to the underlying asset, and does not get the right to copy via a transfer or license (Reuters, 2023), then they run the danger of directly infringing on someone else's copyright. In addition, marketplaces as well as other third parties might get held liable for unintentional copyright infringement whenever an unlawful NFT is mined via their platform. This responsibility may result in a financial penalty.

In addition, it is important to note that a creative work may involve multiple authors, and it is essential for all those authors to be involved in the licensing or rights transfer process. When it comes to the purchase and sale of non-fungible tokens (NFTs), both buyers and sellers have a responsibility to ascertain whether the transfer includes exclusive ownership of the copyright or if it simply involves a duplication of the digital file with a restricted personal license. It is crucial to disclose any information regarding the inclusion of exclusive rights.

Failing to obtain the necessary copyrightsthrough a license, delegation, or another form of transfer, puts the buyer at risk of infringing the intellectual property rights associated with the underlying asset. In such cases, legal action may be pursued against the buyer for unauthorized use or reproduction.

To ensure compliance with copyright laws and protect both parties involved, it is crucial for buyers to acquire the necessary copyright rights before engaging in any transfer of ownership of NFTs. This may involve obtaining a license or receiving explicit permission from the copyright owner. By adhering to these measures, potential legal disputes and intellectual property infringements can be avoided.

In the ever-evolving landscape of NFTs, where the ownership and rights associated with digital assets are being redefined, it is paramount for all stakeholders to remain vigilant and informed about the legal implications and obligations surrounding intellectual property rights. By respecting copyright ownership and acquiring the necessary permissions, both buyers and sellers can foster a fair and legally compliant environment within the NFT ecosystem.

There is a chance that in the future, the Marketplace may provide more enforcement methods but, in accordance with the Digital Millennium Copyright Act ("DMCA"), some content creators have been successful in contesting notice-and-takedown requests.

NFTs are being used more often by businesses in order to sell their brands, introduce new items, and improve their present procedures. In addition, robust enforcement processes stop companies from getting their marks diluted in the market by unlawful usage, which protects the value of the brands' marks. Even in situations in which the NFT is not tied to a product associated with the brand, NFTs covering assets that include representations of the company nonetheless cause worry for the owners of the trademark (see *Hermès International v. Rothschild* case).

Although non-financial transactions have had a less significant impact on the landscape of patents, they continue to bring fresh issues for those who are considering NFTs involving patent-protected assets. The major function of patents within the area of NFTs has been to provide an additional layer of protection for underlying assets that are tied to NFTs. Since non-fungible tokens are just used to prove ownership but cannot actually make up the underlying asset, the fundamental question is whether or not the underlying asset proper may be patented (Reuters, 2023).

The vast majority of non-financial transactions related to patented assets imply design patents instead of patents for utility. This is due to the fact that the widespread use of NFTs is associated to the aesthetic appeal of the underlying assets rather than their function. Furthermore, although the protection offered by a utility patent entitles the patent holder to recoup lost income and expenses incurred by the patent attorney, the supplementary remedy of restitution of the infringer's profits is available only under design patents. Other aspects of intellectual property ("IP"), such as the following, might be complicated by NFTs: trade secrets and publicity rights.

If the minter does not possess the underlying asset within its whole or can not adequately account for the rights held by each owner in the underlying asset, then an NFT should not be issued. As a consequence of minting unlicensed NFTs, the minter may be subject to an infringement claim, which will make the NFTs worthless and expose the minter to potential damages awards, legal expenses or injunctive relief (Reuters, 2023), in addition to the costs associated with the minter's own defense. There are a variety of scenarios that might lead to an IP owner giving a digital producer a commission to develop NFTs that embody the IP. The party doing the commissioning need to have specific agreements specifying ownership of the intellectual property rights in the commission project, like work produced for hiring and labor contracts, or outright assignments. These should be in place before the project is started. The scope of the project involving the NFT should be specified in writing for the parties involved in this scenario so that any possible misconceptions may be avoided.

COMMON LAW PRINCIPLES AND NFT TRANSACTIONS

Despite both non-fungible tokens and intellectual property falling under the umbrella of property rights, there is limited understanding regarding the application of common law principles to NFT transactions (Reuters, 2023). One example of this is the concept in common law where the original owner of an object has the right to reclaim ownership from a subsequent buyer if the asset was initially purchased from someone who did not have clear ownership of the asset.

This notion implies that a seller cannot transfer a title that they do not possess, which would have implications for NFT buyers. It means that an NFT buyer would only acquire the intellectual

property rights that the seller is legally able to convey, regardless of what the NFT contract or specifications may state. Thus, an NFT buyer might receive only the IP rights that the seller legitimately possesses.

The application of common law principles to NFT transactions raises questions and uncertainties regarding the extent of intellectual property rights transferred through the sale of an NFT. It emphasizes the importance of conducting due diligence to ensure that the seller has the legal authority to sell and transfer the intellectual property rights associated with the NFT.

Understanding the intersection of common law and NFTs is an evolving area that requires further exploration and clarification. As NFTs continue to gain prominence and reshape digital ownership, legal frameworks and precedents will likely emerge to address the complexities surrounding property rights, intellectual property, and the legal implications of NFT transactions.

Due to the irreversible characteristic of blockchain transactions, parties will still be faced with ambiguity over the resolution of the dispute even in the event that any transfer of IP rights is amended or cancelled after the sale of the NFT (Reuters, 2023). In spite of this, the parties involved are obligated to perform exhaustive research on the ownership of the IP and should carefully examine any alleged transactions and NFT specifications.

METAVERSE CHALENGES IN NFT OWNERSHIP

When data and ownership are transferred throughout the Metaverse via NFTs, this will give rise to unique legal challenges, particularly in terms of intellectual property. Brands will encounter challenges in the realm of intellectual property protection and enforcement, including the complexities of identifying potential anonymous infringers (jdsupra.com) and demonstrating dilution within a decentralized network. When it comes to protecting their intellectual property rights, brands may face hurdles in locating and identifying individuals who engage in infringement activities anonymously. Additionally, brands may encounter challenges in proving dilution within a decentralized network. Dilution refers to the blurring or tarnishing of a brand's distinctiveness or reputation caused by unauthorized use or association with inferior goods or services. Demonstrating dilution in a decentralized environment, where content may be widespread and difficult to track, can pose unique obstacles for brand owners.

CONCLUSIONS

The emergence of NFTs has brought about a significant change in the field of intellectual property. This change is characterized by the combination of smart contracts, blockchain technology, and digital ownership, which has resulted in a transformational period. This analysis of NFT transactions explores the complex network of difficulties and possibilities that stakeholders face in the changing environment.

Smart contracts, celebrated as technological wonders, incorporate digital instructions into NFTs, streamlining the process of transferring ownership and settling payments. As these transactions occur on the blockchain, transparency becomes a fundamental aspect, offering a verifiable documentation of ownership. Nevertheless, the combination of NFTs with intellectual

property brings up intricacies, underscoring the essential requirement for accurate agreements to define the extent of rights.

The NFT landscape is heavily influenced by intellectual property considerations, particularly in relation to ownership, licensing, and replication rights, which require careful attention to detail. Although the transfer of NFT ownership does not automatically grant intellectual property rights, parties must carefully handle licensing complexities to prevent infringement claims. The utmost importance lies in the clarity of agreements, as it serves to prevent any potential misunderstandings and disputes that may develop due to the distinctive convergence of NFTs and intellectual property.

The inclusion of common law rules introduces additional intricacy, necessitating a more thorough analysis of the rights lawfully transferred by sellers. Conducting due diligence is crucial to determine the legal authority to transfer intellectual property rights linked to an NFT. The impact of NFTs on digital ownership necessitates the utilization of common law and the formation of legal precedents to determine the scope of intellectual property rights involved in these transactions.

Amidst this changing environment, the need for openness, thorough investigation, and effective communication arises as a fundamental concept for all individuals and groups concerned. With the increasing use of NFTs by brands for marketing and asset representation, ensuring the security of intellectual property becomes of utmost importance. Difficulties remain, particularly in decentralized networks, where the identification of infringers and the establishment of dilution are particularly challenging.

The future of NFTs depends on the development of legal frameworks and precedents. In order to cultivate a just and legally robust environment within the NFT ecosystem, stakeholders must wholeheartedly adopt principles of transparency, precision, and adherence to regulations. The permanent characteristic of blockchain transactions requires extensive investigation, emphasizing the requirement for strong enforcement techniques and systems to handle conflicts.

Within the constantly expanding Metaverse, the introduction of NFTs will add complexity to the intellectual property domain, necessitating inventive approaches to safeguarding trademarks and enforcing rights. Traversing the NFT terrain highlights the significance of continuous inquiry, flexibility, and cooperative endeavors in shaping a future where digital ownership and intellectual property rights peacefully coexist.

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ASPECTS REGARDING THE GENERAL PATRIMONY – PATRIMONY OF AFFECTATION

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Abstract: *The general identification of the patrimonial mass, its type, and content is a subject that has been subjected to numerous debates. Both the general and the affected patrimonies have undergone several modifications, all in line with the societal development and its corresponding needs.*

Keywords: *patrimony, patrimony of affectation, patrimony division, patrimony establishment, patrimony liquidation*

INTRODUCTION

Relative to the New Civil Code, every person holds a patrimony. This individual's patrimony is not limited to a single mass of goods, rights, or obligations; it can encompass multiple patrimonial masses, established according to the law. These patrimonial masses can be divided into the mass of the affected patrimony – which is the division of the patrimony that includes the assets affected by the exercise of an authorized profession – and the fiduciary patrimonial mass – which is the division of the patrimony that includes real rights, debts, guarantees, or other patrimonial rights transferred by the founder to one or more fiduciaries, who exercise them for a purpose. In correlation with the idea expressed above, maintaining the idea of multiple types of patrimonies, it can be emphasized that there is no person without patrimony, resulting in every person having at least one patrimony.

1. The Notion of Patrimony and Doctrinal Positions

The general definition of the notion of patrimony can first be found within the Explanatory Dictionary of the Romanian Language, where it is defined as the "totality of rights and obligations with economic value, as well as material goods to which these rights refer, owned by a person (natural or legal)." Furthermore, having the same foundation, the current meaning of this term is as an asset inherited by law from parents (or relatives), a parental fortune.

This notion of patrimony holds significant importance for civil legislation. For a long time, this term did not have a clear definition, but upon the drafting of the Civil Code in 1864, minimal attention was given to this term. Subsequently, after the Civil Code of 1864, the New Civil Code was drafted and implemented. An initial version of this Civil Code, prior to the modifications brought by Law no. 71/2011, article 31 paragraph (1), did not contain such a definition; it merely

stated that "every natural person or legal entity is the holder of a patrimony." In the current version, the Civil Code provides a more complex definition of patrimony, according to Article 31 of this code: "every natural person or legal entity is the holder of a patrimony that includes all the rights and obligations that can be assessed in money and belong to that person."

In previous doctrine, patrimony was defined as "the ensemble of rights and obligations of a person that have or represent a pecuniary or economic value" (Hamangiu et al., 1996:522). According to this definition attributed to patrimony, rights that cannot be evaluated in monetary terms, such as personal-nonpatrimonial rights (e.g., right to name, right to honor, right to reputation, etc.), were left aside. Once these rights are infringed, even though they do not have a monetary value, they can give rise to an action for monetary compensation against the perpetrator of the infringement; there is a contradiction in this scenario in that this action has a pecuniary value, being a patrimonial good, but the infringed right remains outside the patrimony, not being one with a pecuniary value.

The doctrine's position regarding the patrimonies of concern and the uniqueness of the patrimony, in 1947 it was admitted that a person can have multiple patrimonies; in other words, the fractionalization of the patrimony was allowed whenever one or more assets were subject to a specific assignment. "To establish a distinct patrimony, each of these fractions must have, alongside its assets, a passive part, meaning it genuinely corresponds to the idea of concern, which is only possible if the following two conditions are met: the goods comprising this fraction, distinct from the general patrimony of the person, must be dedicated to a specific purpose, having a different destination from the other special patrimonies of the same person; this destination must result from a written act that has been invested with the necessary forms of publicity so that interested third parties could become aware of it and therefore oppose it" (Luțescu, 1947:34)

As a difference from the idea expressed above, at the time of adopting the new Civil Code (2009), in doctrine, it was admitted that there was no contradiction between the idea of the unity of the person and the patrimony and the idea of the divisibility of the patrimony. "Indeed, even though divided into several masses of rights and obligations with economic content, the patrimony remains unitary. The patrimonial masses regulated by Article 31 paragraph (3) NCC are the result of this division. Following the division, a person does not have multiple patrimonies but rather multiple patrimonial masses, called patrimonies of affectation just to highlight how elements of the modern theory of patrimony have been incorporated, including elements of both the personalist theory and the theory of the patrimony of affectation." (Stoica, 2009:9-10).

2. Intrapatrimonial Transfer

According to Article 32 of the New Civil Code, in the case of division or affectation, the transfer of rights and obligations from one patrimonial mass to another within the same patrimony is done while respecting the conditions provided by law and without prejudicing the rights of creditors over each patrimonial mass. The transfer of rights and obligations from one patrimonial mass to another does not constitute an alienation.

The transfer of rights and obligations from one patrimonial mass to another, in the event that the law institutes a division case, is carried out under the conditions established by law, ensuring the protection of the rights of third parties.

The second paragraph of Article 32 of the New Civil Code is necessary because "in practice, this transfer is seen as an alienation, as the mechanism of patrimony division is not understood. The consequences are inequitable, even absurd, because the intrapatrimonial transfer act is considered an interpatrimonial transfer act, subject to the requirements of form and taxation for alienation acts. This text puts an end to this unfair and absurd practice" (Project 2004, www.just.ro).

The aforementioned Article 32 does not refer to an alienation in the true sense of the word, but rather to a mobilization of a part of goods, rights, and obligations between the divisions of a patrimony. This mobilization is carried out by the unilateral act of the holder and must be performed without affecting the rights of creditors.

3. Affectation Patrimony

The German doctrine from the early 20th century (Article 419 BGB - Zweckvermogen - currently repealed) inspired the theory of the affectation patrimony and sought to refine the classical theory of patrimony (founded by Aubry and Rau). Solutions were needed to resolve new legal situations that were not identified in the previous model. Examples of newly emerged situations could include the creation of foundations, the establishment of legal entities with or without a patrimonial purpose.

Referring to this theory, any individual can hold a number of distinct patrimonies equal to the number of different activities exercised, and each patrimony is independent of the others.

Distinguished authors of French doctrine are of the opinion that "an individual can have, in addition to their general patrimony, patrimonies affected by particular destinations" (Terré et al., 1999:26). This theory opposes the classical theory of patrimony.

In a study of trust, it is noted that "the trust allows the establishment of an autonomous patrimony - the affectation patrimony - which no longer belongs to the constituent but also does not integrate into that of the fiduciary. It is the great innovation of the law (referring to the French law of 2007) which, by allowing a single person to have two distinct patrimonies, contravenes a major principle of French law, that of the uniqueness of patrimony" (Lefebvre, 2009).

Similarly, Jacques Auger, regarding the trust regulated by the Civil Code of the Province of Quebec (Article 1260 CCQ), states that "this choice of the legislature to consider the trust as an autonomous and distinct affectation patrimony puts an end to a long doctrinal and jurisprudential controversy regarding the right of ownership over goods transferred in trust. This right is not severed (dismembered) and does not constitute a sui generis property right; it remains a traditional property right entirely encompassed in the fiduciary's patrimony, with all its attributes. This conception of trust presupposes the recognition of the idea that a patrimony can exist without a holder, which differs entirely from the classical theory of patrimony" (Auger, 1998:77).

The Romanian doctrine is more conservative, faithful to the classical theory of patrimony. While not rejecting the idea of the existence of multiple patrimonies belonging to the same person, it still considers that the "fiduciary patrimony" is merely a "separate particular mass" of goods that do not overlap with the other masses of goods of the fiduciary, existing within the same, unique patrimony of the fiduciary.

The aspects mentioned above are also found in Article 773; these rights (those transmitted to the fiduciary) constitute an autonomous patrimonial mass, distinct from the other rights and obligations in the fiduciaries' patrimonies. From the viewpoint of Romanian doctrine, one cannot speak of the existence of multiple patrimonies, but one can talk about the existence of multiple masses of goods affected for certain purposes.

3.1 Mode of Establishment (Article 33 of the New Civil Code)

"The legislator's will is not sufficient for the formation of affectation patrimonies; it must be accompanied by the declared purpose of its holder. The affectation declaration is a unilateral manifestation of will by the one who desires the establishment of an affectation patrimony, for example, the patrimony necessary for conducting a liberal activity. This expression of will can take the form of the unilateral act of patrimony division but can also be inserted in the content of bilateral legal acts for acquiring a certain asset intended to be used in exercising the profession (sale, exchange, donation)" (Sferdian, 2011).

Article 33 of the New Civil Code regulates the mode of establishment, the publicity of establishment, and the liquidation of patrimony.

Constitution can be achieved through a professional's intrapatrimonial transfer by a unilateral act. The establishment act of the affectation patrimony is either a private law act with a conventional nature or a private law act with a unilateral nature.

3.2 Liquidation of Affectation Patrimony

Liquidation is the means by which the affectation patrimony can be terminated. The liquidation must be carried out by an authorized liquidator, a member of UNPIR, similar to the liquidation of companies. Under no circumstance are the assets of the professional affectation patrimony subject to the pursuit by the personal creditors of the professional. Similarly, even in the case of professional creditors, they cannot pursue assets from the personal patrimony of the professional.

According to Article 2324, paragraph (3) and (4) of the NCC, those creditors whose claims arise in connection with a specific division of the patrimony, authorized by law, must first pursue the assets that are the subject of that patrimonial mass. Thus, the assets subject to a division of the patrimony related to the exercise of an authorized profession by law can only be pursued by those creditors whose claims are connected with that specific profession, without pursuing the other assets of the debtor.

CONCLUSIONS

We should not view patrimony in a limiting way, as if it only belongs to natural persons, because legal entities can also have a patrimony.

In the situation where a patrimony is fragmented, it should not be understood or confused with the separation of patrimonies, which belongs to the legal entity. Through this separation of patrimonies, the legal entity has the possibility to fractionate its own patrimony (unique, separate from that of the administrative bodies or members). An example would be when a group of companies is the owner of an enterprise, and the most relevant aspect would be if their patrimonies were not separate but in confusion. In the case presented above, the companies are patrimonial entities of the group.

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THE LEGAL REASONING IN THE INVESTIGATION OF MEDICAL MALPRACTICE COMMITTED IN HOSPITALS

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Abstract: *The aim of this article is to emphasize the main investigation features in the criminal cases involving the death or the health injuries caused to the patients by the medical malpractice occurred in hospital. It is an analysis of the steps to be taken in order to establish the legal condition for criminal liability of the doctors or the other medical personnel.*

Keywords: *Medical malpractice, medical conduct, risk analysis, loss of chance, commissive conduct, should have foreseen, able to foresee, minimum threshold.*

INTRODUCTION

The medical malpractice is today a very widespread topic in Romania and raises lively debates both from the point of view of the quality of medical services provided by doctors and hospitals and from the perspective of the criminal liability of people who commit offenses while providing medical services. From this point of view, we appreciate that investigating the medical malpractice requires certain characteristics that qualify it as a special one. Is the reason for what we have laid down certain steps in successfully carrying out such an investigation.

Step 1: First of all, must be established the premises of the case, i.e. what should have been done so that the malpractice would not have been committed

For this purpose, it is determined what the performed medical act ideally entails: an abstract evaluation of the professional rules; outlining the standard conduct; from the standard conduct, a sum of professional obligations associated with the medical act is obtained. Establishing professional rules means identifying the conduct prohibited by the law, identifying those rules whose violation is included in the constitutive content of the offence (*actus reus* and *mens rea*) (Călin, 2014:247). On this occasion, it is established whether the medical act necessarily involves certain physical sufferings; if there are such consequences and they are inherent in the medical act, they will not be considered as a ground for criminal liability. The identification of the professional standard involves the determination, in the abstract, of the correct conduct, establishes what should have been the result of the medical act and identifies what exactly the doctor had to foresee in order not to fall within a medical malpractice (Luntraru, 2018:30).

Step 2: Establishing the concrete conduct

After identifying the correct conduct, in the abstract, it is to be established what was done concretely, which implies an analyze of what exactly did each of the people involved in the medical act. In this endeavor, it will be established how the professional obligations, both

those of diligence and those of result, were fulfilled. Due diligence obligations include: establishing the diagnosis; prescription of treatment; treatment application. In order to establish how the obligations of result were fulfilled, it will be taken in consideration some aspects such as: the use of safe medical devices and equipment; prevention of nosocomial infections; the integrity of the surgical operating rooms, during the surgical intervention or in the post-intervention period; the way in which the patient was supervised.

Step 3: Check if there is a causal link between the wrongness of the medical act and the death/injury; the theory of objective imputation of the result

In the situation where a medical malpractice is analyzed, there is a need to analyze a double causal link: between the act committed and the dangerous result provided for by the criminalization norm and between the wrong nature of the medical intervention from a professional point of view and the harmful result suffered by the patient (Călin, 2014:247). It is necessary to specify that, in order to analyze this aspect of causality, in medical procedures, it must be considered that the medical act intervenes, in most situations, on a pre-existing pathological background. On the other hand, it is a natural horizon of expectation that by their nature, medical acts involve certain bodily injuries or may even have an accepted lethal injury potential. Consequently, in order to establish which of the medical interventions entails the criminal liability of the medical staff, it must be specified that only those sufferings or injuries that exceed the permitted risk will be considered (Călin, 2014:247).

There is, however, a hypothesis in which, the bodily injury which is normally caused in the medical act is considered as an offence. It is about the situation in which the medical act was provided without the patient's consent. In this context, the dangerous consequence previewed by the incriminating law must be considered even if the suffering or bodily injuries do not exceed the inherent threshold of the medical act. Only those medical acts performed without the patient's consent that were performed under the conditions of justifying cause or a state of necessity (e.g. a surgical intervention performed as a result of a road accident that requires emergency and the patient is in a state of unconsciousness) are excluded from criminal liability.

In determining the criminal liability of medical personnel and institutions, a very important aspect in evaluating the dangerous consequences of the act is the "loss of chance". It represents a minimum threshold that must exist in order to attract criminal liability and is met when the criminal investigation can prove that the medical act performed erroneously resulted in the loss of all chances of healing or, as the case may be, of survival (Decision no. 209/2018 of the High Court of Cassation and Justice, p. 107).

Step 4. Risk analysis

Another, very important aspect in establishing criminal liability for medical malpractice is the analysis of the risk created for the patient's health. From this point of view, the task for investigator is to establish if the risk assumed by the medical personnel is one impermissible and it represents a wrong medical conduct, which does not correspond to the ideal. Being so, it is able, *de plano*, in the abstract, to produce a dangerous result for the patient's health or life. The commissive conduct exists when the medical act itself produces an injury or if it aggravates

a pre-existing injury with the consequence of producing an injury with no chance of recovery or death. There is, also, a medical malpractice when it overlaps with a pre-existing risk. The threshold of criminal responsibility will be realized both in the situation where the pre-existing risk is increased and, in the situation, where it is not diminished.

The dangerous result for the patient's health that attracts criminal liability occurred when the erroneous medical conduct that created a state of potential danger, turned into a concrete consequence in which the patient's medical condition was irremediably aggravated, respectively it was not diminished.

In practice, there are, also, situations in which a risk, initially created by the medical act, is ultimately diverted, which implies that the causal chain of the crime is interrupted, and, implicitly, absolves from criminal liability. There is also the equal risk, the one that appears in the hypothesis that even if the doctor had had a correct medical conduct, apart from any mistake, the result would have been the same.

Step 5: Establish Guilt

For the existence of a minimum standard of criminal responsibility, it is necessary that, from a professional point of view, the doctor who undertook the medical act "should have foreseen" the dangerous consequences for the patient's health, when he chose a certain medical conduct. To practice his profession, the doctor is obliged to know the generally accepted medical standards, to know the information with general applicability, to access reputable and scientifically confirmed documentation sources. The second condition for the existence of this minimum standard of responsibility is that the doctor, according to the concrete situation, which must be analyzed on a case-by-case basis, must have been "able to foresee" the dangerous outcome for the patient's health. In establishing this threshold, the criminal investigation must establish whether, depending on the concrete premises in which the medical act was carried out, it is objectively foreseeable the result, because it is foreseeable by any other medical staff acting in the same circumstances as those had by the investigated doctor. An eloquent example of jurisprudence, under this aspect, is the one retained from Criminal Decision no. 614/2019 of the Court of Appeal of Iași: "The sudden change in health status after an infusion applied to a patient with high risk of pregnancy, who registered a sudden increase in heart rate to 160, low blood pressure, should have signaled to the doctor the fact that there is a problem. The condition could be relatively easy to check by a clinical examination and laboratory examination, but the signs of this complication were misinterpreted. The differential diagnosis of chorioamnionitis should have been made. The correct interpretation of the circumstances in which the fact occurred, as well as the concrete possibilities of prediction - uterine rupture - could not be prevented but could be suspected as a diagnosis, since certain sudden clinical signs appeared, related to the infusion with oxytocin."

The public health law, article no. 663, para. (3), also provides for the situations in which the doctor who intervened, in emergency situations, exceeding his professional competences, is not to be punished. In this situation, if it is beyond doubt that the medical intervention was done as an emergency because the patient's life was in danger and there was no alternative possibility to intervene a specialist doctor in a reasonable time, the inability to foresee a result, due precisely to the lack of specialization, exonerates from criminal liability.

Step 6. Establishing the existence or non-existence of justifying and imputable causes

In the case of the investigation of a medical malpractice, as in the case of any crimes, there is the possibility of some circumstances that exonerate the perpetrator of the act from criminal liability, if those situations that the criminal law regulates in this regard, are found. One of the most frequent situations of this kind, encountered in medical activity, is represented by the consent of the victim. Specifically, this aspect represents a transfer of responsibility for the risk of an undesirable outcome for the patient's health or life, from the doctor to the patient, in the situation where the latter was made aware of the potential dangers of intervention and he/she assume this risk. Therefore, in case of bad consequences for his health, if they are part of the risk explicitly assumed by the patient (Cimpoeru, 2013:151), it exonerates the doctor from criminal liability, if the medical conduct was within the limits of professional standards.

The article 382 para. (1) of the Health Law provides that: "With the exception of cases of force majeure, emergency or when the patient or his legal or appointed representatives are unable to express his will or consent, the doctor acts respecting the patient's will and his right to refuse or stop a medical intervention."

Therefore, in the absence of the consent, there is no obligation for the doctor to perform the medical act and his passivity does not contravene to any professional standard. On the contrary, if the doctor acts even though the patient's refusal is beyond doubt, the doctor is responsible, except when he can invoke the existence of a state of necessity.

CONCLUSIONS

The investigation of a medical malpractice is undoubtedly a typical approach, which involves a thorough analysis of the rules specific to medical institutions and those of good professional practices. Beyond the liability standards established by the legal norms, which are valid for all crimes, in the case of these offenses, a number of objective factors must be taken into account: the medicine is an exact science, based on experiment and professional standards, but standardized medical acts does not ensure the same result for all patients; any medical intervention involves a certain risk; there are diseases and medical conditions for which there is no answer from medical science; the medical act represents, in its essence, a noble approach, to help or save a person from a critical situation, therefore, the specific horizon of expectation is the good faith and the knowledge of professional standards by the doctor and the gross negligence is the exception; in certain circumstances, the failure to take medical decisions with potential risk, inherently implies death or health impairment, therefore, within reasonable limits, such borderline decisions should not be interpreted as irresponsible gestures.

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CONCEPTUAL PREMISES FOR SKETCHING A RATIONALE FOR THE INSTITUTION OF PRESCRIPTION

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Abstract: *The author observes that the concerns of substantiating the institution of prescription belong to the theory of civil law and that the presentations of the civil model are made separately for the two forms of prescription (extinctive and acquisitive). This, in a context where criminal jurisprudence faces one of the most intense debates on how to apply the criminal rules regarding the prescription of criminal liability, a debate which, however, omits the idea of substantiating the institution. The thesis is updated according to which time - movement in sequence of events, external and unavoidable natural element of subjective rights - is presented as a modality of obligations, a concept that can be used both in the scope of civil and criminal norms. Time with the stated legal meaning can be accepted as the basis of prescription. The model offers a consistent methodological potential for the hypotheses in which the legal norm - whatever its origin - finds its meaning with difficulty. Hence the consequence: the subjective rights - interests with high legal protection of the subjects in the relationship - placed in time, can be understood in a unitary way and applied to all branches of law.*

Keywords: *extinguishing prescription, acquisitive prescription, modality of obligations, substantive subjective right, procedural right, right to action in material sense, legal interest.*

INTRODUCTION

The concept of prescription includes the elements of an extremely complex legal institution that can be traced in all branches of law (Căpățână, 1989:304). Its substantiation, of the concept, involves the research of the very reasons "that justify it" (Pop et al., 1975:490) and then explains the mechanisms providing the effects; this even if the substantiation and legitimization presentations are particularly concerned with the theory of civil law.

Civil doctrine, explaining the prescription, insists on the purpose and functions pursued by the legislator by regulating the prescription (Căpățână, 1989:305) or, in another expression, in "establishing the reasons, the reasons on which it is based" (Nicolae, 2010:48). Mainly, "reasons of public order: consolidation of factual situations and guarantee of security, stability of the civil circuit..." are observed from comparative and Romanian law; or, depending on the case and circumstances, the prescription would also be justified on other grounds: the presumption of payment, the sanctioning of negligence, the prevention of the debtor's ruin, the confirmation of a voidable act (Nicolae, 2010:49-51); but "the consolidation of factual situations through the adequacy of the right to the facts remains the basic and essential rationale of any extinguishing prescription" (Nicolae, 2010:51).

In other words, the need to ensure the stability of relationships between individuals and entities would justify the regulation, functions, mechanisms and effects of the prescription; the prescription would reveal, an indisputable fact otherwise, an opportune solution for a specific, precisely determined problem in social functioning, explicitly regulated. We would be dealing,

therefore, as in any other field of interest, with a particularizing form of necessary intervention of the legislator in human relations, on a social reality.

1. The civil foundations of the prescription

Controversies related to the nature of regulations or prescription mechanisms, problems arising in jurisprudence related to the operation and application of these mechanisms (Rădulescu, 2006; Pivniceru et al., 2007; Vlăduca, 2022), as well as the need for pragmatic clarifications forces us to deepen the research; this without disputing in any way the expressions presented. From the consistent set of problems highlighted by the civil jurisprudence regarding the statute of limitations, I highlight issues of constitutionality or compliance with the fundamental rights related to this institution: a) if the forfeitures of the right to action and implicitly the statute of limitations are compatible with the right of access to justice – (EctHR, 1996), b) or if the lapses related to the flow of time, deadlines are sufficiently protective of the right to property – (Constitutional Court, 2006).

I only observe methodologically and by way of example possible questions: on the one hand, the inevitability of the need for public order is emphasized when substantiating the standards and the operation of the prescription, on the other hand, observing and invoking it remains - at least in the civil space - within reach to the interested party, after the terms have expired (art. 2507 of the new Civil Code); separately, the imprescriptibility of claims is stated and, next to it, the acquisitive prescription - usucapion - is regulated as an effect of possession - art. 928 – 937 of the new civil code; that is, even the prescription of the claim action of the holder of the subjective right is regulated in practical terms.

The examples indicate, in reality, apparent contradictions and may even suggest a certain superficiality in the approach. The formulations are convincingly explained by the civil doctrine: conditional possession produces acquisitive effects following the prescriptions of the law; or, as the case may be, giving up the benefit of prescription – which naturally links subjective rights to the passage of time (Pop et al., 1975:487) – it is, in its essence, a waiver of an explicitly recognized personal right (Stoica, 2017:361-397; Avram, 2006:222; Terzea, 2012:2522).

Practically, the civil foundations of the prescription place the abstract and the concrete of the existence of subjective rights - birth, effects and extinction - in the reality of time.

2. Amendments related to the statute of limitations

The possible doubts - related to the purpose of the statute of limitations - were not produced by civil practice, which was always based on a nuanced and highly adapted theoretical discourse, but by the understanding of criminal statutes in the matter of statute of limitations. Contextually, the prosecutor - representative of the most general interests of society, the protector of its values and, therefore, the sole holder of the criminal action – invoked a procedural need and the judge - through a preliminary question addressed to the European court - requested clarifications regarding the applied procedural meaning of a solution issued by the constitutional court and which, subsequently, outlined - recognized or not - a genuine problem substantiation of the prescription in criminal matters.

More precisely, the Constitutional Court decided - of course, casuistically and as a guide - that a certain wording in the criminal code regarding the interruption of the statute of limitations for the criminal liability action would violate the requirements of the constitutional order (Constitutional Court, 2018) (predictability of criminal law - which stated that the interruption of the prescription of criminal liability - that is, the right to initiate criminal action in the material sense - is interrupted by any procedural act in question, it is not necessary that the interrupting procedural act is necessary - according to the old regulation - to be communicated to the interested party; casuistically, since it is a matter of criminal rules of material law that appeared successively over time, it would logically follow to apply the more favorable criminal law, if one or more criminal laws intervened between the commission of the crime and the final judgment of the case, the more favorable law is applied); and the lack of predictability of the law - in a field such as the criminal one governed by the legality of crimes - could essentially affect other personal rights recorded also constitutionally.

The answer received (CJEU, 2023) however, it was atypical for the general way of interpretation and, above all, of the reasoning of the courts: judges cannot, "within the jurisdictional proceedings that aim to penalize serious fraud crimes that harm the financial interests of the Union, to apply the national standard of protection regarding the principle of retroactive application of the more favorable criminal law (lex mitior - the application of the national standard would "increase the systemic risk of impunity for such crimes" (point 99 of the same reasoning), to bring back into question the interruption of the limitation period of criminal liability by procedural documents intervened before June 25, 2018.

That is, do we understand the same rule - related to the prescription of a subjective right - and therefore apply it differently when debating the financial interests of the Union in relation to the possible damage to other interests?

4. Such overly simplistic and inconvenient question points us to at least a methodological problem in explaining the institution of prescription and, why not, procedural lapses (Nicolae, 2010:137-149).

The general theory of the civil legal act - the most concerned with the field - insists only on the extinguishing prescription; the courses of real rights observe the manifestations of the possessors - bearers of good or bad faith - which could constitute conditions for an acquisitive prescription; administrative law joins with references adapted to the developments of civil theory and criminal law - based on the positivist principle of the legality of its institutions - is not at all concerned with the deep potential of the foundations (Nedelcu, 2020). But, here, ironically, it is precisely the criminal law that is hampered by the insufficiency of the law and the conjunctural relativity of the meaning of the rules.

The legislator - as usual - is completely devoid of such concern and disperses the rules of prescription in the most diverse forms, on domains, in different chapters of the codes or of the particularizations of special laws.

2.1. Acquisitive and extinguishing forms of civil prescription

Juxtaposing the two forms of regulation of civil prescription - acquisitive and extinguishing - suggest only apparent similarities. The similarities would not be essential, fundamental (Nicolae, 2010:48).

Extinctive prescription operates against the holder of a right of claim who does not request that the debtor perform his performance (or does not start enforcement). The acquisitive one sanctions a negligent owner who does not "stop for a while the disturbing acts initiated by a third party possessor, although the prerogatives of this real right impose on everyone the task of not committing such acts" (Luha, 2017:49).

In the first hypothesis, the prescription is liberating but in a particular sense: only the action in the realization of the subjective right is extinguished, action understood in a material sense. The prescription in the acquisitive sense shows us that - effect of the positive norm - even the extinction of the subjective right, of the real right, of ownership is accepted; "a long possession - of a certain kind - carelessness, neglect of the holder - justifies the possessor (sometimes even being in bad faith) to become the owner himself to the detriment of his predecessor: the possessor usucapated, acquired by acquisitive prescription" (Luha, 2017:49). Basically, the statements indicate differences, not similarities.

However, in each case a general interest is invoked: combating the neglect of the holder in the exercise of prerogatives, clarifying factual situations on which legal situations overlap; this even if the omission produces different ineffectiveness: in the case of the extinguishing one the right subsists, "the correlative obligation preserving its being as a natural obligation"(Pop et al., 2012:38); through the effect of usufruct, the real right of the inactive owner is extinguished.

In other words, the two institutions are similar only through the substantiation understood as the purpose, as the mission of the regulation and its application (Nicolae, 2010:48) or by its legal nature presented as a sanction for the defaulter (Pop et al., 1975:576) or, as the case may be, through the mobilizing prevention function in favor of the interested party (Căpățână, 1989:306).

But the civil doctrine insists - which is a fragmentary and separate law - on an essential difference between the two forms of prescription, a difference that suggests the methodological need to search for new elements in the foundation of this essential institution in law.
The statute of limitations is always analyzed from the perspective of the negligent creditor; the acquisitive one, on the contrary, only from the position of the third party concerned and active up to behavioral vice, debtor of a general duty to refrain from disturbing acts directed against the holders.

Not by chance the protective action of the holder of the real right it is not extinguished by the main fact of the passage of time as in the case of the prescription of a debt right; first the real right is extinguished - as an effect of someone's purchase - and only subsequently the right to action is lost; the action is, therefore, undeniably imprescriptible; it is lost as a result of the disappearance of the main right and not as a result of the idea of prescription.

2.2. The double condition

In another debate setting (Malaurie et al., 2010:732) it was observed that time, its flow, presents itself to us juridically - alone or associated with other events - as a modality of obligations: external elements on which the exercise or existence of subjective rights depends, as well as their correlative obligations. This, precisely in order to be able to overcome the

possible limits of substantiating civil prescriptions on the need to protect the general interest of securing and predictability of the effects of factual or legal situations.

So we locate ourselves in an area of the modalities of combined obligations; "we have either an obligation with a term subject to a condition, in the case of the statute of limitations, or a term subject to the expiration of the obligation (resolutive condition), in the case of the acquisitive prescription.

That is, in the case of the extinguishing prescription, the obligation that must be executed within a certain term - and which exists because it is affected by a term - is subject to a probable event, uncertain that it will occur, outside the legal relationship (a condition): negligent behavior of the creditor. In the space of the acquisitive prescription, the real real estate right - whatever it may be - is doubly conditioned - in its existence - by the active behavior of the usufructuary possessor: if the possession will be compliant for a while (while it outlines an extinction term), the owner's right will disappear from his heritage; if the usufructuary claimant's possession will be inadequate within the time indicated by law, its effect (of possession) will be specific to a lapsed situation.

The double condition - each subject to the same resolutive term - indicates the angle from which we see the legal relationship: the condition will be extinguishing for the usufructuary and suspensive for the acquirer" (Luha, 2017:52).

3. The theory of subjective rights

Treating the prescription from the perspective of the modalities of the obligations sends us to another area of concepts: the modalities of the obligations are seen as external elements of a subjective right; such elements could be designated - only methodologically and in a generalizing formula - in the form of external conditionality of the effects of this right.
Equally, any subjective right originates in the fulfillment - concurrently or successively - of some internal conditionality (capacity, consent, object of cause) (Titulescu, 2002). All these conditionalities - internal or external - are placed, objectively, equally and inevitably, in time - seen as a movement in sequence of events - and only in a space of complex social relations.

The theory of subjective rights is very developed (Dogaru et al., 2008:372-830) and generally known. It was observed and, then, it was demonstrated, also by way of substantiation, that subjective rights are in their essence interests of the subjects, interests with the highest level of legal protection (alongside, among others, indifferent interests, legitimate interests, etc.) (Thierry, 2004). Moreover, even art. 1349 of (1) and (2) of the Civil Code approach - recognized or not - also a model of conceptualization as long as the common law imposes on everyone the general duty to respect, along with the rights, the legitimate interests of others; and disregarding this obligation attracts civil liability (Art 1349 C. civil: al. (1).

Separately, the rules distinguish and the doctrine develops the distinction and details its implications between the substantive subjective right, the right to action in the material sense (Stoica, 2023:248-281), the right to enforcement, as well as the procedural right (Nicolae, 2010:155-216). The connection between these autonomous rights is complex but can also be presented starting from the idea that the subjective rights subsequent to the substantive right - such as the right to action - include the latter - the substantive right - as an intrinsic condition of its existence (of the right to action, for enforcement, etc.).

CONCLUSIONS

The theory of subjective law and, implicitly, of legal interest is common - of course with specific particularities - to any branch of law. Time - its flow - presented as a modality of correlative rights obligations inevitably becomes valid and applicable - even if there would be difficulties in delimitation and tracking - to every legal field.

In conclusion, it can be stated that nothing would justify a separation of the treatment of the criminal prescription from the civil one both in terms of the foundation and the understanding of the principles that govern its mechanisms.

The subjective rights - substantial, action in a material sense, procedural or enforcement - the interests of the subjects however diverse their origin and foundation - criminal or civil rights and/or interests - appear and exist over time and very often in competition.

These sketched concepts - explained, then, in detail and following their practical implications - indicate a huge methodological potential for the hypotheses in which the legal norm - whatever its origin - finds its meaning with difficulty. I note that the reference to the jurisprudence of the European court - the financial interests of the European Union has its particularity and foundation; these interests may - case by case and in a very different manner - come into competition with the procedural rights of those against whom the criminal action has been initiated; following the effects of the concepts that I presented schematically, the landmarks of an answer can be outlined in the debate that concerns the criminal law community: the application of the norm of interruption of the prescription is not done in an abstract way - the community norm or, as the case may be, the constitutional norm has priority - national - but only on a case-by-case basis, analyzing the inter-conditions of rights and competing interests (Leș, 2023).

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NEVER-ENDING VIOLENCE AGAINST WOMEN AND CHILDREN

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Abstract: *This article regards the subject of "secondary victimization". It regards a judicial term which still appears to be unknown, not only to the public opinion but also to justice operators; however, it defines a reality of domestic violence and assisted violence which, unfortunately, are still very frequent and dramatically affect the life of many women and of their children and it consists in blaming the victim of the violence.*

Keywords: *secondary victimization, victim, violence, phenomenon, cases of minors, foster families, accusation.*

INTRODUCTION

Secondary victimization means "victimization which does not happen as a direct consequence of the criminal act, but throughout the response given by institutions and individuals to the victim" (definition given by the Reccomendation of May 8 of the Council of Europe).

The victim becomes a double victim: the first time because of the domestic violence which she is subject to, secondarily in a judiciary context since the children are removed from the victim who reported the violence in order to safeguard the children involved! This kind of double (or triple?) violence may be taken out through judicial, forensic, and assistential victimization.

With a specific regard to the kind of violence that happens in judicial separation, removal of minors, limitation of parental responsibility proceedings, the authorities called to repress violence - probably fail at recognising it or do not give it the due relevance – they fail to adopt the right measures aimed at safeguarding the victim, and instead underline the victim's responsibility in the violence to which she has been subject to.

Underestimating the phenomenon of domestic violence against women has the direct effect of subjecting the victim to secundary victimisation in the context of civil or minors proceedings. Therefore, acting as a consequence appears necessary, especially in order to ensure the right to justice and the certainty of the punishment since our legal system is required to prosecute crimes and convict guilty people, not mistake them for the victims.

I am not the only one claiming this, also the Parliamentary Commission of inquiry on feminicide and on any other form of violence were the main subject of a very important inquiry regarding secondary victimization on women and on their children, however, barely anyone has ever heard about it (Art. 27, Italian Constituion)**.**

So now I'm going to be the one to disclose the Parliamentary Commission Inquiry, along with the outcome of my experience in the field, my thoughts on the subject.

Therefore, I hope that with my new book I will be able to contribute, along with doing my job on a daily basis, in advocating for victims of domestic violence and their children, despite all of the hurdles that are deliberately imposed to me.

1. The premises of rising violence against women and children

For decades I have dealt with cases of minors taken away from their biological mothers victims of domestic violence, and this happens in the light of judicial measures that appear to be questionable, given by reports written by the Social Services and by official technical reports (CTU) which appear to be equally, if not even more questionable (Guidi et al., 2013).

The measures have led to the removal of minors not only from the mother and their home, but also from all of their relatives (such as grandparents, aunties and uncles, cousins, older brothers or sisters which appear to be available for their custody) and have led to the direct consequence of the temporary placement of the minors - which usually becomes a permanent placement in special homes or to family units.

Sometimes the children are even placed with the father who is accused of violence.. many of these cases are dramatically known and are still waiting for the final sentence. In the meantime, the unit composed by mother and child, biological or lawful, now dismembered and dispersed, has been subject to an existential damage which appears to be irreversible and that can never be compensated on a affective, personal and relational level, and last but not least, on an economic level.

On this last subject – money, it's always about money! – foster care outside of the biological family lead to very high costs and it is public money. It is estimated that a minor placed in foster care, almost always private ones, costs the Italian State and/or Regions around 400 Euros a day, if not even more! (Miraglia, 2023)

Foster families are obviously entitled to forms of reimbursement and compensation, holders of a maintenance allowance of more than 6-700 euros per month. Whereas, based on my experience in the field, I can confidently say that at least 50 or 60% of the removal proceedings have no reason to exist and that minors could indeed, without any kind of harm, remain placed with their own mother if supported, even economically by the State, Regions, and local authorities. The expenses would surely be lower and the results much better!

But why does this happen? One could ask. Why are minors removed from the mother who has reported a domestic violence, which has often occurred before their own eyes? It usually happens because women have reported violence episodes taken out by their ex- husband or ex-partner, and for this specific reason are considered as weak and overprotective of their children, hindering their relationship with the father.

An accusation which finds it origin in the fact that the father, even if violent towards the mother, has never directly harmed the child and therefore, could be considered a good father.
Overmore, the mothers are accused of failing in the attempt to protect their children and accused of not reporting the father of their children before (Miraglia, 2020).

Whichever perspective you look at it from, women who are subject to domestic violence are pointed out and blamed as responsable for the violence and unfit to raise their children, which are taken away without any form of support from the institutions.

The consequence is that children, in the name of a right to parenthood, in the the vast majority of cases only serves to reiterate the ancestral intra-family superiority of the male role over the female one (a superiority particularly felt in Italy and which in fact restores the parental power which, even by law, should have been superseded by many years), are forced to keep in contact with their violent father, are given shared foster care in their name of double parenthood or, in the majority of cases, taken away from the father but also removed from the mother because the majority of complaints about domestic violence are not even taken into account.

This is confirmed by the judges, magistrates and the Parliamentary Commission Report into femicide: 95% of the courts are unable to say in how many cases regarding separations, divorces, measures regarding children, situations of mistreatment and abuse emerge; and this happens frequently even when the domestic violence is known and verified since almost a third of the cases, the documents regarding the criminal proceedings are acquired by civil proceedings. The complaint filed by the abused mother usually serves to set the perverse mechanism of removal from the family or placement in foster care (Antonocci, 1986).

The consequences of secundary victimization affect on the short and long term many of the cognitive processes, such as memories, attention span, the ability to elaborate informations.

On a psychological level they can be very severe manifesting in fear if not terror, a sense of helplessness, low self-esteem, depression, anxiety, post traumatic stress disorder, traumatic stress, social isolation, shame, guilt and loss of trust in other, institutions with the devastating consequences in the relationship between mother and child, not to mention the direct consequences that children face on a daily basis.

There may also be a long lasting impact on pyhisical health, causing sleeping disorders, heart problems, gastrointestinal disorders and other stress related disorders. Victims may also experience challenges in interpersonal relationships and in their ability to lead a satisfying lifestyle.

These kind of disorders, which if not overcome can lead to spirals of violence, perpetuates a cycle in which the child who once was victim of violence, becomes himself or herself a bearer of the same violence.

Let us now look more closely at what this violence is, this triple violence - gender, domestic, assisted - which women and their minor children are still unable to escape or oppose, in many cases becoming victims twice over: once of their executioner, a second time of the decisions taken in the name and on behalf of Italian law.

Often in everyday reality, in the family environment, it is difficult, if not impossible, to draw a clear line of demarcation between the three types of violence. In any case, as statistics show, the common element is almost always violence against or through women, and it almost always involves a woman mother.

1.1. What is violence

First of all, it is good to clarify the terminology because only in this way is it possible to outline the problem and, above all, qualify the crime of which one is a victim in order to act in the most appropriate way in order to protect oneself and free oneself from it. Furthermore, these are definitions, especially those of domestic violence and witnessed violence, which are still little known to the great mass of public opinion. It is often combined with the more well-known "stalking" (or persecutory acts) but, as we will see better later, it is not always the same type of violence and crime and, consequently, the protections and sanctions.

It is therefore appropriate, first of all, to recall the definition of violence, as given by the World Health Organization (WHO):

“Violence is defined as the intentional use of physical force or power, whether threatened or actual, against oneself, another person, or against a group or community, resulting in or having a high degree of likelihood of resulting in injury, death, psychological damage, poor development or deprivation” (based on Francesco Morcavallo's speech at the "il Caso Bibbiano" conference organized by Renovatio21 in Cavriago on 4 october 2019).

The numbers are impressive and we will analyze them in detail below. For now, just think that, according to the report that Save the Children (one of the most important international organizations for the protection of children and adolescents) published in 2011 with the support of CISMAI (Italian Coordination of Services against Child Maltreatment and Abuse), the minors involved as spectators or victims of domestic violence in Italy were around 400 thousand, while ISTAT (Higher Institute of Statistics) counted in over 6 million and 700 thousand women between the ages of 16 and 70 were victims of violence, 690 thousand were those who suffered it at home and had children, and 400 thousand children were present (2015 data). And behind each of these numbers, behind each of these stories there is a small spectator who "will have consequences equal to those of a directly mistreated and abused child".

1.2. Gender violence

The expression "gender violence" indicates all those forms of violence that affect a large number of people discriminated against on the basis of gender, i.e. sex. It therefore ranges from the psychological and physical to the sexual, from the persecutory acts of stalking up to rape and, as an extreme consequence, feminicide, that is, the murder of the woman as such.

Since in the vast majority of cases the victims of gender violence are women (it is no coincidence that, historically, the female gender has been defined as the "weaker sex"), gender violence effectively coincides with violence against women and therefore with the content of the UN Declaration on the Elimination of Violence against Women. The latter had been preceded by the United Nations World Conference (Vienna, 14-25 June 1993), in which gender violence (specifically against women) had already been defined as "any act of gender violence involving, or is likely to result in physical, sexual or psychological suffering or any form of suffering to the woman, including threats of such violence, forms of coercion or arbitrary forms of deprivation of personal liberty whether occurring in the context of private life or the public one".

A few months later, on 20 December 1993, with Resolution 48/104, the aforementioned Declaration on the elimination of violence against women was adopted by the General Assembly of the United Nations, albeit without a vote. it contains the recognition of the "urgent need for the universal application to women of the rights and principles relating to equality, security, freedom, integrity and dignity of all human beings" (Manicardi, 2011).

The Resolution therefore recalls and embodies the same rights and principles enshrined in the Universal Declaration of Human Rights (i.e. the document on the rights of the person, adopted by the United Nations General Assembly in its third session, on 10 December 1948 in Paris with the Resolution 219077A).

Articles 1 and 2 of the Declaration on the Elimination of Violence against Women provide the most widespread definition of violence against women (OHCR, 1993):

- Article 1: “For the purposes of this Declaration, the term 'violence against women' means any act of gender-based violence that causes, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether in public or private life."
- Article 2: “Violence against women is defined as including, but not limited to, the following: a. Physical, sexual and psychological violence occurring within the family, including beatings, sexual abuse of female children in the family, dowry violence, marital rape, female

genital mutilation and other traditional practices harmful to women, non-marital violence and violence linked to exploitation;

b. Physical, sexual and psychological violence that occurs within the community at large, including rape, sexual abuse, sexual harassment and intimidation at work, in educational institutions and elsewhere, trafficking in women and forced prostitution;

c. Physical, sexual and psychological violence perpetrated or condoned by the State, wherever it occurs".

- Article 3: "Women have the right to the equal enjoyment and protection of all human rights and fundamental freedoms in political, economic, social, cultural, civil or any other fields. These rights include, among other things:

  a. The right to life;

  b. The right to equality;

  c. The right to liberty and security of the person;

  d. The right to equal protection before the law;

  e. The right to be free from all forms of discrimination;

  f. The right to the highest attainable standard of physical and mental health;

  g. The right to fair and favorable working conditions;

  h. The right not to be subjected to torture or other cruel, inhuman or degrading treatment or punishment."

In 1999, as a consequence of the Resolution, the United Nations General Assembly, led by the representative of the Dominican Republic, then designated November 25 of each year as the "International Day for the Elimination of Violence against Women" (based on Francesco Miraglia's speech at the "il Caso Bibbiano" conference organized in Cavriago on 4 October 2019).

2. The many faces of gender violence

The forms and ways in which violence is expressed can also be of various types: - verbal threats of abuse, aggression or torture towards the woman and/or her family, children, friends; - repeated threats of abandonment, divorce, starting another relationship if the woman does not satisfy certain requests; - damage or destruction of the woman's property; - violence against animals dear to the woman and/or her children.

It is important to remember that in moments of anger we can all use provocative, insulting or contemptuous words and we can behave in inappropriate ways but usually followed by remorse and repentance. In psychological violence, however, it is not a momentary outburst of anger but rather a constant and intentional torment with the aim of subjugating the other and maintaining one's own power and control." There is no profile of the typical woman who suffers violence. It can involve all women. It takes on many forms and modalities, although the physical one is the easiest to recognize. Here is a sort of sample.

2.1. Physical violence

"It includes the use of any act driven by the intention to harm or terrorize the victim. Acts attributable to physical violence are: throwing objects; pushing; slaps; bites, kicks or punches; hit or try to hit with an object; beatings; suffocation; threat with a firearm or knife; use of a firearm or cutting weapon. These forms occur in the crimes of battery, personal injury, private violence, home invasion, kidnapping."

2.2. Sexual violence

"It includes the imposition of unwanted sexual practices or relationships that are physically harmful and harmful to dignity, obtained through threats or blackmail of various kinds. The imposition of an unwanted sexual relationship or intimacy is an act of humiliation, oppression and subjugation, which causes deep psychological as well as physical wounds in the victim."

2.3. Psychological violence

"It encompasses every form of abuse that damages the identity of women:
- verbal attacks such as derision, verbal harassment, insult, denigration, aimed at convincing the woman that she is "worth nothing", to better keep her under control;
- isolate the woman, distance her from supportive social relationships or prevent her access to economic and non-economic resources, so as to limit her independence;
- jealousy and obsessiveness: excessive control, repeated accusations of infidelity and control of his acquaintances

2.4. Economic violence

Often such violence is difficult to register as a form of violence because it may seem normal and obvious that the management of family finances is the man's responsibility. Economic violence is defined as: - limit or deny access to family finances; - hide the family's patrimonial situation and financial resources; - prohibit, hinder or boycott women's work outside the home; - not fulfilling the maintenance duties established by law; - exploit women as workforce in the family business or in general without giving any type of remuneration in exchange; - take possession of the woman's savings or earnings from work and use them to their own advantage; - implement every form of legal protection for the exclusive personal advantage and to the detriment of the woman (for example, the registration of properties); - impose legal commitments by deception, threats or blackmail. This form of direct control, which limits and/or prevents the woman's economic independence, often does not allow escape from a destructive relationship of mistreatment." Stalking (Persecutory acts) "It indicates the oppressive behavior carried out by the persecutor towards the victim who rejected him (mainly the ex-partner). Often the stalker's conduct is subtle, aimed at harassing the victim and placing her in a state of anxiety and awe, with the aim of compromising her serenity, making her feel hunted, and in any case not free (Palmieri, 2021).

2.5. Domestic violence

The most widespread violence, contrary to what is thought even if we have now become aware of the reality of the phenomenon, is that which occurs within the home, or within the family. It consists of a continuous series of different actions but characterized by a common purpose: domination and control by one partner over the other, through psychological, physical, economic and sexual violence. The World Bank recognizes domestic violence as a public health problem, as it seriously affects the psychological and physical well-being of all family members.

According to the definition that was given way back in 1996 by the World Health Organization, "domestic or intra-family violence includes every form of physical, psychological or sexual violence and concerns both subjects who have, have had or intend to have an intimate relationship between a couple and individuals who have parental or emotional relationships within a more or less extended family unit". This definition still seems to us to be the most incisive and

extensive because it manages to extend to all the new types of interpersonal relationships that in the meantime have emerged, spread and consolidated, profoundly changing the social perception of the concepts of family nucleus, parental relationship, intimate couple and emotional relationship.

The mechanism that best defines the phases of a condition of domestic violence suffered by a woman is called "spiral of violence" or "cycle of violence", to indicate the ways in which the violent man achieves his goal of subjugating his partner making her feel incapable, weak, helpless, totally dependent on him.The phases of the spiral of violence can present themselves in a crescendo and then "mix": isolation, intimidation, threats, blackmail of children, physical and sexual assaults often alternate with phases of relative calm and false reconciliations, with the aim of confusing the woman and weaken her further.

2.6. Witnessed violence

This term refers to violence witnessed by minors, that is, a form of child abuse and psychological maltreatment that occurs mainly within the family, in the presence of domestic violence. It is indirect violence, not suffered personally but through violence on other individuals present in the family, usually the mother.

Minors may be directly exposed to violence or abuse when it occurs in their presence or may have indirect knowledge of it when someone, voluntarily or unconsciously, informs them about it; or, again, they can perceive its effects when they feel sadness, terror, anguish and a continuous state of alert of the victim or when they see bruises, wounds, torn clothes, tears, broken furnishings, etc. Minor victims of witnessed violence are invisible: invisible to the mother, who no longer has resources, and invisible to society, which barely recognizes them. They see, unseen, a daily climate of shame masked behind the appearance of normality.

Their involvement in domestic violence can occur not only during the parents' cohabitation, but also during the separation phase and after the separation itself. These last two phases are particularly at risk due to their involvement by the violent father/partner, who can use the children as a tool to reiterate the mistreatment of the mother and to continue to control her. Furthermore, in these phases the risk of escalation of violence and the possibility of a lethal outcome (murder of the mother, multiple homicides, murder-suicide) increases.

The dynamics of domestic violence obviously interfere with the relationship with children, altering the expression of the parental functions of the maltreating mother and father and the attachment models (Vita et al., 2023).

CONCLUSIONS

So, what conclusions should be drawn? What kind of advice should be given to women and mothers victims of domestic violence by the hand of their husband or partner? Don’t file a complaint because it will just get worse? Because, reporting will only add to the punishment of seeing your child removed from you.

In the meantime, every taxpayer continues to pay in order to support a system based on a double form of suffering, which also leads to the death of the woman and mother, in a femicide hatched in the complicit silence of the insititutions since it holds a woman prisoner in a house where she continues to suffer until the final explosion. Does that seem fair to you? (Palmieri et al., 2021)

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THE REFORM OF THE PROTECTION OF INDIVIDUALS WITH INTELLECTUAL AND PSYCHOSOCIAL DISABILITIES IN ROMANIA, PART OF THE EUROPEAN REFORM

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Abstract: *In recent decades, people with intellectual and psychosocial disabilities have been the focus of international conventions. At the level of national legislation, we discover the tendency to replace outdated and often degrading regulations with new, modern rules. This transition was not without problems, however. The article presents the historical evolution of personal protection in Romania and a comparative analysis of the current regulation with that of some European states.*

Keywords*: intellectual and psychosocial disabilities, guardianship, psychiatric involuntary treatment.*

INTRODUCTION

After the year 2000, an extensive process of modernization of the legislation regarding people with intellectual and psychosocial disabilities took place in Romania. In 2002, a new law on mental health and the protection of people with mental disorders was adopted. In the same decade has been adopted Law no. 448/2006 on the protection and promotion of the rights of persons with disabilities (Onica Chipea, 2018:184). Also, these categories of people benefit from tax exemptions in the fiscal legislation (Cîrmaciu, 2017:19). After that, in 2011, a new Civil Code came into force that also referred to the protection of individuals with intellectual and psychosocial disabilities. However, these normative acts did not comply with the standards imposed by the international conventions to which Romania is a party, especially those of the European Convention on Human Rights and the Convention on the Rights of Persons with Disabilities. This led to the declaration of unconstitutionality of some legal texts and a reform of the institutions regarding to the protection of these persons.

The Romanian Civil Code underwent important changes following the entry into force of Law no. 140/2022. This regulation represents the culmination of the change of perspective regarding the protection of the person with intellectual and psychosocial disabilities, but it is the result of a slow evolution and over a long period of time evolution that was the result of the change of perspective on the problem of these categories of people. In order to understand the progress of the analyzed institution, we will present both its historical evolution and the current regulation in the various European states.

HISTORICAL EVOLUTION OF PERSONAL PROTECTION IN ROMANIA

We believe that in order to understand the stage of the institution's evolution, it is necessary to follow its historical evolution. In principle, the protection of people with intellectual and psychosocial disabilities pursued two goals: ensuring a medical treatment that would prevent the deterioration of their health status and protecting them from concluding acts that could have harmed them. Over time, an extremely diverse terminology was used in the legislation that also provided clues as to how society viewed these people

The procedure of placing the person under legal guardianship provided by the Civil Code from 1864, aimed at depriving the person of capacity. Already under the rule of the Civil Code, it was understood that this serious limitation of civil capacity must be thoroughly justified: "in order to be able to place under guardianship and declare incapable a person with weakened mental faculties, this serious weakening of mental faculties must constitute the habitual state, causing great difficulty to be established, even for physicians. If this habitual state does not exist, then one cannot forbid a person; individual freedom must be respected, which justice defends even against medical expertise" (Plastara, N.A.:486). The Romanian Civil Code, faithful to the French Civil Code from which it was inspired, followed the rules established by it: "the lack of development or the alteration of the intellectual faculties must be very serious; if imbecility is only weakness of mind, if madness is only mania, there is no reason to pronounce the legal guardianship" (Planiol, 1920:617).

For a long time, the protection of the natural person through the court ban was regulated in the Family Code (Title III – Protection of those lacking capacity, those with limited capacity and other persons). According to art. 142 of the Family Code, the one who did not have the discernment to take care of his interests, due to mental alienation or mental weakness, could be placed under legal guardianship (*interdicție judecătorească*) which was instituted by the court for an indefinite period and led to the deprivation of the person's legal capacity and the institution of guardianship.

Before the 1989 revolution, the "protection" of people with mental disorders was ensured by *Decree no. 313/1980 on the assistance of dangerous mental patients*. The law distinguished between two categories of people suffering from mental illnesses - "*non-dangerous mentally ill*" and "*dangerously mentally ill*" and established distinct protection measures for the two categories. As we can see, the pejorative terminology suggests the way in which the Romanian legislator understood to protect these categories of persons. The non-dangerous mentally ill were protected by placing them under judicial interdiction and the institution of guardianship. As for dangerous mental patients and dangerous drug addicts, they could be required to receive outpatient medical treatment (without hospitalization) or compulsory medical treatment in hospital conditions. Those who, through their manifestations, endanger their own or others' life, health, bodily integrity, important material values, or repeatedly and seriously disturb work or life conditions, in the family or society, were considered "dangerous mentally ill" (art. 2 of Decree No. 313/1980).

Medical treatment with hospitalization was instituted by a medical commission through an enforceable decision. The law provided that the legality of taking the measure was subject to the control of the prosecutor's office in whose territorial radius the hospital is located. Also, against the decision of the medical commission, an appeal could be made to the court in whose territorial radius the health facility is located. The court verifies the legality of the medical board's decision, being able to order the a medico-legal psychiatric examination and being obliged to listen to the person against whom the measure was taken (Lupan, 1999:276).

Apparently the old regulation included some guarantees of respect for the rights of the person. In reality, however, this normative act was used by the old regime to remove from public life people who had an inappropriate attitude towards the then regime. That is why, after the change of regime, the need for a real reform of the protection of disabled people appeared.

THE REFORM AT THE LEVEL OF THE EUROPEAN UNION AND THE MEMBER STATES

An important influence on Romanian legislation was the Convention on the Rights of Persons with Disabilities adopted in New York on December 13, 2006, signed by Romania on September 26, 2007 and ratified by Romania through Law no. 221/2010. According to article 12, paragraphs 2-4:

"States Parties shall recognize that persons with disabilities enjoy legal capacity on an equal basis with others in all aspects of life.

States Parties shall take appropriate measures to provide access by persons with disabilities to the support they may require in exercising their legal capacity.

States Parties shall ensure that all measures that relate to the exercise of legal capacity provide appropriate and effective safeguards to prevent abuse in accordance with international human rights law. Such safeguards shall ensure that measures relating to the exercise of legal capacity respect the rights, will and preferences of the person, are free of conflict of interest and undue influence, are proportional and tailored to the person's circumstances, apply for the shortest time possible and are subject to regular review by a competent, independent and impartial authority or judicial body. The safeguards shall be proportional to the degree to which such measures affect the person's rights and interests" (United Nations, 2007).

In accordance with the Convention on the Rights of Persons with Disabilities, the person's legal capacity is not confused with his mental capacity, being distinct concepts, and perceived or real limitations in mental capacity should not be used as justification for rejecting legal capacity.

The European Convention on Human Rights (ECHR) was also very influential in the elaboration of the new legislation. The Convention's main objective is to protect the individual freedom of European citizens and to control how a state can justify any limitations on freedom it imposes. The ECHR ruled, in essence, that a measure that has the effect of total incapacity must be proportional to the degree of capacity of the person concerned and adapted to his circumstances and individual needs, the mental disorder must be "of the type or the degree" that would justify such a measure, interference with a person's right to respect his private life

constituting a violation of art. 8 of the Convention for the Protection of Human Rights and Fundamental Freedoms, unless it was "prescribed by law", pursued a legitimate objective and was a measure "necessary in a democratic society"

To reduce the risk of arbitrary decisions, the ECHR imposes judicial control on the limitation of rights by psychiatric involuntary treatment. Romania did not comply with this disposition in its legislation before 2022. The ECHR states that judicial control should be possible at any time and, if needed, repeatedly. Every patient should be able to access judicial review quickly. The ECHR describes in detail the patient's rights, insisting on the right to information and on the principle of restricting any limitation to liberty to the least needed to allow the necessary psychiatric treatment.

Through Recommendation no. R(99) 4 of the Committee of Ministers to Member States on the principles concerning the legal protection of incapable adults (Council of Europe, 1999), established that national legislation should, as far as possible, recognize the fact that there may be different degrees of incapacity and that incapacity may vary over time; "where a measure of protection is necessary it should be proportional to the degree of capacity of the person concerned and tailored to the individual circumstances and needs of the person concerned" (Principle 6 – Proportionality).

Romania did not fully comply this disposition in his legislation before 2022 although its Constitution provided in article 20 the principle of priority of international conventions: "If there are inconsistencies between the pacts and treaties regarding fundamental human rights, to which Romania is a party, and the internal laws, the international regulations take precedence, unless the Constitution or internal laws contain more favorable provisions". Also, article 50 of the Romanian Constitution, entitled "Protection of disabled persons", recognizes the right of persons with disabilities to enjoy special protection: "The state ensures the implementation of a national policy of equal opportunities, prevention and treatment of disabilities, with a view to the effective participation of disabled people in community life, respecting the rights and duties of parents and guardians". In the interpretation of the Constitutional Court, this norm imposes on the legislator the positive obligation to regulate appropriate measures so that persons with disabilities can exercise their rights, freedoms and fundamental duties, the obligation of support and support to come to their aid (Decision 138/2019).

We must note that, although at the constitutional level the protection of persons with disabilities was guaranteed, the legislation did not respect this rule, which, as we will see, led to the finding of the unconstitutionality of some normative acts and, finally, to real legislative changes.

The new Civil Code entered into force on October 1, 2011, took over the rules regarding the court ban from the Family Code. According to art. 164 paragraph 1, "*The person who does not have the necessary discernment to take care of his own interests, due to alienation or mental disorder, will be placed under legal guardianship*". "In the meaning of the Civil Code, as well as the civil legislation in force, the expressions mental alienation or mental debility mean a mental illness or a mental handicap that determines the mental incompetence of the person to act

critically and predictively regarding the social-legal consequences that may arise from the exercise of civil rights and obligations" (art. 211 of Law 71/2011 for the implementation of the Civil Code). The one who was placed under judicial interdiction could not conclude any juridical acts, neither *inter vivos* nor *mortis causa* (Popa, 2012:83).

In 2020, the exception of unconstitutionality of article 164 paragraph 1 of the Civil Code was invoked before the Constitutional Court of Romania and the Constitutional Court declared the text of the law as unconstitutional by Decision no. 601/2020. The Court considered that in the Civil Code, absolute values are used in the sense that any potential impairment of mental capacity, regardless of its degree, can lead to people being deprived of civil capacity (...) Thus, any partial/total, permanent/temporary limitation of mental capacity can inexorably lead to the loss of exercise capacity and the limitation of civil capacity, without the possibility that such a situation can be avoided through necessary support measures. It follows that there is a paradigmatic dissonance between the Convention on the Rights of Persons with Disabilities and the Civil Code regarding the protective measures that must be taken regarding persons with disabilities, the former being placed in the sphere of support measures and operating with intermediate values, and the latter placing itself in a regime of substitution and absolute values, refusing intermediate solutions.

After the declaration of unconstitutionality of article 164 paragraph 1 of the Civil Code, it ceased to be applicable. For a long period, until the entry into force of Law no. 140/2022, no other means of protection for individuals with intellectual and psychosocial disabilities with regulated in the Romanian legislation. It was a difficult time for courts who were deprived of the necessary tools to protect these people from entering into legal acts that would have prejudiced them. As it was noted, "every day new valences appear that require a quick solution, in the spirit of the law, thus ensuring the trust of natural and legal persons in the role of law in society and at the same time a new attitude towards the rule of law, of the state of right, which one must" (Drăgoi et al., 2018:3).

At the same time, the trials that Romania had at the European Court of Human Rights proved the fragility of the legal regulation. In the decision of October 12, 2021 in the case of RD and IMD v. Romania (application 35402/2014), the ECHR, ruled, unanimously, that there was a violation of article 5 paragraph 1 (the right to freedom and safety) of the European Convention of Human Rights, as well as a violation of art. 8 (the right to respect for private life).

The case concerned the involuntary admission of the applicants to a psychiatric hospital in order to compel them to undergo medical treatment, as well as the obligation to undergo such treatment. The Court noted that the relevant medico-legal psychiatric reports on the applicants were drawn up on 4 October 2011, more than three years before the measure ordering their placement in a psychiatric hospital. In the Tribunal's view, the lack of a recent medical assessment was sufficient to conclude that the applicants' placement was not lawful under the Convention. Furthermore, the lack of detailed reasoning in the domestic court's judgments ordering their detention did not allow it to be sufficiently established that the applicants posed a risk to themselves or others, in particular because of their psychiatric condition.

The Court considered that, although the measure in dispute indeed had a legal basis in Romanian law, the lack of sufficient guarantees against forced drug treatment had deprived the applicants of the minimum degree of protection to which they were entitled in a democratic society. Since the 2000s, there has been an extensive legislative reform at the level of numerous states regarding the system of protection of natural persons with disabilities. Thus, in **France**, the Civil Code was amended by Law n°2007-308 of March 5, 2007. The new Civil Code entered into force on March 15, 2009. "Measures for the protection of adults" are regulated in Title XI entitled "On the state of majority and on the adult protected by law" from Book I - "On persons" are regulated (chapter II, art. 425 – 494-12). According to article 425, any person who is unable to provide for his or her interests alone due to a medically proven alteration of either his mental faculties or his bodily faculties such as to prevent the expression of his will may benefit from a measure of legal protection provided for in this chapter. Unless otherwise provided, the measure is intended to protect both the person and their property interests. It can, however, be expressly limited to one of these two missions.

French law provides for three categories of persons of full age lacking legal capacity. The first covers “persons of full age under judicial protection” (*personne placée sous sauvegarde de justice*), who only require temporary protection in the conduct of their civil affairs or representation in the performance of specific acts (Article 433 of the Civil Code). The person placed under judicial protection retains the exercise of his rights. However, it cannot, under penalty of nullity, carry out an act for which a special representative has been appointed.

The second category concerns persons of full age under supervision orders (*curatélaires*) who are not unable to act alone but require constant assistance or supervision in the conduct of important civil affairs where it has been established that judicial protection cannot provide sufficient protection (Article 440 (1) and 3 of the Civil Code). Supervision can take two different forms, namely standard and enhanced. While standard supervision is the ordinary-law mechanism commonly used, a court may at any time order enhance supervision. The latter arrangement differs in that only the supervisor receives the supervisee’s income in an account opened in the latter’s name. The supervisee personally settles his or her expenditures to third persons. The supervisor is required to draw up an annual accountancy report (Article 472 of the Civil Code). Lastly, persons who require constant representation in the conduct of civil affairs may be placed under guardianship orders *(la tutelle*) if it is established that neither judicial protection nor supervision will provide sufficient protection (Article 440 (3) and (4) of the Civil Code). The judge establishes the length of the period of supervision or guardianship orders, which cannot exceed five years, save for exceptional cases (Article 441 of the Civil Code).

This protective measure can be ordered by a court only if strictly necessary and where no other legal means or less stringent measures are practicable (Article 428 of the Civil Code). The measure is structured and customised in accordance with the degree of impairment of the individual’s personal faculties (Article 428 (2) of the Civil Code). Applications for a protective measure must, under threat of inadmissibility, be accompanied by a detailed certificate prepared

by a medical officer who is selected from a list drawn up by the State Prosecutor (Article 431 (1) of the Civil Code). The person concerned is heard by the judge (Article 432 of the Civil Code).

On 27 September 2013 France enacted a new mental health law regarding psychiatric involuntary treatment. It is the fourth French mental health law on this matter. This new French mental health law is an attempt to find a balance between the protection of patients' rights and the need for treatment. The law confirmed the role of the judge and strengthened the legal procedures. It represents a new step in psychiatric involuntary treatment in France. One of its main characteristics is to introduce the Judge for Liberties and Detention in the control of treatment without the patient's consent, shifting to judicial power what was previously an administrative power. Indeed, it gives to the judge the task of checking if the limitations on individual liberties imposed by the psychiatric involuntary treatment are well adapted to and commensurate with the patient's therapeutic needs (Senon et al., 2016:13-15).

Despite this modern regulation and in accordance with the European Convention on Human Rights (ECHR), situations still arise that call into question the effective protection of these persons. In the Case of Delecolle v. France - 25 October 2018, the applicant alleged a violation of Article 12 of the Convention. He complained that he had been denied the right to marry on the grounds that his marriage had been subject to the authorisation of his supervisor or the guardianship judge. On 23 June 2009 the guardianship judge of the District Court of the 15th Administrative District of Paris placed the applicant, who was then seventy-two years of age, under enhanced protective supervision (*curatelle renforcée*) for five years. The report drawn up by a neuropsychiatrist whom the applicant had consulted, had ruled out any form of dementia but had confirmed a slight cognitive impairment and some psychological fragility and vulnerability, rendering a protective measure necessary in view of the extent of the applicant's personal assets. The applicant requested his supervisor's authorisation to marry M.S., a friend whom he had known since 1996 and who had become his partner in 2008. They informed her of the importance which they attached to the religious dimension of marriage. On 17 December 2009 the supervisor refused to authorise the marriage on the grounds that she had only known the applicant for a few months and that she therefore lacked the necessary background to authorise a wedding. In order to get permission to marry, he applied to the guardianship judge. On 24 June 2010 the guardianship judge dismissed the applicant's request. Without pronouncing on the religious dimension mentioned by the applicant, she concluded that the planned marriage as it stood was not in the applicant's interests.

The European Court of Human Rights holds that there has been no violation of Article 12 of the Convention. The Convention institutions have accepted that limitations on the right to marry laid down in the national laws may comprise formal rules, but also substantive provisions based on generally recognised considerations of public interest, in particular concerning capacity. Persons under supervision are not deprived of the right to marry. On the other hand, their right to marry is subject to prior authorisation, owing to the restriction on their legal capacity, which is one of the substantive grounds whose relevance is acknowledged by case-law. It is true that some restrictions are laid down. However, the Court observed that those restrictions

are properly regulated, with remedies under which restrictions on the right to marry can be subjected to judicial review, in the framework of adversarial proceedings.

The new **Hungarian Civil Code**. The recodification process of the Hungarian civil law began in 1998 and it resulted in a new Hungarian Civil Code, namely Act No. V of 2013 (HCC) which entered into force on 15 March 2014. The previous Hungarian civil law distinguished three categories of legal competency: full legal competency, limited capacity and legal incompetency. Legal incompetency and limited capacity could have been a result of two possible factors: age of the person (minors under 14 years of age were legally incompetent, while minors between 14-18 years of age were considered persons with limited capacity) and the court could have placed him or her under conservatorship or guardianship. Putting someone under guardianship and totally limiting his legal competency, declaring him incompetent was a very powerful instrument in the hand of judges. The new Civil Code arranges the entire Hungarian civil law into a consolidated structure, integrating regulations already present in separate acts.

The new Civil Code regulates the protection of the person in Book II entitled "Individual as a subject of law", Part II, Title V "Limitation of adults' capacity to act". The code distinguishes between partially limited capacity to act and no capacity to act. As a general rule, every person is capable of acting if his capacity to act is not limited by the Civil Code or a court ruling.

"An adult shall have partially limited capacity to act if placed by the court under guardianship (*cselekvőképességet részlegesen korlátozó gondnokság*) to that effect. The court shall place an adult under guardianship partially limiting his capacity to act if, due to his mental disorder, his ability required to take care of his own affairs is, permanently or in a temporarily recurring manner, significantly reduced, and consequently, having regard to his personal circumstances, family ties and social relations, his placement under guardianship is justified with regard to specified categories of affairs" (HCC 2:19 §). The court judgment that partially limits the capacity to act must define the groups of cases under which the ability of the person under guardianship to act is limited (Kriston, 2016:29).

"An adult shall have no capacity to act if placed by the court under guardianship fully limiting his capacity to act (*cselekvőképességet teljesen korlátozó gondnokság*). The court shall place an adult under guardianship fully limiting his capacity to act if, due to his mental disorder, he permanently and completely lacks the ability required to take care of his own affairs, and consequently, having regard to his personal circumstances, family ties and social relations, his placement under guardianship is justified. The court shall be allowed to limit the capacity to act in full if the protection of the rights of the person concerned cannot be ensured by means that do not affect his capacity to act or by partial limitation of his capacity to act" (HCC 2:21. §).

The court appoints a forensic psychiatric expert to examine the defendant's state of mind; within the framework of this, in order to carry out the investigation, he can be ordered to be placed in an inpatient hospital for a maximum of thirty days. In its ruling, the court also provides for a mandatory review of guardianship, which must be initiated *ex officio* by the guardianship

authority after a maximum of five years in the case of a partial restriction of the capacity to act, and a maximum of ten years in the case of a total restriction.

Both types of competency limitations are *ultima ratio* instruments and courts must evaluate whether other instruments would serve the interests of the person better without limiting his competency. These other instruments may be partial limitations on full legal competency only in selected cases and activities as the new Code allows judges to put somebody under guardianship only in selected cases rather than in all cases with general scope. Another instrument to completely avoid any limitations on one's legal competency is advocated decision-making without prejudice to legal competency. Where a person of legal age is in need of assistance due to the partial loss of his or her discretional ability in certain matters, the guardian authority shall appoint an advocate upon his or her request with a view to avoiding conservatorship invoking limited legal capacity (Fezer, 2014).

In the Czech Republic, a new Civil Code came into force through Law No. 89/2012 and is in force since January 1, 2014 (CCC). The limitations of the civil capacity and the means of protection of the natural person are provided in Title II dedicated to Persons, Part II - Individuals. "In anticipation of its own incapacity to act can legally express the will of man, that his affairs were managed in a certain way, or in order to manage a person or a person to become his guardian" (§ 38 CCC). The Czech Civil Code also regulates the assistance in decision making: "if a person needs help in decision making, because in his mental disorder that causes difficulties, though not be limited in incapacitation, he can negotiate with the proponent of providing support, proponents may be more" (§ 45 CCC). The Code also allows tot the adult with mental disorder that has no other representative, in a legal act, to be represent by its descendant, ancestor, sibling, spouse or partner who lived before the emergence of representation in the same household for at least three years (§ 49).

Limitation of capacity may be made only in the interests of man, which concerned, after his views and with full recognition of his rights and his personal uniqueness. It must be carefully taken into account the extent and degree of disability a person to take care of their own affairs. Limit the legal capacity of man can only be threatened if he would otherwise not be enough and serious harm to its interests due to the milder and less restrictive measures (§ 55 CCC). The court may restrict the legal capacity in connection with the subject matter for the time necessary for its execution, or otherwise designated for some time, but no longer than three years, the legal effects of the expiry of limitation expire. An extension of this time limit is possible but not for longer than one year (§ 59).

CHANGES IN ROMANIAN LEGISLATION

The provisions of the Civil Code regarding the enforcement capacity underwent important changes in 2022 following the entry into force of *Law no. 140/2022 regarding some protection measures for people with intellectual and psychosocial disabilities and the modification and completion of some normative acts* (Law 140/2022). The new regulation replaced the institution of the judicial ban which, previously, was declared unconstitutional by Decision no. 601/2020 of

the Constitutional Court of Romania. The measure of legal guardianships was replaced, in some cases, with judicial counseling and special guardianship. The law also regulated the assistance in concluding legal acts. In the new regulation, the Civil Code establishes a series of essential guarantees regulated for the benefit of the protected: the establishment of a gradual system, in steps, of ordering protection measures, of certain periods of time for which the measures can be ordered, respectively extended, the configuration some rules regarding the periodic reassessment of the chosen protection regime or the possibility of adaptation by the guardianship court of the protection measure depending on the concrete circumstances in which the protected person finds himself (Diaconescu et al., 2022:126).

According to article 164 paragraph 1 Civil Code, amended by Law no 140/2022, "*the adult who cannot take care of his own interests due to a temporary or permanent, partial or total impairment of his mental faculties, established following medical and psychosocial assessment, and who needs support in forming or expressing his will can benefit from judicial counseling or special guardianship, if taking this measure is necessary for the exercise of his civil capacity, under conditions of equality with other persons".*

A person can benefit from special guardianship (*tutelă specială*) if the deterioration of his mental faculties is total and, possibly permanent and it is necessary to be continuously represented in the exercise of his rights and freedoms; The institution of special guardianship is ordered for a period that cannot exceed 5 years. However, if the damage to the protected person's mental faculties is permanent, the court can order the extension of the special guardianship measure for a longer period, which cannot exceed 15 years (art. 168 paragraph 3 Civil Code).

A person can benefit from judicial counseling (*consiliere judiciară*) if the deterioration of his mental faculties is partial and it is necessary to be continuously counseled in the exercise of his rights and freedoms. The institution of judicial counseling can only be done if an adequate protection of the protected person cannot be ensured by the institution of assistance for the conclusion of legal acts (art. 164 paragraph 2 and 3 Civil Code) In the new regulation, the duration for which protective measures can be taken was also limited: The institution of judicial counseling is ordered for a period that cannot exceed 3 years (art. 168 paragraph 2 Civil Code). However, it is possible to renew the measure.

The settlement of the request for the institution of a protective measure is made according to the provisions of the Code of Civil Procedure (article 936 – 943). The procedure particularly insists on medical and psychological evaluation, limits the possibility of involuntary hospitalization to no more than 20 days; the process is carried out with the mandatory participation of the prosecutor and the ill person is heard by the court (Miheș et al., 2020). We mention that the court has the possibility of adapting the protection measure depending on the concrete circumstances in which the protected person finds himself. In this sense, art. 937 paragraph 3 of the Civil Procedure Code provides that "*the guardianship court is not bound by the object of the request and may institute, under the law, a protective measure different from the one requested"*.

Law 140/2022 also regulates assistance for the conclusion of legal acts: "The adult who, due to an intellectual or psychosocial disability, needs support to take care of his person, manage his patrimony and to exercise, in general, civil rights and liberties may request the public notary to appoint an assistant, under the conditions of the Law of Public Notaries and Notarial Activity no. 36/1995, republished, with subsequent amendments, for a maximum duration of 2 years" (article 1).

Regarding the legal guardianships (*interdicția judecătorească*) established before the publication of the Constitutional Court decision, their situation is regulated by art. 20 of Law no. 140/2022. The text of the law instituted the duty of the courts to re-examine, *ex officio*, the measures of judicial prohibition, within 3 years from the date of entry into force of Law no. 140/2022. The courts will either replace the legal guardianship with one of the means of protection provided by Law no. 140/2022 or lift the guardianship. Until the court rulings become final, those under judicial interdiction are considered, with full right, in terms of their condition and capacity, as persons for whom special guardianship has been instituted.

The psychiatric involuntary treatment is currently regulated by Law no. 487/2002 of Mental Health and the Protection of People with Mental Disorders. The regulation of Decree 313/1980 was replaced by a modern regulation and a change of perspective. The change starts with the terminology; the pejorative, degrading notions used by the Decree have been replaced by a new terminology: "*person with mental disorders*" and "*person with serious mental disorders*". Art. 5 of Law no. 487/2002, defines the notions: a person with mental disorders is understood as "a person with mental imbalance or insufficient mental development or dependent on psychoactive substances, whose manifestations fall within the diagnostic criteria in force for psychiatric practice"; a person with serious mental disorders means a person with mental disorders who is unable to understand the meaning and consequences of his behavior, so that he requires immediate psychiatric help. The serious mental disorder thus affects the very discernment of the person: he is unable to understand the meaning and consequences of his behavior. The great merit of Law no. 487/2002 was that, for the first time in Romanian legislation, it dedicated a section on the rights of people with mental disorders.

In its initial form, the law had numerous deficiencies: we were only dealing with an administrative protection, ordered by the medical authority, the court having attributions in the disposition of these measures, rather than in the resolution of possible complaints. The involuntary internal decision was notified only to the prosecutor's office (not the court) and was subject to review by the prosecutor's office. As we note, the court has no role in verifying the legality of the measure before it is instituted; the court could only resolve the referral of the patient dissatisfied with the involuntary hospitalization decision.

Following numerous amendments, the law acquired a modern form that guarantees respect for the rights of the involuntarily interned person. The institution of compulsory medical treatment is subject, in all cases, to the control of the court.

Admission to a psychiatric unit is done only for medical reasons, meaning diagnostic and treatment procedures (Article 49 paragraph 1 of the Law). The involuntary hospitalization

procedure, as a rule, goes through 3 stages: the involuntary hospitalization proposal made by the psychiatrist, the hospitalization decision made by a committee of doctors and the confirmation of the decision by the court. The request for involuntary admission of a person may be made by the family doctor or the specialist psychiatrist, the person's family, the representatives of the local public administration, the representatives of the police, the gendarmerie or the fire brigade, as well as by the prosecutor. we appreciate that the request must be made in good faith (Mihăilă, 2020:186). The medical commission that made the decision to admit the patient has the obligation to re-examine the patients at most once a month and whenever necessary depending on their condition.

CONCLUSIONS

From the analysis of international regulations, we observe the current existence of a clear normative framework, established by the European Convention on Human Rights and the Convention on the Rights of Persons with Disabilities and other regulations, intended to standardize national legislations.

Following the benchmarks drawn by the international conventions, the European Union states have modernized their legislation in such a way as to offer adequate guarantees for the protection of the rights of persons with disabilities. In the analyzed legislations we can discover the same constants. Thus, we discover the intention of adopting intermediate solutions, adapted to the particular situation of each person, depending on the degree of total or partial damage, permanent or temporary. On the other hand, the legislation aims for the protective measures to be proportionate, adapted to the person's situation and to be applied for the shortest possible period. Also, the limitation of the time interval for which the measure can be taken appears as a constant in all the analyzed legislations and an important guarantee of respecting the freedom of the person.

As we could see, the new Romanian Civil Code establishes a series of essential guarantees regulated for the benefit of the protected. The previous legal guardianship has been replaced with gradual, flexible means of protection and the guardianship court has the possibility of adaptation of the protection measure depending on the concrete circumstances in which the protected person finds himself. Any legislation is perfectible. The concern of the Romanian legislator for the analyzed issue still exists. The proof is represented by the numerous legislative changes; the last amendment to Law no. 487/2002 intervened on March 30, 2023.

I believe that the possibility of the guardianship court to order that the protection measure only concern certain categories of legal acts (Article 168 paragraph 4 of the Romanian Civil Code) requires greater attention from the point of view of those who will conclude legal acts with such categories of people. Also, a more flexible way of thinking, detached from the old patterns, is needed in terms of approaching legal relations with individual with intellectual and psychosocial disabilities.

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CHALLENGES OF PUBLIC PROCUREMENT IN THE ROMANIAN MILITARY SYSTEM IN THE CURRENT SECURITY CONTEXT

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Abstract: *Public procurement represents a complex and challenging professional field. Working as a specialist in public procurement within the Romanian defense sector involves managing and overseeing the procurement processes specific to defense related goods and services not only for the military personnel that perform during peace time but also for the forces participating in international missions. This role entails a deep understanding of regulatory compliance, security requirements, and specialized procedures. Moreover, it might involve ensuring transparency, competitive bidding, and adherence to stringent regulations. In this context, this paper analyzes the main challenges faced in the procurement process during the international missions.*

Keywords*: procurement, defense sector, resources, law, international mission.*

Introduction

One of the areas of interest for logistics specialists in the Romanian Army is that of procurement. The provision of goods and materials necessary for the daily activities of the military structures, whether in time of peace, on the national territory, in crisis situations or during missions in theatres of operations outside the borders of the Romanian state is a challenge. Starting from the demands of the contemporary reality, in which, more and more often, the military structures of the Romanian Army are asked to participate in international missions under the aegis of the UN, EU or NATO, and noting the lack of scientific analysis on the subject of public procurement in theatres of operations, through this material we intend to bring to attention this extremely relevant topic for the Romanian Army.

In this regard, we have set the following objectives: to identify and systematize the main legislative references that define the general framework of public procurement carried out in theatres of operations outside the national territory, to highlight the particularities of the procurement process of military structures working in theatres of operations as well as the challenges faced by specialists in this field.

This material is approached from a legislative perspective, but the focus is on the technical-procedural aspects supported by the practical experience of the authors and imposed by current legislation, the need to adapt to the international economic and security situation.

1. Challenges of the geostrategic situation

The current international context supports, through the current challenges, the reinforcement of the image of an uncertain and challenging security environment. Here are a few aspects that support the above statement:

- The aggression of the Russian Federation against Ukraine started in 2014 and turned into a war of attrition with a high level of complexity;
- The confrontation in which the State of Israel has been asked to take part, as a main actor;
- The security situation in the Central African Republic where the Council of the European Union has decided to continue the EUTM RCA military mission (Council of EU, 2022);
- Involvement of 27 contributing states in the NATO KFOR mission in Kosovo, with the aim of maintaining a balanced security environment and freedom of movement for all minorities living in the region (NATO, 2023);
- The frozen conflicts in the Caucasus region that could escalate at any time;

All of these can bring or contribute to regional and even global security imbalances.

The 19 years during which the Romanian armed forces have participated in the military conflict in Afghanistan (Cioculescu, 2023) have demonstrated that, although we do not have an expeditionary army, we can, with the support of allies, carry out military actions in an area located at a considerable distance from the national territory. Direct involvement in North Atlantic Alliance missions has made it easier for us to understand how to work in a multinational space, giving us access to an understanding of a specific legal framework with rules adapted to a particular context. Whether we are referring to the strategic movement of Romanian forces in the theatre of operations, the punctual planning of missions or the management of available resources, in relation to the agreements between the participating nations, all these have been the premises for the development of the Romanian armed forces, in relation to the requirements of the international operational environment. At the moment, along with the whole spectrum of measures implemented as a result of the conflict in the vicinity, both in relation to the approaches that the North Atlantic Alliance has on the table as well as to taking into account the specifics of the national security provisions, Romania has assumed the presence, through Romanian forces of varying sizes, in theatres of operations outside the national territory.

Also, Romania's membership of the European Union obliges our country to create its own policies in relation to those of the European Commission (Ivan, 2023), the regional security climate requires this institution to take specific measures. According to Article 288 of the Treaty on the Functioning of the European Union, the secondary legislation of the European Union materialized by Regulations is directly applicable in all Member States, without the need for transposition into national legislation, our country, like the other Member States, having to know and implement the European Regulations on public procurement.

From deciding on the type of military structure, its size, staffing, equipping and provisioning according to the mission assigned to it, to the needs for procurement and re-provisioning throughout the duration of the mission, all these aspects significantly influence the procurement processes planned and carried out in support of the military structure participating in the international mission.

2. Legislative aspects of public procurement in the defence system

Providing the material goods and services needed to carry out all activities in the public domain involves considerable resources: from the design and construction of public domain infrastructure, the provision of equipment and technology, the appropriate equipment, the employment of specialised staff and their salaries, to everything needed to carry out day-to-day activities. First of all, we are talking about substantial financial funds that are required to be spent. Secondly, we draw attention to the need for specialised human resources and continued investment in ensuring the functioning of an information system. Research and development as well as logistical activities are in addition to those mentioned above. Whichever public sector we wish to refer to, the deployment of resources must be continuous. Education, health, public transport or defence, like the others, require a constant provision of resources to achieve the objectives of each sector, which requires significant financial efforts from each individual state.

As we have already pointed out, one of the public sectors on whose functionality national security is directly dependent is the defence sector, with the army being the central pillar of the national defence system. In this regard, achieving the objectives set for the size of the military system, staffing, training and continuous instruction of human resources, the provision of equipment and technical equipment and, last but not least, ensuring the potential to respond in situations of crisis or armed conflict are activities that must maintain their priority in providing resources. Given that the use of the state budget is a matter of interest to citizens, but not only to them, ensuring transparency in the award of contracts, judicious use of resources and honest behaviour in the use of available resources are requirements for the professional conduct of public sector specialists. Even though national security is of vital interest, both from an individual and institutional perspective, public procurement carried out for the Romanian Army does not exceed specific European and national legislation.

The field of public procurement is predominantly technical and described by increasingly dense legislation. Thus, public procurement in the defence sector is primarily governed by European legislation (primary and secondary). This is transposed at national level into primary and secondary legislation and also into regulations with internal application. Briefly, in the table below, we have mentioned the main legislative milestones which are both necessary and defining for public procurement in the defence sector, both for those carried out on national territory and for those whose beneficiaries are deployed in theatres of operations, in international missions.

Table no. 1. Main legislative milestones regarding public procurement in the defence sector carried out for Romanian forces on the national territory but also for military structures participating in international missions

European Union legislation (primary and secondary)	**National primary legislation**	**National secondary legislation**	**Regulations of entities with a monitoring and control role in public procurement. Regulations applicable in the Ministry of National Defence**
Directive 2014/23/EU on concession contracts	Law no. 100 / 23 May 2016	GD 867/ 9 December 2016	
Directive 2014/24/EU	Law no. 98 / 23 May	GD 395/ 7	

on public procurement	2016	June 2016	
Directive 2014/25/EU on sectoral procurement	Law 99 / 23 May 2016	GD 394/ 7 June 2016	
Council Directive 1989/665/EEC (remedies and appeal procedures)	Law 101 / 23 May 2016		
European Commission Regulation No. 1986 of 2015 (secondary European legislation)			
	G.E.O. No. 98/2017 on the ex ante control function		
			National Public Procurement Agency instructions (document templates, procedural details, etc.)
			Order M 97 of 2011 of the Minister of National Defence for establishing the conditions for the procurement of technical supplies and equipment, in the country, in emergency conditions, as well as goods, construction works and services, outside the territory of the Romanian State, necessary for the performance of missions and operations performed by the armed forces
			Annual / biannual concepts on public procurement in the Romanian Army
	Law 121 of 2011 on the participation of the armed forces in missions and operations outside the national territory		Order M31/2008 on procurement competences for products, services and works within the Ministry of Defence.

(Source: authors' synthesis)

At the level of the Romanian Army, public procurement, by virtue of the legislation in place and the contemporary economic and security context, is carried out in a centralized system. Designated contracting authorities set up complex portfolios of procedures based on established needs and competences. From the perspective of these authorizing officers designated to supply goods and services to military structures, the challenges of planning and conducting public procurement cannot be neglected. Generically, without going into further detail, in relation to public procurement for the Army and carried out on national territory, we refer to:

- Difficulties in understanding and implementing the increasingly complex and varied legal framework for public procurement;
- harmonizing the requirements of the Army with the legal aspects defining the procedural framework for public procurement;
- The time constraints imposed by the needs of the Army on the one hand and the legislative requirements on the other;

- Lack of human resources specialized in procurement;
- Difficulties in cooperating with other structures involved in the procurement process.

If these are the millstones that specialists encounter in peacetime situations on national territory, in the next chapter we analyse the challenges encountered in the international context.

3. Public procurement for the benefit of military structures participating in international missions

When we talk about international missions we are talking about military personnel, specialized detachments, sub-units and military units assigned to participate in missions outside the national territory. Also, considering the sequence of events involved, from the expression of political will to contribute with forces and means to certain security initiatives and military operations in the context of non-Article 5 NATO, EU, UN, OSCE, etc., to the actual deployment of operations, in areas or theatres of operations around the world. The political option is translated into a decision at the level of the Supreme Council of National Defence, which determines the volume of the national troop contribution, a decision that is assimilated and appropriated by the strategic and operational levels of the Romanian Army. Thus, the Defence Staff issues action orders on force generation and operationalisation. Subsequently, an entire process is triggered for the nomination and selection of personnel, the formation of detachments or the completion of sub-units and units, their equipping and the procurement of material goods necessary for the deployment of international missions.

All these steps are carried out in a unified and coherent concept, initiated at the small tactical level and completed and approved at the large tactical level, namely at the level of the responsible force category (land forces, air forces, maritime forces, special operations forces, logistic support forces, cyber defence, etc.). Thus prepared and trained for the mission, detachments, sub-units or units go through an evaluation process strictly regulated by national military or NATO provisions, under the planning and command of the Joint Forces Command, the only operational level command of the Romanian Army, a command that will take over all structures participating in international operations as long as they carry out missions.

With regard to the logistic support of the participating structures, the logistic support concepts of the structures participating in missions can foresee two ways of approaching it. The first option is full in-country logistics provision, either by transporting the entire logistics package on deployment or by organising transport missions for resupply and the provision of goods (especially fuel) and services (food, accommodation, laundry, recreation and sports, etc.) by coalition partners for a fee. In the second variant, it is foreseen to supplement some products and services, during the deployment of the mission, by purchases in the theatre of operations, when the economic and security situation of the host country allows it.

Naturally, purchases made outside the national territory comply with public procurement legislation, as long as the supply/provision/performance of services is paid for with public money. However, the Romanian law[1] governing the planning, organisation and conduct of public

[1] Law No. 98 of 19 May 2016 on public procurement, as amended and updated

procurement processes states that the law does not apply to "the award of public procurement contracts for contracting authority structures operating on the territory of other states when the value of the contract is less than the value thresholds laid down in Article 7 para. (1)", namely, at that time, 678,748 lei, which is the equivalent in euro of 140,000 euro. This amount is significant and allows, in most cases, the successful execution of all necessary re-procurement abroad for structures participating in international missions. Moreover, the same legislative provision states that contracting authorities draw up their own rules for making purchases below this value threshold, which must comply with the application of legislative principles. The principles defined by the national legislation are: non-discrimination, equal treatment, mutual recognition, transparency, proportionality and accountability (Law 198, 2016).

At the level of third national legislation, we find an Order of the Ministry of National Defence[2], which mainly states the value threshold below which the acquisition competence is held by the structure itself or the National Support Element. The latter is a specific 3rd line general and logistical support structure, which is not included in international organisations'[3] requests for missions but is required as a voluntary national contribution to support national forces abroad. The regulated threshold is €15,000 per purchase of goods or services. Once the procurement estimate exceeds this amount, the procurement can no longer be carried out by the structure itself, as the procurement competence lies with the National Support Element.

In this context, the main procurement challenge can be formulated in the form of a question: what should be the elements that the contracting authority, namely the National Support Element, should take into account when tasked with carrying out procurement for the benefit of its own structure and the national structures located in its area of responsibility?

We mention the fact that so far our country has not recorded any breach of the threshold of 140,000 euros / purchase, outside the national territory, In our opinion, for the coherent and legal planning and organization of public procurement processes, the acquiring structure must go through, first of all, all the steps prior to the identification of the exceptional cases provided for by the legislation, as follows:

- Consultation with the specialist staff of the Joint Force Command to provide forecasts of the forces participating in the mission in the theatre of operations in the coming year;
- Interviewing categories of forces generating mission participating structures as well as detachments/structures already present in the theatre of operations on projected requirements and providing expert support for the preparation of requirement briefs;
- The implementation of the annual procurement programme and the direct procurement annex as a management tool for procurement conducted outside the national territory and as a basic tool in the subsequent application for funds to the force categories generating structures participating in missions;
- Carrying out these steps through the rules for estimating the value of a public procurement, namely grouping products with identical or similar uses within the same

[2] Order of the Minister of National Defence No. M-97 of 2011
[3] NATO, UN, OSCE, EU, etc.

procurement requirement. Furthermore, as a national support element operating for the benefit of the national contingent present in a theatre or area of operations, the contracting authority shall estimate the procurement to be performed in the plan year by estimating its value as the total of the identical or similar requirements of all detachments/structures supported in the plan year, whether or not the component staff of these structures are rotated during the year, whether or not National Support Element staff are rotated during the year;

- If the contracting authority finds itself in the position of having to carry out competitive procurement procedures, as a result of value thresholds being exceeded for certain requirements, as a result of the procurement planning process, it shall fully comply with the requirements of national procurement legislation for the requirements of the supported structures present in the theatre of operations.

As regards the budget used by the National Support Element in the implementation of procurement, it is built from funds already provided for in the own budgets of the force categories generating structures participating in the missions and which must be made available to the Joint Logistics Command, the category generating the National Support Element. The basic purpose for which Romanian legislation provides for such centralisation for procurement carried out abroad is the economy of forces and means, as long as, in a theatre of operations, there will have to be a single entity specialised in public procurement to deal with the problem of re-supplying national forces from local economic operators.

The above-mentioned ministerial order also stipulates that, for purchases worth more than EUR 75,000, the National Support Element is obliged to notify the Directorate-General for Armaments. This is only natural, as the Directorate-General for Armaments is the regulatory authority of the Ministry of National Defence in the field of public procurement, and it can order specific measures, for the theatre of operations, to increase the efficiency, economy and timeliness of purchases made outside the national territory.

Conclusions and proposals

As an aspirant of the North Atlantic Partnership, and later as part of the alliance, Romania has consistently, over the years, responded affirmatively to requests from international organisations to contribute with forces to democratic peacekeeping efforts and to regional initiatives to restore peace and security. At this time, the Romanian Army benefits from a general, systemic approach essentially opposed to the organisational and operational paradigm under which it functioned in the pre- and post-December years. Exercises aimed at forming people's identity, ways of thinking, ways of operating and national standards as close as possible to those of the West, as well as the international operations in which our country has taken part in recent decades, have made it possible to develop the military ensemble and the Romanian military as a whole in a much more resilient, more efficient, more sustainable and more integrated manner, in terms of its subsystems and with the North Atlantic Alliance in general.

Romania's most extensive and long-standing experience in international missions is undoubtedly represented by the operations in Afghanistan over twenty years. Here, thousands of Romanian soldiers have been able to observe and internalize many aspects that give performance and quality to the military system, individual training, professional way of operating and psycho-moral qualities to which the professional in this field is called. However, from a logistical point of view, the Romanian military generally had the opportunity to admire American professionalism and benefit from it to the full. In fact, the Lift&Sustain programme, run by the US military for certain nations, has accustomed the Romanian military to being supported, logistically and financially, for the most part, during the deployment of missions, by the partner in the theatre of operations, in spite of NATO doctrine which clearly stipulates national responsibility in this area. As a consequence, almost 3 years after withdrawing from Afghanistan, the Romanian military continues to rely on the support of its partner in the theater, in contradiction to the specifications of logistical action orders and mission support concepts. Current experience shows that in most cases, the need for in-theatre procurement outside national territory is not understood and the acceptance of national responsibility for full logistical support of the contingent participating in multinational operations is hardly accepted. Although simple in itself, for a procurement officer, the issue of procurement outside national territory seems a challenging obstacle. In our view, this obstacle is essentially a mental one, and can be easily dismantled by including NATO logistics topics and practical exercises for planning, requesting funds, organising and conducting procurement processes in mission training programs.

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THE CRIMINAL LAW ASSESSMENT OF EXTORTION IN THE LIGHT OF THE CSEMEGI CODE AND CONTEMPORARY JUDICIAL PRACTICE

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Abstract: *In this essay I would like to introduce the process of the causes leading to the creation of the statutory offence of extortion, the examination of the created offence and the development of judicial practice at the time. For this purpose, I primarily drew on the documents prepared during the codification of the Csemegi Code, the ministerial explanatory memorandum of the Act, the works of the classics of Hungarian criminal law scholarship and court decisions. The extortion first appeared in the Csemegi Code, so prior to its entry into force only extortion-like offences had been regulated. The offence of extortion criminalisation and hence its inclusion in the list of property offences is linked to the Act V of 1878, which name is Csemegi Code. Chapter XXVII of the Special Part of the Csemegi Code is entitled Robbery and Extortion. The Article 350 of the Penal Code is included the basic case of extortion. While the Article 353 of the Csemegi Code is included the qualified cases of extortion. By presenting these in this essay I would like to introduce the specificities of regulation and explain in detail the similarities and differences between robbery and extortion.*

Keywords: *criminal law, extortion, violent crime against property, Csemegi Code, legal history*

INTRODUCTION

"Among the various categories of offences and misdemeanours, there is hardly one which requires the examination of so many and so complex issues, the clarification of so many elements and the settlement of so many controversies as offences and misdemeanours against property. It is a peculiar and exceedingly sad fact that around these offences forming the greater part of the subjects of criminal legislation the most doubts arise, the most differences prevail, and the most intriguing controversies press to the fore." (1878. évi V. törvényczikk indokolása [Ministerial Explanatory Memorandum to the Csemegi Code]).

The emergence of violent crime against property can be said to be as old as the development of societies. After all, property is the most basic institution of all existing societies, defining the character of each society and ensuring the community's control over resources and material rights, as well as determining the redistribution of wealth (Földi et al., 2008:284). And crimes against property are a violation of the order of property relations, which justifies their early emergence. The offence of extortion is to some extent an exception to this rule, since its criminalisation and hence its inclusion in the list of property offences is linked to the Hungarian Criminal Code, the Act V of 1878 on the law on offences and misdemeanours, which is associated with the name of Károly Csemegi.

Regarding this I have chosen to examine the process of the causes leading to the creation of the statutory offence of extortion, the examination of the created offence and the development of judicial practice at the time. For this purpose, I primarily drew on the documents prepared during the codification of the Csemegi Code, the ministerial explanatory memorandum of the Act, the works of the classics of Hungarian criminal law scholarship, including László Fáyer, Ferenc Finkey and Pál Angyal, and court decisions.

1. Beyond codification - the emergence of extortion-like offences

As I mentioned above extortion as a violent offence against property first appeared in the Csemegi Code, so prior to its entry into force only extortion-like offences had been regulated. This is why Ferenc Finkey began his interpretation of the concept of extortion with the following sentence: 'extortion is a product of the criminal law of the latest era (Finkey, 1914). In my view extortion-like offences can be divided into two categories.

In the first category those offences are included which can only be committed by a specific group of persons. This is the case of Act XXIII of 1497, which made the acts of military troops who "enter and cause damage to the lands of others after war" punishable by death. The same punishment for acts against soldiers was provided for in Act XVII of 1729, which declared that "soldiers and officers stationed in the country shall not dare to demand or extort any kind of donation". And in the Act XXX of 1567 a provision for official extortion can be found.

Act XVIII of 1871 on the liability of judges and court officials can also be included. According to Article 11(c) of the Act extortion is considered an administrative offence, which is defined in Article 14 of the Act (Section 14: A judge or judge's clerk who abuses his official power to compel a person to do, tolerate or refrain from doing an act unlawfully commits the crime of extortion.).

The second group includes provisions which punish certain acts in order to protect a specific group of persons. Undoubtedly this includes Act XXVIII of 1545 which protected those who delivered food to castles against unauthorised collectors and extortionists, while Act XLIV of 1545 'protected the poor against extortionists'. Furthermore, the Act CI of 1715 "protected the poor people against oppression." (Angyal, 1934:58-59).

The offence of extortion first appeared in the 1843 bill, where it was placed in Chapter 34, Section 326 after the case of robbery (Section 326: Whoever, with the intent to unlawfully benefit itself or other person by its act, coerces any person, either by violence or by threats which are seriously dangerous to the person life, body, property or honour, or to the life, body, property or honour of any other person belonging to the subject person: (a) To sign or issue, destroy or alter any deed, whether of movable or immovable value, or by any other act to make any disposition of his property, whether to itself or to any other person, prejudicial to itself or to any other person; (b) To send or deposit any money or other movable property anywhere to the person threatened or to any other person, as an extortioner, shall be liable to the penalty provided in Section 320, 321 and 322 for robbery.).

2. Beyond codification - the legal concept of extortion

2.1. Taxonomy

The Codification Committee was not in an easy position to place the offence in a taxonomic context. Pál Angyal explained that extortion could be included in the offences of violation of personal liberty, offences against property and offences of exploitation. Similar to the fraud offence in a taxonomic context (Madai, 2008:22). However, the placement should not be based on a singling out of specific characteristics, but on the search for the criterion that is most common in practice. The conclusion to be drawn from an examination of the practice of the law enforcement authorities is that an infringement of property rights can be established in all cases (Angyal, 1934:69).

The Act divided the offences against property into ten chapters, and the ministerial explanatory memorandum further divided the offences into four categories. The first group included offences that involved the wrongful appropriation of other person's property, the second group included offences that deprived the owner of the property by unlawful retention or disposal of the wrongful appropriation of property of other person. The third group consisted of offences where the owner of the property was persuaded to surrender it by "trickery"; the fourth group consisted of offences where the offender unlawfully destroyed or damaged the property of other person. According to this classification, the first group included extortion, theft and robbery.

Chapter XXVII of the Special Part of the Csemegi Code is entitled Robbery and Extortion. According to Finkey the regulation under this common title was based on the mode of commission of both offences, i.e. violence and threats against the person. It is the use of violence or threats as an instrumental act that creates the affinity between the two offences and distinguishes them from other offences against property (Finkey, 1914:666-667).

The ministerial explanatory memorandum to the Act explains in detail the similarities and differences between robbery and extortion. The common feature is that the legal object of both offences is property, the means of violating the object being violence or threats. On the other hand, there is a difference in the way the offences are committed, since while robbery is committed by taking movable property, extortion is committed by "coercing" a passive subject into compliance, acquiescence or abandonment. There is a further difference between the offences in terms of the degree of completion, since the offence of robbery is committed by the taking of movable property, establishing extortion does not require the achievement of a material loss (Löw, 1880:680).

2.2. Cases of extortion

2.2.1. The concept and basic case of extortion

According to Article 350 of the Penal Code, "Any person with an intention for obtaining for itself or other person an unlawful pecuniary gain, compels a person, by force or threat, to do, take or leave anything, shall, unless his act constitutes a more serious offence, be guilty of extortion and liable to imprisonment for a term of up to three years."

In defining the concept of extortion, the codification committee copied word by word the definition of extortion from the German Reich Criminal Code of 1871, the only difference being that the German Criminal Code refers to the unlawful acquisition of pecuniary gain, whereas the Hungarian legislation focuses on the quality of the pecuniary gain (Angyal, 1934:75).

2.2.2. The "main" factual elements of the offence

It is clear from a reading of the factual elements that the offence does not require any personal qualification to be committed and can therefore be committed by anyone. But it is important to note here that, given the subsidiary nature of the offence, if the offence is committed by a public official, it is not extortion but abuse of office based on Article 475 of the Code.

The conduct of the offence is coercion, which takes the form of forcing the offender to act, to tolerate or to abandon. The Minister explains that coercion may be directed either to action or to compliance (Löw, 1880:680).

Both in the case-law and in the legal literature of the time, coercion meant nothing more than in the current legislation, the imposition of force or threats on the victim's will, capable of making it behave in a way which the offender requires of it. The existence of a causal link between the coercion of the offender and the temporary paralysis of the passive subject's freedom of action is essential to establish the offence.

It is also important to note that coercion constitutes extortion only if the perpetrator is motivated by the intention to obtain an unlawful pecuniary gain for itself or for other person. This circumstance brings extortion closer to fraud and at the same time distances it from robbery. The legal concept of fraud also includes the aim of obtaining pecuniary gain, but requires different conduct - deception and misrepresentation - whereas the means used in the case of robbery are the same as those used by the extortioner - violence or threats - but do not require the aim of obtaining pecuniary gain (Angyal, 1934:89).

Pál Angyal defines the concept of pecuniary gain as "a phenomenon manifested in goods (things, rights, positions, expectations, etc.) which is capable of enhancing the desire to eliminate a sense of lack." Thus, a property benefit is both an increase in wealth and a favourable phenomenon which is capable of securing existing wealth, facilitating the enforcement of a property claim, or preventing a threat to property without increasing the wealth (Angyal, 1934:92).

Since extortion is a crime against property, only the coercion to act, to tolerate or to refrain from acting can stipulate establishing of extortion, which is capable of achieving the offender's aim of obtaining a pecuniary benefit for itself or for other person and causing damage to property.

Furthermore, it is also need to be clarified which degree of violence and threats used in coercion. Both the legal literature and the case law are unanimous in their view that in the case of robbery the existence of vis absoluta i.e. violence which bends the will is necessary, in the case of extortion the existence of vis compulsive i.e. violence which paralyses the will is sufficient.

Pál Angyal defined the threat as nothing more than the prospect of future harm depending on the will and power of the threatener. In my view, this general definition can also be equated with the definition of the threat of extortion, since the law does not provide any further instructions to the direction and extent of the harm contemplated except in the qualified case, unlike the qualified threat used in the case of the threat of robbery (Angyal, 1934:83-86). It is irrelevant for the determination of the factual elements whether the threatened harm may actually occur, the essential element is that the passive subject perceives

the threat as "real" and acts in accordance with the will of the perpetrator. This view is supported by the Curia's case-law which states that the misdemeanour of extortion can be committed by means of an irredeemable threat (Vavrik, 1907:109).

In the legal literature of the time, extortion is also known as a "segment crime", since the legal definition of the offence is that the offender must coerce the passive subject without causing material damage, i.e. the law is satisfied with "a segment of the offence" (Angyal, 1934:83).

2.2.3. The "special case" of extortion

According to Section 351 of the Csemegi Code "a person who threatens to publish a defamatory or libellous allegation by means of a printed publication in order to obtain pecuniary gain for itself or other person commits the offence of blackmail and shall be punishable under Section 350.

The legislator criminalises what is known in the literature as 'revolver journalism'. The specificity of the offence compared with the basic case is on the one hand the specificity of the method of commission, since it is only the publication of a defamatory or libellous statement by means of the press that is threatened, on the other hand the aim of financial gain need not be unlawful and, furthermore, the act is deemed to be completed by the threat. Since in the present case the attempt to blackmail constitutes a separate offence, Section 352 of the Code (which provides that the attempt to commit the offence of blackmail is also punishable) shall not be applied to this particular case (Finkey, 1914:674).

According to the case-law of the time justification of the truth regarding this specific case of extortion is excluded (Büntetőjogi Határozatok Tára: 180-181).

In his monograph Pál Angyal explains that the original text of the law uses the term 'its allegation', not the term 'the allegation', which is used incorrectly by some legal scholars, although the two are interpreted in a completely different way.

The conduct of the offence in this case is not coercion but one of its means which is threatening. According to the legislation the offence is deemed to be completed as soon as the threat has been made. It should be noted that it is irrelevant for the purposes of the offence whether the threat was coercive or whether the perpetrator benefited financially from the act. In the case where the threatening person has carried out its threat and has actually published its defamatory or libellous allegation by means of a printed publication the offence of blackmail as described in this Chapter is no longer to be established. If the publication has not yet had the effect of coercion or the coercion has occurred the offence of attempted blackmail as defined in Article 350 or the completed offence of blackmail shall be established. In such a case defamation or libel shall also be found to have been committed in material accumulation with extortion.

2.2.4. Qualified cases of extortion

Under Section 353 of the Code, "extortion is a criminal offence punishable by imprisonment for up to five years if: 1. the extortioner threatens to commit murder, grievous bodily harm, arson or other serious damage to property; 2. the offence is committed under the

pretention of an impersonation of a public official or under the pretext of an official order of a public authority.

According to the Ministerial Explanatory Memorandum to the Act, this qualification brings extortion so close to robbery that the differences between the two "disappear". This raises the question why it was necessary to establish this qualified case. The answer in my view is given in the Ministerial Explanatory Memorandum itself, which states that such threats have become quite common. The first proposal which is similar to the Belgian system, set the minimum sentence at 5 years and the general maximum at 10 years, but the committee found this too strict and reduced the maximum sentence to 5 years (Löw, 1880: 686).

The first phrase of the qualified case covers the threat to cause harm by certain criminal offences. Murder and grievous bodily harm by their nature as substantive offences only define the result - death or causing injury which takes more than 8 days to heal. Threats of arson may be committed expressly, although the Ministerial Explanatory Memorandum does not say *expressis verbis*, by the threat of intentionally setting fire to the property defined in Section 422 of the Act. Regarding this for example the threat to set fire to movable property does not constitute a qualified offence of extortion. According to the legal literature other serious damage to property includes e.g. causing flooding, libel and the destruction of a document (Section 422: The offence of arson is punishable by imprisonment for a term of five to ten years, who: 1. deliberately sets fire to a house, hut, mill or any building or room used or intended for the habitation of people or for the assembly of several people at a time when no one is present in it; 2. intentionally sets fire to a warehouse, farm building, large quantities of goods or crops lying in the open air, grain lying undisturbed or in heaps or piles, woods, large quantities of building or heating materials, bridges, ships or mines).

In its judgment, the Curia ruled - and this position has also taken root in the legal literature - that in these cases, the relevant question for the qualification is not whether the perpetrator actually intended to carry out the acts in question in the absence of the desired effect, but whether his conduct was such as to lead the victim to infer that he had committed the acts (Angyal, 1934:131-134).

The second element of the qualified case is related to the offence of fraud, in that the offender seeks to create a deceptive appearance, contrary to the truth, by abusing the high degree of trust placed in persons performing public functions.

CONCLUSIONS

In my study of the literature and judicial practice of the time I found that the recurrence of the act of extortion gave emphasis to the criminalisation of the offence, which raised a number of theoretical questions given that the extortion-like behaviour that had occurred previously was mostly exploitative in nature.

These theoretical questions were addressed by taking into account the legislation of other countries and the conceptual elements of other offences known to legal doctrine and practice, which led to the creation of the legal concept of extortion.

In my view, the criminalisation of extortion has initiated a process in which legal theory and jurisprudence have together laid the theoretical foundations for the legal regulation of the currently effective offence of extortion.

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LEGISLATIVE FRAMEWORK FOR CRITICAL INFRASTRUCTURE PROTECTION IN ROMANIA

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Abstract: *The evolution of the legislation regarding the protection of critical infrastructures in Romania followed an upward path built with a sustained effort from several institutional actors to develop a legislative framework necessary to ensure a solid protection that responds to threats and vulnerabilities. Step by step, many normative acts were developed and issued, which created a legislative framework, necessary for the protection and resilience of critical infrastructures.*

Keywords*: critical infrastructures protection, national law, legislative framework, resilience of critical entities*

INTRODUCTION

The essential services of society are provided through the functionality of certain infrastructures, referred to by several countries as critical infrastructure. These essential services include electricity supply, transport services, drinking water supply, information and communication services, health care, emergency services and last but not least national security. A series of undesirable events affecting the delivery of essential services, the functionality of critical infrastructures, the management of public authorities, and the state of normality of the population have led to the development of the field of critical infrastructure protection. Looking at the big picture, a conceptual framework emerged first, followed by a legislative framework and an operational framework. On the other hand, academia and research play an important role in the evolution of the critical infrastructure protection field.

The aim of this article is to analyse the main elements of the legislative framework in Romania concerning the protection of national and European critical infrastructures, starting from the implementation of the European Programme for Critical Infrastructure Protection (EPCIP), up to the transposition of a new directive on the resilience of critical entities.

The research hypotheses in this article are as follows:

- H_1: the national legislative framework meets the requirements of the European Union in the field of critical infrastructure protection.
- H_2: Romania has a complex and comprehensive legislative framework to ensure the protection of national and European critical infrastructures;

Further, the article is structured in 2 sections necessary to validate the research hypotheses, namely: the evolution of the EU Critical Infrastructure Protection Programme and the Romanian legislative framework for the protection of national and European critical infrastructures.

1. EVOLUTION OF THE EUROPEAN PROGRAMME FOR CRITICAL INFRASTRUCTURE PROTECTION (EPCIP)

Looking back, the landmark moment for the development of the field of critical infrastructure protection is Executive Order 13010 of 1996, issued by the US Presidential Administration. This order emerged, on the one hand, as a response to several undesirable events that had occurred on US territory, and, on the other hand, as a project for the future to reconfigure the policies, strategies, means and instruments involved in protecting those infrastructures that provided essential state services. Thus, in the content of the act these infrastructures are referred to as critical infrastructures and are referred to as *"certain national infrastructures are so vital that their incapacity or destruction would have a debilitating impact on the defense or economic security of the United States"* (Clinton, 1996:1). Today, EO 13010 can be identified as the first legislative landmark with innumerable implications in the legislation of several states of the world on the protection of critical infrastructures.

Several events with a strong international impact, such as the terrorist attacks of 11 September 2001 or the terrorist attacks in Madrid on 11 March 2004, led to a series of measures at European Union level. In this respect, in 2004, the first official document appeared, entitled Communication from the Commission to the Council and the European Parliament - Critical Infrastructure Protection in the fight against terrorism. The main elements of the document highlight the danger of terrorist threats in the physical and virtual environment, the definition of critical infrastructures and essential services, the adoption of a legislative framework at the level of EU institutions and Member States. In the light of several issues addressed in the last point of the Communication, the need to develop and implement a European Programme for Critical Infrastructure Protection (EPCIP) is highlighted (European Commission, 2004). One year later, in the context of other significant events, namely the launch of the terrorist attacks in London on 7 July 2005, the European Commission adopted the Green Paper, which is the second step in the process of developing EPCIP. At the same time, the Commission suggested the need to set up the Critical Infrastructure Warning Information Network (CIWIN) in order to facilitate the exchange of best practices and ensure a common European warning and alert system (European Commission, 2005).

On 12 December 2006, the Commission publishes the Communication for EPCIP - COM (2006) 786, outlining the general objective of the programme. This objective is to improve the protection of critical infrastructures in the EU by developing a consolidated framework for several lines of action, including the implementation of measures, support to EU Member States on the protection of national critical infrastructures, the development of an external dimension to EPCIP, the development of contingency plans to minimise the potential effects of disruption or destruction, specific financial measures, and last but not least the implementation of a common framework for

a Directive on the identification and designation of critical infrastructures (European Commission, 2006a).

Therefore, on 8 December 2008, the Council adopted Directive 2008/114/EC on the identification and designation of European critical infrastructures and the assessment of the need to improve their protection. The Directive is consolidated on three main pillars: identification, designation and improvement of critical infrastructure protection. The identification of European Critical Infrastructures (ECIs) is carried out within each Member State on the basis of sectoral and cross-sectoral criteria. Designation is done through national legislation and the protection part involves the responsibility of the Critical Infrastructure Security Liaison Officers (LSOs), based on Operator Security Plans (OSPs). At European level, also in this act, the energy and transport sectors have been mentioned as sectors holding European Critical Infrastructures. At the same time, Member States had a deadline of 12 January 2011 to transpose the directive into national law (Council of the European Union, 2008). This moment represents, on the one hand, the concretisation of the effort made in previous years and, on the other hand, the establishment of an extremely important area at EU level with long-term implications for Member States. The content of the Directive contains, with some modifications, the main elements set out in the previous EPCIP regulations.

Further, in 2012, EPCIP, and in particular Directive 114, underwent a first review process, where preliminary findings were published in a European Commission working document on the EPCIP review (European Commission, 2012). A year later, a new approach to the programme was set out in another working document (European Commission, 2013). In the same context, an important moment in the evolution of the programme is its evaluation. The Commission launched the evaluation, involving a number of stakeholders, for the period January 2009 to August 2018, with the aim of analysing, both quantitatively and qualitatively, its implementation and application in all EU Member States (European Commission, 2019). The publication of the results in 2019 highlighted the limitations of the Directive in achieving a uniform approach across EU Member States to the identification and designation of ECIs. Moreover, the findings from the evaluation, together with other EU legislative discrepancies, contributed to the emergence of a new Directive, repealing Directive 2008/114, as of 18 October 2024. Directive (EU) 2022/2557 on the resilience of critical entities and repealing Council Directive 2008/114/EC aims to identify and support critical entities. Some studies show that the new EU directive aims to develop a common framework to support Member States' critical entities in the face of all types of threats (Pătrașcu, 2022:26), but some authors wonder how to assess the level of resilience of critical entities in relation to current threats (Rehak et al., 2023) or what is the risk picture behind the new directive (Pursiainen et al., 2022:86). One of the new elements is the term *critical entities*, mentioned in the very title of the directive. However, the protection part is assimilated to resilience, and this, in addition to European Critical Infrastructures, includes operators and owners as critical entities.

2. THE ROMANIAN LEGISLATIVE FRAMEWORK FOR THE PROTECTION OF NATIONAL AND EUROPEAN CRITICAL INFRASTRUCTURES

LEGISLATIVE FRAMEWORK FOR CRITICAL INFRASTRUCTURE PROTECTION IN ROMANIA

A few years before the first legislative act appeared in Romania, the concept of critical infrastructure, i.e. the protection of critical infrastructures, was already found in the scientific publications of several Romanian authors. Looking at the whole, there are a number of similarities and differences between the legislative approach and the academic or scientific research approach. A reference work by the Romanian authors Alexandrescu and Văduva in 2006, when Romania was not yet an EU member state, highlighted the possibility of including critical infrastructure protection in EPCIP in at least three ways. The first refers to adapting the system of legislation, action and response in emergency situations to European requirements, the second highlights the dependencies and interdependencies between Romanian and European critical infrastructures, and the third mentions participation in the development and implementation of policies and strategies to combat terrorism, illegal trafficking, organised crime and asymmetric threats (Alexandrescu et al., 2006:45-46). Later, Romania, as an EU Member State, made all the necessary efforts to transpose Directive 114 into national law. In December 2010, the Romanian Government issues the first legislative act on the protection of national and European critical infrastructures. With the publication and application of the Emergency Ordinance No 98 of 3 November 2010, Romania initiates a new approach to the protection of those infrastructures that produce goods and provide essential services, namely critical infrastructures.

The Romanian Government's Emergency Ordinance No 98 of 2010 is the first piece of national legislation in the field of critical infrastructure protection. With this regulation, Romania implements Directive 114/2008, creates the basis for the development of a complex legislative framework, i.e. a dynamic operational framework, involving state institutions, financial resources, specialists in the field and last but not least the academic and research environment. The main aspects of the act are the definition of CIP terms and expressions, the establishment of a number of 10 National Critical Infrastructure (NCI) sectors, the designation of a national coordination centre, the presentation of the identification and designation process of ECI and NCI in relation to sectoral and cross-sectoral criteria, and the obligation for operators to draw up a security plan. Also in 2010, the Romanian Government published GD no. 1110 of 03.11.2010 on the composition, tasks and organisation of the Inter-Institutional Working Group for Infrastructure Protection. This regulation mentions a number of 15 public authorities (ministries, services, agencies) that are obliged to appoint representatives to the Working Group. It also stipulates the tasks of both the Working Group and its Technical Secretariat.

One year later, GEO No 98 of 2010 was approved by Law No 18 of 11 March 2011. In addition to the approval of the ordinance, some changes are made in the law. Thus the deadline in the Ordinance for the completion of the process of identification and designation of NCIs was restored 8 months later, i.e. on 30 June 2011. Certain changes have also been made for the responsible public authorities. The next piece of legislation amending and complementing GEO 98 is Law 344 of 2015, which refers to the designation of ECIs according to a written consent of the national authorities holding competence and the EU Member State likely to be affected. A particularly important piece of legislation is Law No 225 of 2018, which makes important amendments and additions to the existing legislative framework. In this respect, the main changes

are directed towards the activities of the responsible public authorities, ECI and NCI owners and operators, as well as the tasks of the liaison officer. Instead, the additions consist of the definition of resilience, vital functions and OSP, the management of classified information, the establishment of the tasks of the National Coordination Centre, the application of contraventions and sanctions, the extension of the number of NCI sectors from 10 to 12 sectors, etc. A year later, the Government issues another ordinance (GEO No 61), redefining the responsible public authorities and the NCI. Another problem faced by operators and owners of NCIs or ECIs was solved with the publication of Law No 344 of 10 November 2023. Thus, natural or legal persons under public or private law who own, for whatever reason, land, buildings or technological installations on the perimeter of which NCI or ECI elements are located or installed, are obliged to allow unconditional access to specialised personnel in order to remedy malfunctions or carry out maintenance of the systems. In the event of damage resulting from such activities, the owners of critical infrastructures are obliged to pay the amount of compensation established by the assessors to those entitled within 60 days.

In June 2011, the National Strategy for Critical Infrastructure Protection was adopted by GD No 718. At that time, the legislative framework already consisted of the three regulations mentioned above. However, the development of a strategy in the field of critical infrastructure protection was necessary to create a strategic framework to implement measures to reduce risk factors and eliminate duplicative situations. On 16 November, GD No 1154 was adopted approving the critical thresholds for cross-sectoral criteria underlying the identification of potential national critical infrastructures and approving the Methodology for the application of critical thresholds for cross-sectoral criteria and the determination of the criticality level. The content of this legislative act is divided into three annexes. In the first annex, the critical thresholds associated with the cross-sectoral criteria, necessary for the process of identifying potential NCIs, are set out and approved. The second annex presents the methodology for the application of the thresholds mentioned in Annex 1 and the establishment of the criticality level. The third annex represents the logical scheme for the identification and designation of NCI.

Since 2012, the Romanian Government has issued a series of decisions designating National Critical Infrastructures. Thus GD No 1198 of 2012 is the first document containing several annexes with declared NCIs but with restricted access to the public. Subsequently, the decision was amended and supplemented by GD 639 of 2015, GD 276 of 2018, GD 1017 of 2020, GD 300 of 2021 and GD 1076 of 2022. During this extended period, in addition to these decisions, the Government issued GD on the designation of public authorities responsible for the protection of national and European critical infrastructures, amended and supplemented by GD 656 of 2021 and GD 930 of 2022 amending GD 1110 of 2010 on the composition, tasks and organisation of the Interinstitutional Working Group for the Protection of Critical Infrastructures.

CONCLUSIONS

The analysis of the evolution of the European legislative framework, followed by the analysis of the national legislative framework for the protection of critical infrastructures shows that Romania has complied with EU requirements, has transposed the EPCIP Directive into a new

legislative framework and has confirmed its effective implementation in practice, which confirms research hypothesis H1. The analysis of the main legislative acts shows the development over time of a legislative framework, characterised by the complexity of the legislative acts, the comprehensiveness of the application of the EU framework and the dynamics of the measures validated by law.

Moreover, some studies by foreign authors reinforce the validation of the two research hypotheses. Thus, Romania is considered as an EU Member State with a strong commitment to European policies and a proactive approach to the Europeanization of critical infrastructure protection. At national level, processes have been organised, functional critical infrastructure systems have been built, supported by public authorities and critical infrastructure operators or owners (Lazari et al., 2016; Mitrevska et al., 2019:60). Also, a number of EU Member States, including Romania, have special national laws used to regulate the field of critical infrastructure protection (Sikimić, 2022:63-72).

In the short term, Romania has until 17 October 2024 to transpose Directive 2557 of 2022 into national law. It will be interesting to see how the new elements will be implemented in a rather strong national legislative framework, how the critical entities and infrastructures will be functional and resilient, taking into account that some elements of the Directive are already questioned by several experts.

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THE LEGAL REGIME OF THE PENALTY CLAUSE AS A WAY OF OBTAINING PERFORMANCE IN KIND OF A CIVIL OBLIGATION

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Abstract: *Currently in the New Civil Code, which has incorporated provisions from the old Civil Code and the old Commercial Code, Article 1536 states that in the case of obligations other than those for the payment of a sum of money, late performance always entitles the debtor to damages equal to statutory interest, calculated from the date on which the debtor is in default on the money equivalent of the obligation, unless a penalty clause has been stipulated or the creditor can prove greater damage caused by the delay in performance. Therefore, according to common law, for late performance of the contract or for non-performance of contractual obligations, if penalties for late performance have been stipulated in the contract, it means that liability for that breach has been definitively settled and damages can no longer be claimed, since it is considered that the penalty clause stipulated in the contract has determined in advance the damages that the debtor will pay.*

Keywords: *penalty clause, anticipatory damage, non-performance of obligation, compensatory damages, principal obligation.*

INTRODUCTION

The penalty clause is characterised as that contractual provision by which the parties estimate the damage in advance, indicating that the debtor, in case of non-performance of the obligation, will bear the consequence of remitting to the creditor a sum of money or other property.

Similar definitions can be found in most civil laws of continental countries.

Thus, according to Article 1226 of the French Civil Code, a penalty clause is one by which a person, in order to ensure the performance of an agreement, undertakes to pay something in case of non-performance.

The Swiss Code of Obligations conceives the penalty clause as a stipulation concerning the sanction (penalty) established for non-performance or imperfect performance of the contract which the creditor may demand in lieu of performance, unless otherwise agreed.

According to the Italian Civil Code, a penalty clause is a clause agreeing that, in the event of non-performance or late performance, one of the contracting parties is bound to a certain performance.

The Russian Civil Code does not define a penalty clause as such, but a penalty, which is a sum of money, fixed by law or by contract, which the debtor owes to the creditor in the event of non-performance or improper performance of the obligation, in

particular in the event of late performance. It follows from the definitions of the penalty clause set out above that, as a rule, it is contractual in nature, respectively it is established by agreement between the parties - the contractual penalty clause. The laws of some countries (e.g. the Civil Code of the Republic of Moldova, the Civil Code of the Russian Federation) provide that the payment of the penalty may be ordered by law - the statutory penalty clause. It should be noted that the penalty established by law (if the lex causae is the law of the Republic of Moldova) cannot be excluded or reduced in advance by agreement of the parties (Nicolae, 2015:39).

1. ***The notion of a penalty clause compared to other legal systems***

The penalty clause applies only if the main obligation of the contract is not performed, which may take the form of total or partial non-performance, improper performance or late performance; non-performance may also be both improper and late. It should be noted that only non-performance of the obligation is specified, which is why it should be borne in mind that the institution of non-performance includes any breach of obligations, including improper or late performance.

Therefore, the penalty clause fulfils both the function of compensatory damages (damages due for the prejudice caused to the creditor by the total or partial non-performance or improper performance of the obligations by the debtor) and default damages (damages due for the prejudice caused to the creditor by the debtor's delay in performing the obligation).

The object of the penalty clause is usually a fixed or determinable sum of money called a penalty. It may be fixed either globally or as a percentage of the value of the subject-matter of the contract to which it relates. The penalty clause may be provided in a fixed amount or in the form of a share of the value of the obligation secured by the penalty clause or of the part not performed.

If the penalty clause is contractual, it must meet the conditions of validity required by law for any contract (civil legal act): capacity of the parties, consent, object and cause.

As regards the formal requirements, it should be stressed that the penalty clause always has to be in writing, even if the main obligation for which it was stipulated does not. Under some legislation, failure to comply with the written form of the penalty clause is punishable by nullity. Although only in some countries (Republic of Moldova, Russian Federation) are the written form requirements expressly laid down by law, arbitration practice and doctrine in various countries have consistently shown that the penalty clause must be expressly provided for in the contract (in writing) and is never implied (Uliescu, 2012:44).

As an expression of the principle of freedom of contract, the penalty clause is of particular practical importance, since it avoids difficulties in the judicial assessment of the damage, since the creditor is not obliged to prove the existence and extent of the damage, and in order to obtain payment of the amount laid down in the penalty clause it is satisfactory for the creditor to prove the factual circumstance of non-performance, improper or late performance of the obligation.

The monetary amount stipulated in the penalty clause shall be due instead of the damages which may be awarded by a court in the event of non-performance or improper and, in particular, late performance of the obligation. At the same time, it has been pointed out in the literature that penalty clauses may also present certain dangers when they are imposed by the stronger party to the contract (Mangu, 2020:102).

Thus, it has been found that in consumer contracts, although these clauses are not unlawful as such, they can be recognised as unfair, for example when there is no reciprocity in their application by the parties.

In the context of counteracting the negative effects that can be caused by penal guidelines in adhesion contracts, we note that standard contract terms are void:

- on the global assessment of the user's entitlement to damages or compensation for diminution in value, if in regulated cases the global value exceeds the damages or diminution in value which would have been expected under normal circumstances, or if his contractual partner is not allowed to prove that no damages or diminution in value have occurred or that they are substantially less than the global value;

- whereby the user is promised payment of a penalty if the obligation is not performed or is performed late, if he delays payment or if his contracting partner terminates the contract.

Several opinions have been expressed in the literature on the legal nature of the penalty clause: - most French and Romanian authors qualify the penalty clause as a means of early assessment of the damage suffered by the creditor as a result of the debtor's non-performance of the obligation. - the penalty clause is a means of guaranteeing the performance of the obligation, which is available to the creditor. The emphasis on the guarantee function of the penalty clause is particularly evident in Russian law and doctrine, and this institution is based on Chapter 23 of the Russian Civil Code, entitled "Securing the performance of obligations";

- the penalty clause is a means of assessing in advance the damages to which non-performance gives rise, but it is also a means of guaranteeing the performance of obligations, so it has a dual nature. As far as we are concerned, the penalty clause is a multifunctional institution.

The main functions of the penalty clause are: guarantee function, evaluation function, compensation function, sanction function and incentive function (Veres, 2020:55).

The penalty clause fulfils the ***function of a guarantee***, as regards the performance of the principal obligation, in that the prospect of the consequences of non-performance of the contractual obligation impels the debtor to the actual performance of the contract. The guarantee function is particularly relevant where the amount of the penalty is appropriately fixed at an amount which is at least equal to the damages which the debtor would be obliged to pay in the absence of a penalty clause.The penalty clause also has an ***evaluation function.*** As noted above, it is emphasised in the literature that the penalty clause appears as a procedure for prior conventional assessment of the damage that may

be caused to the creditor by non-performance of the obligation and, respectively, of the extent of the compensation in the form of damages that the debtor owes to the creditor.

The penalty clause also has ***a compensatory (remedial) function***, as it is intended to compensate for the damage suffered by the creditor through the debtor's failure to fulfil contractual obligations.

The penalty clause also has ***a sanctioning function***, which results from the fact that the penalty is payable regardless of the extent of the damage, and may exceed its limits even in the absence of any damage. It is also possible for the parties to agree on a penalty clause which is higher than the damage for the purposes of compensation. In this context, the penalty clause can also be seen as a form of contractual civil liability, as a "pecuniary penalty".

The penalty clause also has an ***incentive function*** for the debtor to behave properly. By making the payment of the penalty an inevitable consequence of the breach of contractual obligations, the penalty clause demonstrates its mobilising role in encouraging the parties to actually perform their contracts. It is an incentive for the timely and proper performance of contractual obligations.

2. Legal nature of the penalty clause

2.1. Accessory nature

The penalty clause is of an ancillary nature, so that the validity of the main obligation determines an essential condition for the very existence of the penalty clause. In this respect, Article 1540 of the Civil Code provides that a penalty clause may only guarantee a valid claim. The nullity or extinction of the principal obligation also affects the penalty clause according to the rule *accesorium sequitur principalem* (Pop et al., 2020:230).

Thus, if the object of the principal obligation is extinguished by force majeure or fortuitous event, the debtor's obligation to perform the performance stipulated in the penalty clause will also be extinguished. The ancillary nature of the penalty clause also derives from its purpose: the purpose of the clause is to enforce the main obligation and not to collect penalties. It should be noted that the nullity of the penalty clause does not entail the nullity of the principal obligation.

The debtor cannot choose between performance in kind and payment of the amount provided for in the penalty clause, the purpose of the penalty clause being to determine the extent of the compensation and not to create an opportunity for the debtor to discharge the principal obligation by another performance - payment of the penalty. This choice is available only to the creditor and only if the principal obligation which has become due has not been performed in kind by the debtor (Pop et al., 2020:256).

The unsecured creditor is actually the creditor with a penalty clause who competes with the other creditors without having any right of preference over the other unsecured creditors of the same debtor.

2.2. Cumulation of penalties with enforcement

As regards the cumulation of penalties with performance, the rule established by most legislation is that a penalty clause may be cumulated with performance in kind only when it establishes a penalty for late payment. As regards a penalty clause establishing compensatory penalties, the rule established in the legislation of many countries is that such a clause may not be aggregated with the performance in kind of the principal obligation (Piperea, 2019:34).

These rules have been enshrined, in particular, in Article 1539 of the Civil Code, which provides that "The creditor may not demand both the performance in kind of the principal obligation and the payment of the penalty, unless the penalty for non-performance at the time or place fixed. In the latter case, the creditor may demand both the performance of the principal obligation and the penalty, unless he waives this right or accepts, without reservation, the performance of the obligation".

There are certain exceptions to the general rule that the penalty payment clause cannot be combined with the enforcement of the principal obligation, both in some national laws and in uniform law instruments. Thus, Article 160 of the Swiss Code of Obligations provides for the creditor's right to demand both performance of the contract and payment of penalties if the contract has not been performed at the agreed time or place (Almasan, 2018:54).

The rule enshrined in our legislation is that the creditor cannot demand both performance and payment of the penalty clause at the same time, except where penalties are also stipulated for improper or late performance of the obligation. If he has received performance, the creditor can demand payment of the penalty only if he has expressly reserved this right when receiving performance. Our civil law therefore widens the scope of cumulation of the penalty clause with the performance of the principal obligation.

The cumulation, under certain conditions, of penalties with performance in kind of the principal obligation is also allowed under other national legal systems, such as those of Germany, Spain, the USA, etc.

In order for the penalty clause to apply, **all the conditions for compensation must be met**. This requirement derives from the fact that the meaning of the penalty clause is the contractual assessment of the damages due to the creditor for non-performance of the contract and that it is, in fact, a form of contractual civil liability, as explained above. In this context, our civil law expressly provides that the debtor is not obliged to pay a penalty if non-performance is not due to his fault.

Therefore, it is required that the non-execution must be the fault of the debtor, attributable to him, and if he proves extraneous cause, he will be exonerated from paying the penalty. It is difficult to conceive of a clause providing for the payment of a penalty in the event of non-performance due to force majeure. Exceptionally, however, such a clause may be interpreted by the parties as also covering non-performance not attributable to the debtor.

Many legislations also require that the debtor has been put in default beforehand, unless he is in default as of right. This formality is not required by the laws of the Scandinavian countries (Denmark, Finland, Norway and Sweden), according to which,

at least in the case of a sale, the penalty clause automatically becomes operative through the effect of the non-performance of the obligation assumed by the debtor (Nicolae, 2015:177).

If the non-performance is partly due to a fortuitous event or if there are other circumstances which exonerate the debtor from liability, such as, for example, the culpable actions of the creditor which contributed to the occurrence of the damage, the court will have to assess the extent to which the debtor is exonerated from liability and, as a result, the penalty will apply only in proportion to the part of the obligation whose non-performance is due to the fault of the debtor.

3. Binding force between the contracting parties

The penalty clause establishes a binding force between the parties to the contract and, as a rule, must be respected by both the parties and the courts, regardless of whether it is equal to, less than or greater than the damage. In a classic formulation, this rule is derived from Article 1541 of the Civil Code, which provides that the penalty may be reduced by the court only where the principal obligation has been partially performed or the penalty is excessive in relation to the damage that could have been foreseen (Almasan, 2018:63).

In this sense, the penalty clause is also characterised by a liability-limiting function, since in principle it sets a maximum level of damages. This function makes the penalty clause similar to the limitation of liability agreement, since in both cases the damages must not exceed the maximum amount agreed by the parties, unless the parties have agreed otherwise in the case of the penalty clause. The fundamental difference is that whereas in the case of the penalty clause the creditor is deemed to be relieved of the obligation to prove the existence and extent of the damage, in the case of the restrictive covenant the creditor is relieved of this obligation.

The above rule is not absolute. In some cases, as we shall see immediately below, the amount of damages provided for in the penalty clause may be adjusted to the amount of the damage actually suffered by the creditor through non-performance of the obligation - either by increase or by reduction.

Under some national laws, the penalty clause is supplemented by damages; if the amount of the loss turns out to be greater than the amount of the penalty provided for in the penalty clause, the creditor is entitled to claim compensation for the loss not covered by the penalty.

According to Article 1539 of the Civil Code, the correlation between the amount of the penalty and the amount of the damage actually suffered by the creditor can be expressed in several ways. As a general rule, the creditor may claim compensation for the damage in the part not covered by the penalty clause (including the penalty clause). In cases provided for by law or contract, the creditor:

- the possibility of claiming damages or penalties (alternative penalty clause);

- the possibility of claiming damages over and above the penalty (punitive damages clause), which means that both the penalty and the full amount of damages are paid in the amount of the damage incurred;

- the possibility of claiming only the penalty (exclusive penalty clause).

Moldovan law also provides for the possibility of judicial review of the size of the penalty. In exceptional cases, taking into account all the circumstances, the court may order a reduction of the disproportionately large penalty clause. When reducing the penalty clause, account must be taken not only of the creditor's financial interests but also of other interests protected by law. At the same time, the law provides that the penalty cannot be reduced if it has already been paid.

It is important to distinguish between the penalty clause, on the one hand, and the alternative obligation on the other, institutions which allow a party to legitimately discharge a contractual obligation by paying a sum of money or forfeiting the money already paid. However, a clause providing that the creditor may retain sums already paid as part of the price may fall within the scope of the regulations on the subject. This can be illustrated by two examples seen below (Istratoaie, 2013:89).

Example I. *A. undertakes to sell a property to B. for 750,000 lei. In order to guarantee the performance of the obligation to pay the price, the buyer (B.) gives the seller (A.) a pledge of 100,000 lei. A. may withhold the earnest money if B. fails to perform the obligation contracted for. Since there is no indemnity fixed in the contract, the amount in question cannot be reduced, even if it is excessive in the circumstances of the case.*

Example II. *A. enters into a car leasing contract with B. The contract provides that in the event of non-payment of a single instalment of the lease the contract will be terminated and the amounts already paid will be retained by the lessor as compensation. Such a clause may be examined from the point of view of the possibility of reducing the amount of the compensation.*

It should be noted that changing the size of penalties in the cases examined above is a faculty, but not an obligation of the court. If the court decides to change the size of the penalty, it must give reasons for its decision, which is not the case when the court refuses to change it. The review of the penalty clause by the court is an exception to the principle of the binding force of the contract in favour of the principle of equity.

The regulations in the common law system differ substantially from those in continental law. The most important difference is that common law legislation refuses, in principle, to recognise the validity of criminal clauses which provide for compensation in excess of the damage sustained.

The first point to be made in this context is that in Anglo-Saxon law there are two concepts: liquidated damages and penalty.

Following from the general principle that legal defences in civil law can only be compensatory but not punitive, in common law, in the event of non-performance of contractual obligations, only amounts which qualify as liquidated damages may be awarded, but not those which qualify as penalties. A clause is regarded as a penalty if it provides for the payment of sums stipulated as a 'threat' (in terorem) to the other party to force it to perform the contract. However, if the clause represents a "genuine attempt by the parties to estimate in advance the damage which will result from non-performance of

the contract", it will be considered liquidated damages, even if the amount stipulated is not exactly equivalent to the damage suffered by the creditor. Whether the clause qualifies as liquidated damages or as a penalty depends on its content, its wording and the circumstances that existed at the time of the conclusion of the contract (and not at the time of non-performance). The fact how the parties have named their clause in the contract - liquidated damages or penalty - is relevant but not decisive.

Clauses formulated in identical terms may be qualified as liquidated damages or as a penalty, depending on the content of the contract and the circumstances in which it was concluded. The court will make the classification in each individual case, assessing to what extent the amount fixed in advance was justified, to what extent the parties, at the time of the conclusion of the contract, could have expected the damage caused by the non-performance of the contract to correspond to the amount fixed in advance. The extent of the loss actually suffered by the creditor is not a determining factor. What is important is the extent to which the amount assessed in advance was justified at the time the contract was concluded.

Common law case law has established certain criteria for assigning clauses to the categories listed. Thus, it has been held that the clause will be considered as a penalty if the amount stipulated is excessive and exorbitant compared to the greatest damage that could result from non-performance. An example of this is the clause in a contract for works, the value of the subject matter of which is £50, which states that the contractor will have to pay a sum of £1 million in the event of non-performance.

A clause in a contract for the payment of a sum of money will be regarded as a penalty if the amount stipulated in advance is greater than the amount due; for example, a clause requiring the debtor to pay £1000 if he fails to pay £50 when due will be regarded as a penalty.

A clause providing for the payment of the same fixed sum in the event of one or more events, some of which may cause serious damage and others - minor damage - is presumed to be a penalty. A clause may be regarded as liquidated damages if the consequences of non-performance of the contract are such that a precise advance assessment of the damage is impossible.

The importance of the distinction between the two categories of clauses is seen in the effects resulting from the qualification of the clause in question. Thus, if the clause is liquidated damages, the creditor may collect the amount stipulated in advance, even if it exceeds the amount of the actual loss suffered. Conversely, if the stipulation is a penalty, the creditor may not claim the amount fixed in advance, but only the amount which he would be entitled to receive if the contract had not contained the penalty clause. In other words, the creditor will have to prove the extent of the loss actually incurred.

It should be noted that the court may declare the penalty clause null and void, but it does not have the power to reduce the amount of damages set by the clause to a reasonable level, as the court may do in continental law states.

It should be noted that in English law, if the clause qualifies as liquidated damages, the creditor will receive the stipulated amount even if he has not suffered any loss. The solution is different in US law. Thus, if no damage has been caused by non-

performance, the court will refuse to award the agreed sum, thus taking into account not only the situation existing at the time the contract was concluded but also that existing at the time of non-performance. Thus, in the common law system, the guarantee function of the penalty clause is less pronounced than in continental law, since the creditor is always required to justify the amount of the sum set out in the contract as an advance assessment of the loss resulting from non-performance of the contract.

CONCLUSIONS

This contractual stipulation is very frequently used and is of great practical use, since it avoids the difficulties of a possible judicial quantification of damages and, in certain cases, the costs of the civil proceedings.Thus, in the event of non-performance of the obligation initially assumed by the debtor, the penalty clause can be used to oblige the debtor in return to perform another service, which does not necessarily have to consist in the payment of a sum of money but may, for example, be an obligation on the debtor to hand over property to the creditor.

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REMEDIES FOR THE ENTRY IN THE LAND REGISTER OF THE DEED CONCLUDED BY VITIATION OF CONSENT

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Abstract: *The purpose of this study is to present a practical approach to effective instruments for combating defects of consent in legal acts affecting land rights, such as an action to establish rank, an action for a land benefit or an action to rectify a land register. Given that formalism in the land register system is imposed both by the requirement that the legal act constituting the rights in land must be in authentic form and by the primacy given to the functioning of the land registration system within clearly defined parameters, a check on the effects of defects of consent designed into the land register system is particularly necessary.*

Keywords: *land register, rectification, legal act, defects of consent, error, fraud, third party.*

INTRODUCTION

Will can be found in almost every area of human social or individual life, but more than in any other area, will is omnipresent in law, giving rise to the legal act itself, which in turn creates legal relationships, thus producing the legal effects of human actions or inactions.

In legal terms and in terms of its intensity, the will manifests itself as a process by means of which the individual or collective person, as a pricit, undertakes commitments that go beyond the sphere of mere completeness, a will that falls under the legal rules that give limits and content to objective law.

It should be noted that, for the valid formation of any legal act, it is not sufficient for the manifestation of will to be conscious, externalised and made with the intention of producing legal effects, it must also be freely expressed and in full knowledge of the facts, in other words, not vitiated.

We might think that the existence of a conscious and free consent undoubtedly implies a valid legal act, it would mean that any alteration of the psychological process of consent formation automatically leads to the annulment of that act, but the legislator has judiciously assessed through the legal texts established, the fact that the stability of legal relationships must be sought at the same time, which is why only when the alteration of consent is of a certain seriousness and only in cases provided by law, the annulment of legal acts is imposed.

In other words, it would not be moral for a person to benefit from the situation of inferiority in which the author of the legal act or the co-contractor found himself at a given moment, as a result of ignorance of the reality, the fraudulent manoeuvres used or the coercion exercised on him.

From a psycho-philosophical point of view, it can be appreciated that error, malice, violence and injury are vices of the will, and from a legal point of view, they are vices of consent, and only when this will is externalised with the intention of producing legal effects will it become consent.

Thus, in the sphere of civil law, the will is of particular importance because it plays an essential role in the valid formation of the legal act, and it can be said that without the legal will or without its manifestation, there is no legal act.

The obvious importance of the human will, especially in the process of forming the civil legal act, imposes the need to explain this complex psychological process, which to a large extent also forms the object of concern for psychology, but which also interests the science of law.

1. *Action for priority of registration of right or grant of preferential ranking*

The action to establish the rank or priority of the entry in the land register is premised on the entry in the land register of the right of a third party acquirer in bad faith, and the solution offered by the legislator by regulating this procedure is to derogate from the principle of priority of entries in the land register, according to which pre-eminence is granted to the acquirer who first submitted to the registry of the competent land registry and real estate publicity office his application for entry in the land register accompanied by the supporting title.

According to this principle, the conflict between several acquirers of rights in title which are mutually exclusive due to the supporting titles concluded with their common author at different dates shall be resolved by granting priority to the one who first registers his application for entry in the land register of the right thus acquired, while the application of the other acquirers shall be rejected.

The remedy offered by the legislator through the procedure established in Article 892 of the Civil Code, may concern either the cancellation of a right in rem in immovable property and the registration in the land register of the plaintiff's right where the defendant's right cannot coexist with the plaintiff's right, or the granting of preferential rank to the registration of the plaintiff's right over the existing registration in the land register of a similar right in rem in the same immovable property, as in the case of a mortgage right granted in bad faith in favour of another creditor. As can easily be seen, the bad faith of the acquiring third party is essential for the granting of priority to the registration, and in cases where the third party registered in the land register on the basis of a title with a later date than that held by the plaintiff, is also considered to be in bad faith when he prevents by violence or cunning another person from registering his right in the land register on the basis of a concurrent title, but also when he knew or at least ought to have known this fact at the time of the conclusion of his contract.

The third party registered in the land register is also in bad faith if, although he should have known of the anteriority of the title held by the plaintiff, when concluding his own contract with the joint author, he was in excusable error as to the existence of the concurrent title.

Compared to the regulation contained in Article 28 of Law No 7/1996, prior to the entry into force of the Civil Code, according to the current legislation, the claimant is no longer given priority in the registration only because he is the acquirer with a title for consideration, and the third party, even if he has first completed the formalities of registration in the land register, is not given this pre-eminence because he has acquired the right of partition free of charge (Puie, 2012).

As regards the condition of the third party's bad faith, Law No 7/1996 limited itself to providing for the attitude of the third party only as a simple condition, without putting into perspective the situations in which the bad faith of the third party can be assessed, as the legislator has established in the new legislative framework provided by Article 892 of the Civil Code, respectively the condition of hindering the plaintiff by violence and vileness.

Another important condition imposed by Article 892 of the Civil Code for the admissibility of the action for priority of registration of the right or granting of preferential rank is that it must be brought within the limitation period of 3 years from the date of registration by the third party of the right in his favour, a period which in the case of violence must be in conjunction with Article 2529 para. (1) lit. a) of the Civil Code, which provides that the moment at which the three-year period begins to run is the moment at which the violence ceases, even if this moment is after the third party's entry in the land register.

With regard to the phrase "by guile", we cannot say that it constitutes a defect of consent as such, but we can agree that it fulfils the characteristics of fraud, more specifically of the error caused by fraud, which can be transposed to the situation where the third party in bad faith or another person directs the true acquirer of the right in rem, to register his application for registration with a land registry office other than the one in the district of the court in which the property is situated, in effect seeking to delay registration in order to facilitate his own registration.

1.1. ***Action in tabular benefit***

The current regulation given to this action by articles 896-897 of the Civil Code implies two manifestations, namely the ordinary or general tabular action and the special tabular action, which we will analyse below.

In practice, the claimant seeks, by means of an action for partition, to order the predecessor in title to surrender the documents necessary for entry in the land register, in the event that the predecessor in title fails to fulfil its obligations relating to entry of the claimant's right in the land register.

Because it is not infrequent that registration in the land register may involve successive acts of acquisition, a situation also provided for by the legislator, resulting from the fact that the action for registration in the land register does not have to be brought against the predecessor in title, but against the transferor or creator of the right, who will be registered in the land register at the latest with the right of the acquirer.

As regards the obligations to be fulfilled by the predecessor in title, these do not only concern the creation or transfer of rights in rem over immovable property in favour of another person, but also their modification, but not the cancellation of a right in title as was provided for prior to the entry into force of the new Civil Code, respectively by Law No 7/1996 and by

Decree-Law No 115/1938, which qualified the action for partition as a form of substitution of consent to registration.

The obligations which the predecessor in title, the conveyancer or the grantor of the right is required to fulfil by bringing an action for a partition claim against him are not limited to providing the claimant with the necessary documents, since these obligations take on a more complex form characterised by the drawing up of cadastral documentation, operations for the dismemberment or annexation of immovable property, obtaining prior alienation agreements, the cancellation of usufruct rights and so on.

1.2. *Action for special tabular benefit*

A first aspect by which we can distinguish the action in special tabular benefit from the general one, is the fact that it is not brought against the tabular predecessor but against the third party registered in bad faith in the land register, and in addition to this first condition, the legal text of Article 897 of the Civil Code also mentions the situation regarding the anteriority of the legal act invoked by the plaintiff against the third party registered in the land register in bad faith.

In this hypothesis, it is irrelevant whether the legal act concluded in bad faith by the third party who acquired the right of partition entered in the land register is for valuable consideration or free of charge.

However, a similarity can be observed between the action for a general and a special tabular claim, i.e. the fact that the person entitled to registration is not in possession of the titles or documents necessary to complete the formalities for registration in the land register, and a third party registers his right first despite being aware of the existence of a prior act of alienation.

In the case of a special action, the third party's knowledge of the existence of the prior act of alienation must take the form of bad faith, which will actually relate to the time of conclusion of the act of acquisition itself.

Compared to the procedure for establishing preferential rank or priority of registration, the latter action requires the claimant to be in possession of the documents necessary to carry out the registration, but is prevented from doing so by acts of violence or cunning on the part of the third party or another person of whom the third party has knowledge.

It can therefore be concluded that the special action for a partition is admissible if the plaintiff is not in possession of all the documents necessary for registration, and if a third party acquires a concurrent right and registers it in the land register after the plaintiff has received the documents that could make registration possible, then the plaintiff cannot use the mechanism of the special action for a partition because at the time of the registration of the third party in the land register, the plaintiff was in possession of the documents that would have enabled him to register his right.

1.3. *Action in tabular rectification*

Entries in the land register may be rectified at the request of the persons concerned for documents affected by the vitiation of consent, but there are situations, even regulated by the legislator in which the land registrar may also order the rectification of these entries ex officio, namely in the case of promises of sale or option agreements, as provided for in Article 906 para. (3) and (4) of the Civil Code.

Therefore, in the case of a land register entry relating to a unilateral or bilateral promise of sale, if the person entitled does not request the entry in the land register of an action for the pronouncement of a court judgment in lieu of a contract within the 6-month period within which the deed of transfer of ownership should have been concluded, the registrar will automatically order its removal from the land register.

A similar solution is found in the case of the option agreement, where if the beneficiary of the agreement does not request the registration of the right to be acquired before the expiry of the period stipulated by the parties for this purpose, the agreement registered in favour of the beneficiary will be cancelled ex officio.

Even in the situations described above, which provide for the possibility of ex officio cancellation of land register entries and which apparently do not seem to involve acts affected by vitiation of consent, the interested party may indirectly make use of the remedies offered by the legislator through the provisions of Article 906 of the Civil Code, in the sense that he chooses not to proceed with the execution of the promise of sale or the option agreement concluded by him in error and thus the expiry of the deadlines inevitably leads to the ex officio cancellation of the entry.

The place of jurisdiction for the action for rectification of the provisional registration is laid down in Art. 908 of the Civil Code, where the situations in which any interested person may request the rectification of a land register entry are exhaustively presented, but only a few of these cases are dealt with, namely: "the entry or the conclusion is not valid or the act on the basis of which the entry was made has been cancelled, in accordance with the law, for causes or reasons prior to or concomitant with the conclusion or, as the case may be, its issue" and "the right entered has been wrongly qualified".

2. *The instrument on the basis of which the entry was made has been declared void, in accordance with the law, for causes or reasons prior to or concurrent with its conclusion or, as the case may be, its issue (Art. 908 para. (1), 2nd sentence of the Civil Code).*

This first premise established by the legislator in Art. 908 para. (1), point 1 of the Civil Code, requires the analysis of two possibilities, on the one hand, the legal non-existence of the legal act as an evidentiary document as an effect of nullity and, on the other hand, the ineffectiveness of the act for causes prior to or concomitant with its conclusion or issue, as the case may be (Mîneran, 2012:297).

The type of invalidity affecting the legal act is of no importance in the analysis of the conditions for the existence of the action for rectification of the land register, nor the type of legal act affected by this invalidity, and even less so whether the invalidity is judicially or amicably enforced, since from the point of view of the land register only the consequence of these sanctions matters, namely the lack of effects of the legal act for which it was concluded or issued.

The explanation is to be found even in the specialist doctrine which maintains that regardless of the basis for the dissolution of the legal act, relative or absolute nullity, the registration remains without legal basis from the outset, which is why it must be deleted.

The invalidity of the title is also related to situations where the signature of one of the parties is missing from the original notarial deed, or when the registration was made against a person with an identical name, but who did not participate in the conclusion of the legal act or on another property. As regards the ineffectiveness of the legal act, as used by the Civil Code, it implies a much broader application than nullity, in the sense that it includes all cases of ineffectiveness of the legal act provided that they are prior to or concurrent with its conclusion.

We consider it necessary to point out that an action for rectification of the land register based on the provisions of Article 908 para. (1), item 1 of the Civil Code cannot be successfully brought if the plaintiff has not previously requested a declaration of the ineffectiveness of the act on the basis of which the entry was made, and the rectification must be requested either as a small accessory to the main action or on the basis of a final court judgment which has found the act ineffective.

In another sense, the action for rectification of the land register is based on the action for annulment, and this is also reflected in the time-barring of the action for rectification of the land register, the time limit for which may differ depending on the cause of ineffectiveness on the basis of which the action for annulment is brought, but these mechanisms will be examined on another occasion.

2..1. The registration or conclusion is not valid (Art. 908 para. (1) of the Civil Code)

By means of an action for rectification, both in the case of registration and in the case of the land registry, the aim is to remove them as invalid, without it being necessary to call into question the validity of the legal act on the basis of which the registration or the land registry was issued.

It should be noted that if the land register entry on the basis of which the entry was made is invalid, it follows that the subsequent entry is also invalid as a result of the application of the wrong entry.

With regard to land register entries, the acquirer has the right to apply for a review or to lodge a subsequent complaint against the rejection by the chief registrar of a request for review, as provided for in Article 31 of Law No 7/1996, but with regard to invalid entries the acquirer may only have recourse to the legal remedy provided for in Article 908 para. (1) point 1 of the Civil Code, namely the action for rectification of the land register.

Therefore, if the entry in the land register is incorrect as a result of an invalid land register entry, and the land register entry has been successfully challenged by means of a request for review or a complaint or an action for rectification, the rectification of the land register entry will also result in the amendment, erasure or completion of the land register entry without the need for the court to hear a separate claim challenging the entry itself.

By bringing an action for rectification against an invalid entry, the acquirer will not risk influencing the validity or effectiveness of the deed, which is why we can conclude that

challenging the entry in the land register for a reason unrelated to the content of the legal act and the land register entry does not in any way affect their validity or effectiveness.

Last but not least, in the case of invalid registrations, we cannot speak of simple material errors for the rectification of which the acquirer has at his disposal the procedure laid down in Article 913 of the Civil Code, since the distinction between simple material errors and invalid registrations which may be rectified by means of an action for rectification is given by the seriousness of the latter, which is such as to affect the substance of the rights registered (Nicolae, 2021).

2.2. ***The right was wrongly qualified (Art. 908 para. (1), para. 2 C.Civ.)***

The literature has captured and catalogued several situations regarding the misclassification of the right to be entered in the land register, but the most common causes that can lead to the misclassification of the right result from the erroneous qualification given by the parties or the notary public, or from the misclassification assigned by the application for registration, perpetuated by the registrar in turn through his conclusion of the land register and subsequently through the entry in the land register, or in the situation where the misclassification arises directly in the conclusion of the registrar of the land register (Negrea, 1942).

In order to determine as correctly as possible whether the applicable remedy is an action for rectification of the land register on the grounds that the right has been wrongly qualified, we must observe how the wrong qualification of the right occurred.

Therefore, if there is a misclassification of the right in the sense of error in negotio, then we consider that the action for rectification of the land register will be based on the provisions of Article 908 para. (1)(1), and if the misclassification of the right given by the parties at the time of the conclusion of the legal act cannot be assimilated to a defect of consent which renders the act null and void or ineffective, then the action for rectification of the land register may be based on the provisions of Article 908(1)(1). (1), point 2.

Last but not least, if the wrong qualification of the right resulted from the sole fault of the land registrar, the conclusion is considered invalid, but the action for rectification of the land register will be based on the ground provided for in Article 908 para. (1), point 2, and not the one provided for in point 1, as this is a case of rectification distinct from the general hypothesis of the invalidity of the land register conclusion.

CONCLUSIONS

Therefore, we conclude that land register actions are those legal actions which have as their object entries in the land register, and by means of which the registration of real property rights or personal rights transmitted, constituted, modified or, as the case may be, extinguished, as well as other legal situations, is ensured if the person obliged to consent to the making of these entries refuses to hand over the entries necessary for the land registrar to grant the registration.

Land register actions are specific legal means of ensuring that those who are obliged to tolerate the registration of the transfer, creation, modification or extinction of a right in land registers are penalised if they refuse to hand over, by amicable agreement, the entries necessary to make the corresponding entries.

If a right in rem has been entered in the land register in accordance with the law in favour of a person, it shall be presumed that the right exists in favour of that person if it was acquired or created in good faith, as long as the contrary is not proved.

The contents of the land register shall be deemed to be accurate for the benefit of the person who has acquired a right in rem by deed for valuable consideration, if at the time of the acquisition of the right an action contesting its contents has not been entered in the land register or if the acquirer has not otherwise become aware of the inaccuracy.

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SUCCESSION RIGHTS OF THE SURVIVING SPOUSE IN THE LAW OF REPUBLIC OF ALBANIA

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Abstract: *The Republic of Albania is located in southeastern Europe. Although it is a member state of the UN, NATO, OSCE, a member of the Council of Europe and a potential candidate for joining the European Union only in recent years did the Albanian legislature want, through the laws it adopted, to align itself, to a great extent, the general trend of modernization and the recognition of equality in the rights of women and men. The remote traditions and customs of their history and civilization have prevailed when the equality of the sexes is called into question. Certainly, in addition to the patriarchal mentality that is the basis of Albanian society, the fear of the so-called "weaker sex", the helplessness and the lack of confidence in their own emancipation do preserve the customs that I mentioned above.*

Keywords: *Albania, law, succession, woman, deceased, patriarchal system, customs, Constitution, surviving spouse, study, obligation*

INTRODUCTION

Thanks to a 2018 study on the inheritance rights of the surviving female spouse in the Republic of Albania (Kola, 2018:17), we understand that Albanian women are discriminated against. Many, if not most, women choose or are "forced to choose" not to claim their inheritance, but to disinherit. Most of the time, wives and daughters are left out of the will or the deceased enters into fictitious donation contracts in favor of male heirs. Behind the decision to disinherit are several important factors that continue to influence Albanian society. In the Republic of Albania society is based on a patriarchal mentality and customs have a strong influence. The wars they fought over time (Preamble to the Stalinist Constitution of Albania from 1976: "The Albanian people carved their way through history with sword in hand."), the Ottoman Empire, the Kanun, xenophobia, various religions, the level of education and many other factors, are part of the mosaic that does not allow Albanian women to get out of the box of patriarchy. The wife was and, unfortunately, remains the property of the husband and his parents. Unable to emancipate herself, the Albanian woman was born and is born, in slavery.

In patriarchal systems, the woman has no inheritance rights either in the family from which she comes or from the husband. The problem is rooted in the exclusive, patrilineal system of inheritance, with the aim of keeping clan wealth intact (Kola, 2018:19-20).

1. The Kanun

We consider it important to present the Kanun (Aliu, 2021:6), a code of laws, as interesting as it is strange for modern people, who consider the law to be the bastion of a civilized society. Its introduction is especially important because in recent years there has been a revival of this set of rules, which shocks through violence. The Kanun was transmitted from

generation to generation orally, it was formally written only in the second century. 19th by Shtjefen Gjecovi. Historians have not reached a consensus on a complete theory of the Kanun's cultural origins, as it exhibits theological and legislative influences belonging to Roman law, Christianity, Islam and pagan customs.

It is assumed that this code of laws is the work of the Albanian prince Leke Dukagjini and is divided into 13 categories, among which we mention; Church, Family, Marriage, Transfer of property, etc. The rules of the code have changed with the evolution of society, but not significantly. Some of the most horrible rules of this code of laws describe in detail how murders are to be regarded, namely, that, more often than not, a crime draws bloody vengeance, which does not end until the death of all the men involved and the men in the families of those involved. The Kanun is associated by certain legal scholars with the Italian vendetta.

The Kanun is a customary law that was used especially in Northern Albania and Kosovo, starting from the 15th century to the 20th century, banned during the communist period and which, unfortunately, has become applicable again nowadays (Bomanand et al., 2012:15) due to citizens' dissatisfaction with the activity of the local government and the police.

Today there are several organizations that make efforts to mediate the enmity that has arisen between families, trying to convince them to "forgive the bad blood". Such attempts that, in most cases, fail. The most popular collection of these customary laws was that made by Leke Dukagjini. He collected the customs respected on the territory of Albania in the 15th century. The canon is archaic and marked by the inequality between women and men. It is also marked by the bloody revenges considered normal at that time (BBC, 2017).

Even to this day such bloody vendettas remain burning in Albanian families. The tragic example is that of Niko, a 13-year-old boy who is considered "in blood" by customary law, and which proves that these rules have endured to this day. He risks his life every time he leaves the house because of disputes and fights that happened before he was born. One of his family members killed a neighbour in a dispute over the boundary between the lands of the murdered person and his relative.

According to the Kanun, women have no inheritance rights. Patrilineal inheritance is the norm strictly imposed by law. There was only one exception, in that due to the wars and social brutality typical of antiquity, customary law allowed women to become "sworn virgins". In the area of Albania, especially in the area of the Dinaric Alps but not only, a daughter could take over the social role of the "man" herself in the absence of an adult man capable of managing the household. There were other reasons for such a choice. These women chose or were appointed by their families (Young, 1998:59), to occupy the social place of the head of the family, or, the man. These "sworn virgins" were usually chosen from birth or as young children. In certain, rather rare cases, betrothed women who did not wish to marry would accept the title to avoid marriage, and thus both families could keep their honour intact. These women became the heads of the family, as such they were responsible for the manual work, the education of the children and of course, revenge (Young, 1998:60). Also, these women had the full rights of the head of the family, including the right to inheritance. Although these laws have an ancient origin, predating even the Koran, some people still choose to live by them.

The standard reason given by those who choose or encourage such situations is that only in this way can the household continue, that is, all the activities that arise from the management

of the household, namely: economic, religious and social activities. This standard reason is contradicted by Matija Brujic and Vladimir Krstic in the article "Sworn virgins of the Balkan Highlands". They consider the standard reason to be a failure. From their point of view, the lack of a men to continue managing the household is rather perceived as a shame in these societies. The girls who take on this role are the ones who save the "honour" of the family. This phenomenon, the authors show, was registered mainly among Muslims (Albanians, Bosnians, Turkish Roma) and Orthodox Christians (Serbs, Montenegrins) and Roman Catholics (Albanians), Christians. Local communities accepted, and still accept, sworn virgins to take over the role of men in society, because men were and are more respected than women (Brujic et al., 2021:113-130). There are situations where no one knows they are women. There are two types of sworn virgins: women who were predestined to become men from childhood or even from early infancy, being obliged by their parents, the so-called imposed covenant, and women who decide to assume the social role of a man, i.e., the accepted covenant. These women, regardless of the covenant they made, completely renounce their status as women, including the role of wife or mother.

We are thus talking about a cultural anomaly generated by the lack of a men to be the manager of his household and the shame that a family feels in the absence of a man. The existence of sworn virgins represents, from the point of view of the traditionalists, a socio-economic benefit, in the sense that the household can have, in this way, a head of the family. The family gains an example of power, courage and honour. Some researchers of the phenomenon claim, however, that saving the honour of the family is the main reason that led to the creation of such a phenomenon, such a practice.

In general, a sworn virgin is a young virgin, but an adult woman can also assume such a role. They have a special status that includes the following aspects: male name, male dress, haircut, social obligations of a male, namely: carrying weapons, participating in battles and blood wars, participating in meetings with other males, participating at tribal, clan or village meetings, the religious obligations of the head of the family, but also the privileges enjoyed by a man, for example: drinking alcohol, smoking, socializing with other men, etc. According to custom, they receive partial or complete legal and work skills that are not normally available to women. They also own family property, thus becoming respected like men. The only limitations are that sworn virgins cannot vote in the community and cannot be killed in battles or vendettas.

Still, a definition has not been reached that establishes what a sworn virgin is, because the phenomenon is quite sensitive and not fully researched, these women mostly coming from the rural Balkan regions, but, in a small number, and among educated women.

2. Legal provisions by the Albanian Civil Code and Constitution

Even today, although the Albanian inheritance law has undergone significant changes, some female persons choose to renounce their inheritance in favour of other male heirs in order to respect the traditions (Gjinovici, 2016:10). Art. 18 of the Constitution of the Republic of Albania states that: "All people are equal before the law and no one can be discriminated against on the basis of gender, descent, social origin or social status." The Constitution of the Republic of Albania thus determined the role of women and men, placing them on an equal footing, trying to prevent discrimination by adopting several articles of law in this regard. The Republic of

Albania has also ratified several international conventions regulating equality between women and men (Kola, 2018:11).

We can state that the Albanian succession law in force is very similar to Romanian succession law, as follows: inheritance represents the transfer of assets that belonged to the deceased to one or more living persons (Art. 316 c.c.); it opens on the date of death of the person whose inheritance is being discussed (Art. 330 c.c.), at his last place of residence; the ability to inherit is only available to people who are alive on the date of the opening of the inheritance (Art. 318 c.c.), people conceived before her death, provided they are born alive (Art. 320 c.c.); the situation of the cormorants is similar (Art. 321 c.c.); as well as that of unworthy or renounced heirs (Art. 326 c.c.); the right to disclaim an inheritance is extinguished in the situation where the heir behaved as an owner with regard to the share due to him; the heirs of the deceased have the obligation to compensate his creditors, depending on the limit of the value of the inheritance (The term for exercising the right of succession option is 3 months. In the situation where the heir is not in the country, his term for exercising the right of succession option is extended to 6 months.).

As for the surviving spouse, they have the right to inherit the share of the inheritance that was obtained through the joint work of the spouses, these rules also apply in the case of other heirs (Art. 358 c.c.). The category of legal heirs includes: children, children's children, surviving spouse, parents and siblings, nephews of siblings by way of representation, grandparents, relatives up to the 6th degree, people who, from an economic point of view, are dependent on the deceased, and the state (Art. 360 c.c.).

The first class of heirs includes: the children and the surviving spouse, who benefit from equal shares of the inheritance. Children born out of wedlock and adopted children have the same inheritance rights as children born inside of wedlock (Art. 362 c.c.). If one of the children is predeceased, unworthy or disinherited, the representation principle will operate resulting in the inheritance being passed down to their direct inheritor. In the assumption that the surviving spouse comes to the succession table in competition with the heirs of classes II and III, he will benefit from ½ of the inheritance. In the event that there are no heirs in these classes, the surviving spouse will inherit the entire estate.

The second class of legal heirs includes the parents of the deceased and persons who were financially dependent on the deceased, provided that they lived with the deceased at least one year before the death (Art. 363 c.c.). Their shares of the estate are equal.

The third class of heirs includes persons who were economically dependent on the deceased, (persons who are mentioned in art. 363 of the Albanian Code) grandparents, brothers and children of deceased or unworthy brothers, who benefit from equal shares (Art. 364 c.c.).

In the situation where there are no heirs who fall into the three classes of legal heirs, all relatives up to the 6th degree are called to inherit, regardless of whether they are on the maternal or paternal line. Their inheritance shares will be equal (Art. 365 c.c.).

If there are no heirs up to the sixth degree inclusive, the estate of the deceased will enter in bona vacantia (Art. 366 c.c.). The household goods of the deceased will be divided among the heirs who lived in the same house as the deceased. We must also state that the deceased can exclude anyone he wants by will (Art. 378 c.c.), as long as it does not affect the forced shares. Forced heirs are minor heirs and those who cannot support themselves (Art. 379 c.c.).

CONCLUSIONS

The issue of inheritance rights of the surviving female spouse in the Republic of Albania remains a vexing issue. Although the inheritance legislation of the Republic of Albania has been amended, reaching the level of inheritance laws in other states, Albanian society has always found various methods by which women are discriminated against and do not benefit from inheritance rights over family property (Kola, 2018:50).

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SECURING THE DIGITAL DIPLOMACY FRONTIER: A GLOBAL PERSPECTIVE IN THE CYBER ERA WITH A FOCUS ON AZERBAIJAN

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Abstract: *The digital age has fundamentally transformed the nature of diplomacy. As countries embrace the opportunities of the digital realm to foster global relationships and promote their interests, they simultaneously confront an array of cyber threats and challenges. The inherent dynamism of this digital transformation challenges the age-old tenets of diplomacy, prompting a re-evaluation of traditional methodologies and strategies. Countries today are presented with a dual-edged sword. On one hand, digital tools serve as potent enablers, facilitating the forging of global relationships, enhancing soft power projection, and promoting nuanced national interests with unparalleled efficiency. Yet, the same arena also poses substantial challenges: cyber threats, misinformation campaigns, and intricate webs of state-backed digital espionage represent just the tip of a vast iceberg of challenges in the cyber domain. This research paper seeks to elucidate the evolving landscape of digital diplomacy, assessing its implications for traditional statecraft and international relations. By examining the dual nature of digitalisation — it's potential for both collaboration and conflict — we aim to provide a comprehensive understanding of the strategies and tactics employed by state actors. This exploration offers insights into the future of diplomacy, advocating for adaptive, resilient, and innovative approaches to navigate the challenges and harness the opportunities of the cyber era.*

Keywords: *Digital diplomacy, cyber threats, digital strategy, cyber-attacks, misinformation campaigns, digital transformation.*

INTRODUCTION

„Without communication, there is no diplomacy"- Christer Jönsson (2016)

In the evolving narrative of international relations, the age-old mechanisms of diplomacy are being transformed by the relentless tide of digitalization. The cyber era, marked by its vast potential and challenges, compels nations to meticulously navigate their diplomatic endeavors, balancing tradition with technological innovation. Globally, the digital frontier offers a platform for enhanced communication, accessibility, and collaboration, obliterating geographical confines and fostering real-time global dialogues. Yet, these opportunities coexist with emerging threats like cyber espionage, state-sponsored attacks, and the pervasive spread of misinformation. How can states and societies cope with these challenges and risks? How can they ensure the security, resilience, and prosperity of their digital domains? This is the main question that this research paper aims to address by exploring the concept and practice of digital diplomacy in the case of Azerbaijan. While this digital shift is universally felt, examining its manifestation in specific geopolitical contexts, such as Azerbaijan, offers deeper insights. Nestled at the crossroads of Eastern Europe and Western Asia, Azerbaijan emerges as a compelling case study in this narrative.

This research paper has three main objectives: first, to provide an overview of the current state of digital diplomacy in the world and its main trends and developments; second, to analyze the cybersecurity policy and digital strategy of Azerbaijan in comparison to other countries and regions; and third, to evaluate the effectiveness and impact of Azerbaijan's digital diplomacy initiatives and practices in terms of its national interests and global influence. To achieve these objectives, this paper will use a mixed-methods approach that combines qualitative data from various sources, such as official documents, media reports, academic articles, online platforms, and surveys. The paper will also use a theoretical framework based on the four modes of digital diplomacy model by Corneliu Bjola and Marcus Holmes (2015), which distinguishes between four modes of digital diplomacy based on the level of engagement and dialogue between actors: broadcasting, listening, networking, and mobilizing. This framework can help us to understand how Azerbaijan uses different digital platforms and strategies to achieve its diplomatic objectives, and how it interacts with different audiences and stakeholders in the cyber domain. This framework can also help us to compare and contrast Azerbaijan's digital diplomacy with other countries and regions, and to identify its strengths and weaknesses.

Examining Azerbaijan's cybersecurity policies, strategic blueprints, and mechanisms for digital engagement provides an in-depth view of the nation's approach to the multifaceted challenges and prospects of the cyber era. Such an exploration not only highlights Azerbaijan's tactics but also sheds light on the broader shifts in global digital diplomacy, emphasizing the pressing need for countries to fortify their digital domains in this interconnected era.

1. GLOBAL SHIFTS AND THE ADVENT OF DIGITAL DIPLOMACY

Digital diplomacy is not a new phenomenon, but rather a continuation and adaptation of traditional diplomacy to the changing technological environment. Diplomacy has always been influenced by the means of communication available at different historical periods, such as letters, telegraphs, telephones, radios, televisions, and satellites.

Globally, the proliferation of digital tools has democratized information dissemination. No longer are diplomatic messages the sole purview of state-controlled media or closed-door meetings. Today, a tweet, a video clip, or a blog post can resonate as powerfully as a formal diplomatic communique, if not more. Such is the power and unpredictability of digital platforms. However, with this new power also comes an array of challenges. Misinformation and disinformation campaigns, threads and cyberattacks can muddy the waters of international discourse, with non-state actors, both benign and malevolent, possessing the tools to shape narratives. The advent of the Internet and digital technologies in the late 20th and early 21st centuries have brought unprecedented changes to the nature and practice of diplomacy, creating new opportunities and challenges for diplomats, states, and non-state actors. An intern posting a photograph on an embassy's social media account, high-level diplomats networking with tech companies in Silicon Valley, and state leaders using „Twitter" to comment on international negotiations are now examples of everyday diplomatic life.

As Corneliu Bjola and Marcus Holmes (2015) argue, digital technologies have enabled a shift from "digital adaptation", which refers to the use of digital tools to support existing diplomatic functions, to "digital adoption", which refers to the creation of new diplomatic

functions that are only possible through digital tools. Therefore, digital diplomacy can be seen as both a continuation and a transformation of traditional diplomacy in the cyber era.

1.1. Unpacking models of digital diplomacy

One of the main concepts and models of digital diplomacy that has been proposed by scholars and practitioners is the four modes of digital diplomacy model by Corneliu Bjola and Marcus Holmes (2015). This model distinguishes between four modes of digital diplomacy based on the level of engagement and dialogue between actors: broadcasting (one-way communication), listening (monitoring and analysis), networking (relationship building), and mobilizing (influencing and persuading). According to this model, each mode of digital diplomacy has its own objectives, tools, strategies, and outcomes, and they can be used separately or in combination depending on the context and the purpose of the diplomatic action. The model also suggests that digital diplomacy is not a static or linear process, but rather a dynamic and interactive one, where actors can switch between different modes depending on the feedback and the results they receive. The model also acknowledges that digital diplomacy is not a monolithic or homogeneous phenomenon, but rather a diverse and heterogeneous one, where different actors have different levels of access, capacity, and influence in the digital domain.

Another model of digital diplomacy is the three levels of digital diplomacy model by Ilan Manor (2019). This model distinguishes between three levels of digital diplomacy based on the degree of innovation and transformation: migration (transferring offline practices to online platforms), adaptation (adapting offline practices to online platforms), and innovation (creating new practices for online platforms). According to this model, each level of digital diplomacy has its own challenges and opportunities, and they can be used to measure the progress and impact of digital diplomacy. The model also argues that digital diplomacy is not only a matter of technology, but also a matter of culture, mindset, and identity.

A third model of digital diplomacy is the three types of media diplomacy model by Eytan Gilboa (2001). This model distinguishes between three types of media diplomacy based on the role of the media in diplomatic processes: public diplomacy (using the media to communicate with foreign publics), media diplomacy (using the media to communicate with foreign officials), and media-broker diplomacy (using the media to facilitate or mediate negotiations). According to this model, each type of media diplomacy has its own advantages and disadvantages, and they can be used to achieve different diplomatic goals. The model also emphasizes the interdependence and interaction between the media and diplomacy in the age of globalization (ibid., 4).

Historically, diplomatic engagements were primarily physical, but the emergence of online platforms has dramatically reshaped how nations interact. Digital diplomacy or also so called e-diplomacy has emerged as a prominent instrument of statecraft, especially evident in the nuanced situations that have marked recent global affairs. During the 2020 COVID-19 pandemic, as face-to-face diplomatic encounters came to a halt, online platforms became the fulcrum of international communication and cooperation (cf. Naylor, 2023: 1). The World Health Organization adeptly used these tools to circulate indispensable health advisories globally.

„The most effective diplomacy doesn't take place in the formal meeting itself. It's what's happening on the margins. It's what happens in the corridors."- Dr. Tristen Naylor (2023)

However, this digital space was simultaneously contested, with some countries manipulating it to disseminate misleading information or further political agendas about the pandemic. Earlier, during the Ukraine conflict of 2014-2015, digital spaces became battlegrounds for information warfare and cyberattacks. Russia's orchestrated misinformation campaign aimed to validate its annexation of Crimea and involvement in Eastern Ukraine. Conversely, Ukraine turned to social media to rally domestic and international support (*The Diplomacy Network*, 2023). A further testament to the power of digital diplomacy was seen in the 2015 Iran Nuclear Deal negotiations.

Platforms like „Twitter" or also for instance „Zoom"-Rooms (Calls and Videocalls) were no longer mere communication tools but became instrumental in shaping diplomatic outcomes. Both US Secretary of State John Kerry and Iranian Foreign Minister Javad Zarif took to „Twitter" to engage directly, bridging diplomatic divides and simultaneously communicating the accord's nuances to a global audience (Manor, 2019: 3-5).

However, while the proliferation of digital platforms offers transformative avenues for diplomatic discourse and statecraft, it also opens up a Pandora's box of security vulnerabilities. The same online spaces that can be harnessed for fruitful online dialogue and collaboration also expose states to a spectrum of cyber threats that can compromise national security and destabilize diplomatic relations.

1.2. Cyberdiplomacy: cyberattacks in diplomatic relations

Before explaining what 'cyber diplomacy' means, is cruical to define the two terms that compose it: 'diplomacy' and 'cybersecurity'. Diplomacy pertains to the strategic efforts by representatives to further the objectives of the states or entities they champion, leveraging methods such as advocacy, dialogue, and mediation. On the other hand, cybersecurity encompasses the protective strategies employed by individuals and entities to safeguard both their physical resources, like infrastructure and personnel, and intangible assets, such as data, expertise, service provision capabilities, influence, or intellectual capital. With our lives becoming more intertwined with the digital integration, the need for stringent cybersecurity measures is more imperative than ever (Hartmann, 2023).

Such measures are not merely about safeguarding physical assets like infrastructure but also extend to protecting intangible resources, including data, service capabilities, and intellectual capital. Yet, as we emphasize on the importance of cybersecurity, we must acknowledge the vulnerabilities it aims to address.

Delving into the world of cyberattacks in diplomatic relations reveals a stark manifestation of the vulnerabilities inherent in our increasingly digitized global landscape. Cyberattacks in diplomatic relations are malicious activities that use information and communication technologies (ICTs) to target or disrupt the political, economic, or security interests of another state or entity. Cyberattacks can have various objectives, such as espionage, sabotage, coercion, or influence. Cyberattacks can also have various effects, such as damaging critical infrastructures, stealing sensitive data, disrupting public services, or undermining trust and confidence.

Cyberattacks in diplomatic relations pose significant challenges and risks for the international community, as they can escalate tensions, undermine stability, and violate international law and norms. Therefore, "cyber diplomacy" is a very important field of diplomacy that aims to prevent and respond to cyberattacks, and to promote responsible state behaviour in cyberspace. Cyber diplomacy involves various actors, such as states, international organisations, private sector, civil society, and academia. Cyber diplomacy also involves various tools and instruments, such as dialogue, cooperation, capacity building, norms, confidence building measures, attribution, and cyber sanctions regime (Ivan, 2019: 3).

Illustrating the gravity of this cyber-centric landscape are incidents like the 2020 SolarWinds attack, which saw the US pointing fingers at Russia, resulting in consequential sanctions. In 2017, over 150 countries and entities grappled with the ramifications of the WannaCry ransomware, with countries like the UK and US holding North Korea responsible (ibid., 7; *Net Politics*, 2019). Germany too has been on the receiving end, attributing cyber offensives against its parliament in both 2015 and 2020 to Russian hacker factions, a move that led to the expulsion of Russian diplomats. 2020 also spotlighted cyber tensions between India and China, with the former suspecting that cyberattacks on its power grids were inextricably linked to their border skirmishes (*The Diplomat*, 2021).

Adding to the series of cyber-centric geopolitical events, the 2020 Karabakh conflict between Armenia and Azerbaijan provides another illustrative example. Alongside the on-the-ground altercations over the contested Karabakh region, both nations encountered significant challenges on the cyber front. This ranged from intensified campaigns on social media platforms to orchestrated Distributed Denial of Service (DDoS) attacks, leading to disruptions and outages on official portals (*External Cyberattacks During Second Karabakh War Mainly Focused on Azerbaijan's Central Bank – CERT*, 2021; Spînu, 2021: 5). Personal data, often of military personnel or public figures, became a valuable target, resulting in numerous high-profile breaches and subsequent leaks. The conflict's digital dimension also witnessed the symbolic defacement of websites and more covert operations suggestive of cyber espionage, targeting critical infrastructures and communication channels. Such episodes from the Karabakh War II serve as an emphatic testament to the evolving nature of conflicts, underscoring the dual theaters of physical and cyber warfare in modern geopolitics.

2. AZERBAIJAN'S CYBER STRATEGY IN A GLOBAL CONTEXT

A recent study by the A recent study by the Asian Development Bank illuminates Azerbaijan's strategic approach towards bolstering its security and cybersecurity. Spanning from 2019 to 2022, Azerbaijan's strategy is driven by the imperative need to escalate the country's cybersecurity fortifications and mitigate potential threats to its information systems (Yoon, 2019: 19-20; Mehdiyev, 2021: 2-8, 23). The strategy was developed based on the need to increase the level of national cybersecurity in Azerbaijan and reduce threats to information systems. The strategy has following objectives: to improve the legal framework for cybersecurity; to enhance the institutional capacity for cybersecurity; to develop human resources for cybersecurity; and to raise awareness and cooperation on cybersecurity (Yoon, 2019: 20).

However, it's not merely about building an internal strategy. The Cybil Portal's report accentuates that Azerbaijan's cybersecurity tactics resonate with international standards and esteemed practices like the Budapest Convention on Cybercrime and the Global Cybersecurity Index. Yet, it's crucial to acknowledge the existing challenges. The report brings to light certain areas and specific vulnerabilities identified during the ongoing Karabakh conflict that need further attention, including the establishment of a national cyber incident response team, a comprehensive data protection legislation, clarity in inter-agency roles, and a consistent assessment mechanism (Spînu, 2021: 5, 7-10).

Shifting the lens to digital development, DataReportal's research (2022) showcases Azerbaijan's commendable advancements. The country boasts impressive metrics: 82% internet penetration, 116% mobile penetration, 50% social media usage, and a thriving 28% e-commerce engagement among its citizens. Azerbaijan's proactive measures to catalyze its digital transformation journey are evident. These include the inauguration of a national e-government portal, the development of a digital trade nucleus, the foundation of a high-tech park, and a palpable support system for emerging startups and innovative ventures. Furthermore, Azerbaijan is actively participating in various regional digital connectivity initiatives and campaigns.

As reported by Trend News Agency, Azerbaijan is actively formulating an all-encompassing strategy that covers diverse areas of digitalization, spanning big data, artificial intelligence, the Internet of Things, and digital marketing. The country's objective is to launch this advanced digital economy strategy by 2024 (Gasimov, 2023).

3. GLOBAL FUTURE OF E-DIPLOMACY AND DIGITALISATION

As more nations recognize the transformative power of digital tools, the global diplomatic community is poised for a shift towards a more interconnected, transparent, and efficient mode of operations. E-diplomacy isn't just about integrating technology into diplomacy; it's about reimagining the very essence of diplomatic engagements in the digital era.

With artificial intelligence, big data analytics, and blockchain technologies making inroads into this realm, there's an increasing opportunity to harness these advancements for peacekeeping, international collaborations, and global policymaking. Moreover, social media channels are playing pivotal roles in shaping public opinion, making them invaluable tools for soft diplomacy and public diplomacy initiatives. This paradigm shift warrants exploration, and to that end, a journal article by Hedling and Bremberg serves as a seminal piece. In their analysis, they present a practice-based exploration of digital diplomacy. Central to their discourse is the transformative influence of digital technologies, highlighting three dimensions: the reshaping of space, or 'spatiality'; how tangible 'materiality' elements influence diplomatic practices; and the shift in the perception of time, or 'temporality' (Hedling & Bremberg, 2021: 1596-1598).

Building on this foundational understanding, a subsequent layer of analysis comes from Kürzdörfer and her team. Their policy brief examines the European Union's recent digital regulation endeavors. By introducing the Digital Services Act (DSA) and Digital Markets Act (DMA), the EU aims not only to counteract the weaponization of digital interdependence but also to enhance the robustness of its digital ecosystem. Such moves could potentially amplify

the EU's values and norms on the global digital stage (*Digital Transformation Lab (DIGITRAL): Digital Diplomacy and Statecraft*, 2021-2024).

The global future of e-diplomacy is not just a mere extension of traditional diplomacy but a profound evolution. It demands that nations not only adapt to the changing technological landscape but also embrace the ethos of digital age diplomacy—openness, inclusivity, and collaboration—in all spheres of their lives.

CONCLUSIONS

The digital age has brought about transformative shifts in how nations engage with each other, and the domain of diplomacy has not been immune to these changes. Digital diplomacy, or e-diplomacy, stands at the crossroads of traditional statecraft and modern technology. The recent cyber-centric geopolitical events, such as those witnessed during the Karabakh conflict between Armenia and Azerbaijan, emphasize the growing significance of the cyber dimension in international relations.

Azerbaijan, in its journey of digital evolution, has recognized the imperatives of cybersecurity and digital diplomacy. Its strategic alignment with international standards and ambitious plans for the future, such as the upcoming comprehensive digital economy strategy, highlights the nation's commitment to staying abreast with global best practices. Furthermore, the insights from esteemed researchers and global organizations underscore the broader shifts in digital diplomacy and the opportunities and challenges it presents.

The European Union's endeavors, like the introduction of the Digital Services Act (DSA) and the Digital Markets Act (DMA), indicate a global trend towards safeguarding digital ecosystems and promoting values and norms in the digital sphere (Steffens & Müller, 2023; Mschmitz, 2022;).

In this ever-evolving landscape, world must continue to adapt, innovate, and collaborate. The future of e-diplomacy isn't merely an extension of traditional diplomacy but a profound digital evolution and digitalisation. It calls upon countries to not only adapt to technological advancements but also uphold the values of inclusivity and collaboration in the digital era. As we forge ahead in the cyber age, it is crucial for nations worldwide to grasp the potential of digital diplomacy in shaping a connected, inclusive, and resilient global community.

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COMPARATIVE ANALYSIS OF THE DEVELOPMENT PLANS OF THE NORTH-WEST REGION FROM 2014-2020 AND 2021-2027

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Abstract: *The paper further scrutinizes the transformative journey undertaken by the region through its Development Plans, specifically analyzing the periods of 2014-2020 and 2021-2027. The comparative analysis of the two Development Plans highlights both continuities and differences (Counsell, Kate. 2008). Infrastructure development, economic diversification, innovation, education, and sustainability emerge as consistent themes. The differences, notably the intensified focus on environmental sustainability, digitalization, and social inclusion in the 2021-2027 plan, signify the region's adaptive response to evolving challenges and opportunities.*

Keywords: *North-West Region, Development Plan, Sustainability, Digitalization and Inclusive Growth.*

INTRODUCTION

The North-West Region of Romania is one of the historical and geographical divisions of the country, comprising a diverse landscape, rich cultural heritage, and economic significance. Encompassing both urban and rural areas, this region plays a crucial role in the country's overall development. With 446 territorial administrative units (UAT) from which 403 rural communes, 28 cities, and 15 municipalities that are situated in the northwestern part of Romania, the North-West Region is characterized by a varied topography. The region is surrounded by the Carpathian Mountains to the east, the Apuseni Mountains to the south, and the borders with Hungary and Ukraine to the west and north, respectively. The region's terrain includes mountains, hills, and plains, contributing to its ecological diversity.

The North-West Region is home to several important cities, each with its own cultural and economic significance. Cluj-Napoca, the regional capital, is a vibrant urban center known for its historical architecture, academic institutions, and dynamic cultural scene. Other significant cities include Oradea, Satu Mare, Baia Mare, and Zalău. The North-West Region boasts a rich cultural heritage shaped by its historical background. The area has been influenced by various cultures and civilizations, including Roman, Austrian, Hungarian, and Ottoman influences. This diversity is reflected in the region's architecture, traditions, and local customs. Historical sites, such as medieval castles, churches, and fortified villages, contribute to the region's cultural allure.

The presence of reputable universities and research institutions adds to the intellectual vibrancy of the North-West Region. Cluj-Napoca and Oradea, in particular, are known for their academic excellence, attracting students and researchers from across the country and beyond. The emphasis on education and research has contributed to the region's capacity for innovation and

technological development. In summary, the North-West Region of Romania is a dynamic and culturally rich area, marked by a mix of tradition and modernity. Its strategic location and commitment to education and innovation position make this region a key player in the country's overall development (Finn. 2018).

The economy of the North-West Region is diverse, comprising various sectors that contribute to its overall development. Cluj-Napoca, in particular, has become a major economic hub (Cluj-Napoca City Hall. 2022.), known for its focus on information technology, research, and innovation. The region's economy also includes manufacturing, agriculture, mining, and services. Cluj-Napoca has also gained a reputation as a leading IT hub in Romania, attracting both domestic and international companies. The city hosts numerous tech-related events, startups, and research centers, contributing significantly to the regional economy (European Investment Bank. 2018). The North-West Region has a well-established manufacturing sector, producing goods ranging from automotive parts to textiles. Several industrial zones contribute to the region's economic output. The fertile plains in some parts of the region support agricultural activities, with a focus on cereals, vegetables, and livestock. The region's natural beauty, historical sites, and cultural attractions make it a popular destination for tourists. The Apuseni Mountains, Maramureș wooden churches, and historical cities like Cluj-Napoca and Oradea (Oradea City Hall. 2019) are significant draws for visitors. While the North-West Region has seen economic growth and development, it also faces challenges such as regional disparities, infrastructure needs, and environmental sustainability (European Environment Agency. 2022). The development plans for the region aim to address these challenges and capitalize on opportunities to ensure balanced and sustainable growth for the coming years.

1. THE NORTH-WEST REGION DEVELOPMENT PLAN (2014-2020)

The North-West Region of Romania embarked on a transformative journey (North-West RDA. 2013) between 2014 and 2020 with its comprehensive Development Plan, a strategic roadmap designed to foster economic growth (Haan. 2019), enhance infrastructure, and promote social cohesion. This remark delves into the key components, achievements, challenges, and the overall impact of the North-West Region Development Plan during this period. The primary objectives of the 2014-2020 Development Plan (North-West RDA. 2013) were rooted in aligning the region with European Union (EU) policies (Borragán, Michelle. 2019.) and fostering sustainable development (Ukaga, 2019). The plan aimed to enhance competitiveness, encourage innovation, improve infrastructure, and address social disparities within the region.

A cornerstone of the plan was the improvement of infrastructure, particularly in the areas of transportation. Investments were directed towards upgrading roads, railways, and other vital transport links, enhancing connectivity both within the region and beyond. This initiative not only facilitated the movement of goods and people but also positioned the region as an attractive destination for investment. Recognizing the importance of knowledge-based economies, the plan placed a strong emphasis on innovation (Drucker, 2014) and research (European Commission. 2020). Funding and support were provided to universities, research institutions, and businesses

engaged in research and development activities. This focus aimed to propel the region towards a more sustainable and competitive future.

Investments in education were pivotal for the long-term development of the North-West Region. The plan sought to improve educational infrastructure, enhance curriculum quality, and promote lifelong learning. By focusing on human capital development (Brian. 2008), the region aimed to build a skilled workforce capable of meeting the demands of a dynamic economy. The 2014-2020 Development Plan yielded significant achievements that contributed to the overall advancement of the North-West Region. Infrastructure developments, including the expansion and improvement of road networks, led to increased connectivity. This not only benefited the movement of goods and services but also facilitated tourism and cultural exchanges within the region. The plan successfully stimulated economic diversification, with an increased focus on sectors such as information technology, manufacturing, and services. Cluj-Napoca, in particular, emerged as a thriving IT hub, attracting national and international businesses. The investments in education and research bolstered the region's academic standing. Cluj-Napoca, with its renowned universities, became a focal point (Cluj-Napoca City Hall. 2022.) for students and researchers, contributing to the knowledge-based economy (European Investment Bank. 2018). Oradea (Oradea City Hall. 2019) also needs to be mentioned for the major investment in research and development.

Despite the successes, the North-West Region faced challenges during the implementation of the plan. Disparities persisted among different areas within the region, highlighting the need for more targeted interventions to ensure more equitable development. While economic growth was evident, sustainability concerns arose. Striking a balance between development and environmental conservation (Vig, Kraft, 2015) became an ongoing challenge.

The North-West Region Development Plan for 2014-2020 (North-West RDA. 2013) stands as a testament to the region's commitment to sustainable, inclusive, and innovation-driven growth. By focusing on infrastructure, education, and economic diversification, the plan laid the groundwork for a more competitive and resilient North-West Region. The lessons learned from this period will undoubtedly inform future development strategies as the region continues its journey towards prosperity and sustainability.

2. THE NORTH-WEST REGION DEVELOPMENT PLAN (2021-2027)

The North-West Region of Romania embarks on a new phase of development between 2021 and 2027 with its comprehensive Development Plan (North-West RDA. 2020), marking a strategic shift towards sustainability, digitalization, and resilience. This detail explores the key pillars, objectives, and anticipated impacts of the North-West Region Development Plan for the specified period. The 2021-2027 Development Plan for the North-West Region outlines ambitious objectives (North-West RDA. 2020) aligned with both national and European Union strategies (Borragán, Michelle. 2019.), emphasizing sustainability, digital transformation (Siebel. 2019), and resilience to external challenges.

A central focus of the plan is the region's commitment to a green transition. Investments are directed towards environmentally sustainable practices (Ukaga, 2019), renewable energy sources, and the reduction of carbon emissions. This approach aligns with the broader European Green Deal (European Union. 2014), emphasizing the region's dedication to environmental stewardship. Recognizing the transformative potential of digitalization, the plan places a strong emphasis on upgrading digital infrastructure, fostering innovation (Drucker, 2014), and promoting entrepreneurship in technology-driven sectors. This initiative aims to position the North-West Region as a digital leader (Siebel. 2019), contributing to economic growth and global competitiveness.

Building on the foundations of the previous development plan, the 2021-2027 strategy aims for more inclusive growth (North-West RDA. 2020). Policies are designed to address social inequalities, support vulnerable groups, and ensure that the benefits of development are distributed equitably across the region. The plan incorporates measures to enhance the region's resilience to external shocks, be they economic downturns, global crises, or unforeseen challenges. Diversification of economic activities, adaptive industries, and robust social safety nets are key components of this strategy.

The North-West Region Development Plan for 2021-2027 envisions a range of positive impacts (North-West RDA. 2020), fostering a holistic and sustainable development trajectory. By prioritizing the green transition, the plan aims to reduce the region's environmental footprint, contribute to climate change mitigation, and promote sustainable practices in various sectors. Investments in digitalization are expected to position the North-West Region as a leader in the digital economy. The plan anticipates increased innovation, a thriving startup ecosystem, and enhanced competitiveness in the global marketplace.

The emphasis on inclusive growth seeks to reduce social disparities within the region, ensuring that economic benefits reach all segments of the population. This inclusive approach is essential for fostering social cohesion and sustainable development (Brian. 2008). The measures implemented to enhance resilience will contribute to a more robust and adaptive regional economy, capable of withstanding external shocks. This, in turn, will create a stable environment for businesses and improve overall economic well-being.

The North-West Region Development Plan for 2021-2027 (North-West RDA. 2020) represents a forward-thinking and holistic approach to regional development. By prioritizing sustainability, digitalization, and resilience, the plan reflects the region's commitment to addressing contemporary challenges while fostering a future characterized by inclusive prosperity and environmental responsibility. As the North-West Region navigates this new development trajectory, the success of the plan will depend on effective implementation, collaboration, and adaptability to emerging opportunities and challenges.

3. THE COMPARATIVE ANALYSIS (SIMILARITIES)

The North-West Region of Romania has been a focal point for strategic development, with consecutive development plans guiding its growth and evolution. This part of the paper explores

the similarities between the North-West Region Development Plans for the periods 2014-2020 and 2021-2027, highlighting the consistent themes that bridge these two distinct phases of regional planning.

One of the enduring themes across both development (Brian. 2008) plans is a strong emphasis on infrastructure development. In the 2014-2020 period, investments were directed towards improving transport networks, including roads and railways. Similarly, the 2021-2027 plan continues this focus on infrastructure, recognizing its pivotal role in fostering economic growth and enhancing connectivity within the region.

Both development plans share a commitment to economic diversification. The 2014-2020 plan witnessed efforts to stimulate growth (Haan. 2019) in various sectors, including information technology and manufacturing. This theme persists in the 2021-2027 plan, with a continued focus on diversifying the economy, albeit with an increased emphasis on environmentally sustainable and digitally driven sectors.

The promotion of innovation and investment in education is a common thread in both plans. The 2014-2020 plan sought to bolster research and development activities, while the 2021-2027 plan takes this a step further by explicitly emphasizing digitalization, innovation (Drucker, 2014), and the enhancement of digital skills. The continuity of this theme underscores the region's commitment to staying at the forefront of technological advancements.

Addressing social disparities and promoting inclusive growth has been a consistent goal across both periods. The 2014-2020 plan aimed to reduce economic and social inequalities, and the 2021-2027 plan builds upon this foundation, placing an even stronger emphasis on inclusive policies to ensure that the benefits of development are equitably distributed among the population. While the degree of emphasis may vary, both development plans acknowledge the importance of sustainable practices (Ukaga, 2019). The 2014-2020 plan included measures to improve energy efficiency, and the 2021-2027 plan takes a more pronounced step towards a green transition, aligning with broader European environmental goals (Vig, Kraft, 2015).

The similarities between the North-West Region Development Plans for 2014-2020 and 2021-2027 underscore the region's commitment to continuity, adaptability, and a long-term vision for sustainable growth. Infrastructure development, economic diversification, innovation, education, inclusive growth, and sustainability are enduring themes that have shaped the region's trajectory across these two distinct timeframes. The evolution from one plan to the next reflects a responsiveness to changing global trends and challenges while maintaining a strategic focus on the fundamental pillars that drive the Region towards a resilient, inclusive, and sustainable future.

4. THE COMPARATIVE ANALYSIS (DIFFERENCES)

The North-West Region of Romania has undergone a transformative journey in its pursuit of regional development (Brian. 2008), transitioning from the 2014-2020 Development Plan to the updated strategy for 2021-2027. This part explores the notable differences between these two phases, highlighting shifts in priorities, emerging challenges, and the region's adaptive response to a changing global landscape.

One of the most significant differences between the two development plans is the heightened emphasis on environmental sustainability (European Environment Agency. 2022) in the 2021-2027 strategy. While the 2014-2020 plan acknowledged the importance of energy efficiency and sustainability, the new plan places a stronger focus on the green transition, aligning with broader European goals for climate action and ecological resilience. Investments in renewable energy, circular economy practices (European Investment Bank. 2018), and eco-friendly initiatives mark a distinct shift towards a more environmentally conscious development agenda.

The 2021-2027 plan exhibits a more pronounced emphasis on digitalization (Siebel. 2019) and innovation compared to its predecessor. While the 2014-2020 plan acknowledged the importance of research and development, the updated strategy explicitly prioritizes digital transformation. Investments in digital infrastructure, the promotion of technological innovation (Drucker, 2014), and the development of digital skills underscore the region's commitment to becoming a leader in the digital economy (Eurostat. 2023).

The concept of resilience to external shocks is more explicitly addressed in the 2021-2027 plan. This marks a response to the evolving global landscape, which includes challenges such as economic uncertainties, public health crises, and geopolitical shifts. The emphasis on economic diversification, adaptability, and strategies to mitigate external risks reflects a more forward-looking and proactive approach in the new development plan.

While both plans share a commitment to inclusive growth, the 2021-2027 plan places a greater emphasis on addressing social disparities. Policies are more explicitly designed to support vulnerable groups, ensure equitable access to opportunities, and foster social inclusion. This heightened focus reflects an evolving understanding of the need for a more socially conscious approach to regional development. The 2021-2027 plan aligns more closely with overarching European Union strategies, notably the European Green Deal (European Union. 2014) and the Digital Europe Program. This alignment ensures the region's eligibility for EU funding and positions it within the broader context of European policy objectives. The increased focus on European and global alignment reflects a strategic commitment to international cooperation and shared objectives.

The differences between the North-West Region Development Plans for 2014-2020 and 2021-2027 highlight the region's capacity for evolution, adaptation, and responsiveness to changing circumstances. The heightened focus on environmental sustainability (European Environment Agency. 2022), digitalization, resilience, and social inclusion in the new plan underscores the region's commitment to addressing contemporary challenges while capitalizing on emerging opportunities. As the North-West Region navigates this new phase of development, these differences signify a strategic response to the dynamic and evolving nature of regional and global dynamics.

CONCLUSIONS

In conclusion, the North-West Region of Romania stands at the intersection of tradition and modernity, with a rich cultural heritage, diverse landscape, and significant economic

contributions. As a key player in the country's development, the region has outlined its growth trajectory through comprehensive Development Plans, spanning the periods of 2014-2020 and 2021-2027.

The 2014-2020 Development Plan laid the foundation for the region's progress, focusing on infrastructure improvement, economic diversification, and education. Achievements in enhanced connectivity, economic growth, and academic excellence showcased the effectiveness of the plan. However, challenges like regional disparities and sustainability concerns were acknowledged, providing valuable lessons for future strategies.

The 2021-2027 Development Plan represents a strategic shift, embracing sustainability, digitalization, and resilience as key pillars. The heightened emphasis on environmental consciousness, digital transformation (Siebel. 2019), and addressing social disparities reflects the region's adaptability to emerging global trends. With a focus on inclusive growth, the plan positions the North-West Region to thrive in the face of external shocks and aligns closely with European and global strategies. The comparative analysis reveals both continuities and differences between the two development plans. Infrastructure development, economic diversification, innovation, education, and sustainability remain consistent themes. The differences, such as the intensified focus on environmental sustainability and digitalization in the 2021-2027 plan, illustrate the region's proactive response to evolving challenges and opportunities.

As the North-West Region moves forward, the synthesis of past successes, ongoing commitments, and adaptive strategies positions it as a dynamic and resilient contributor to Romania's overall development. The lessons learned from previous plans, coupled with the innovative approaches of the current strategy, underscore the region's commitment to achieving sustainable, inclusive, and forward-looking growth (Haan. 2019). The North-West Region's journey serves as a testament to its ability to evolve, adapt, and thrive in a rapidly changing global landscape.

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THE EUROPEAN YEAR OF SKILLS 2023 AND EMPLOYMENT PROSPECTS FOR EU AND THIRD COUNTRY NATIONALS

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Abstract: *In today's rapidly developing global economy, the European Union (EU) is undergoing significant transformations. These developments have far-reaching consequences for the labour market and employment prospects of all EU residents, especially EU citizens who are not nationals of the countries in which they live and third-country nationals. Digital transformation involves rapid advances in technology, automation and artificial intelligence, leading to new job opportunities in various sectors. At the same time, the green transformation emphasizes the shift to a sustainable and low-carbon economy. Both transformations present challenges and opportunities for EU residents, such as the need to upskill, retrain and adapt to new technologies and industries. In the context of these transformations, we will also focus on 2023 as the European Year of Skills, which will highlight the potential of increasing employability based on improving the skills of individuals.*

Keywords: *employability, Industry 4.0, Industry 5.0, digital and green transformation, European Year of Skills 2023.*

INTRODUCTION

In the first part, the research is devoted to the theoretical foundations of employability and economic integration within the European Union. In addition, it covers Industry 4.0 and 5.0, the current state of digital and green transformation and their impact on employment, and the European Year of Skills 2023.

The second part focuses on research objectives, methodology and research methods used in the research. It presents the way in which the data and information were obtained and the methods of analysis and interpretation of the results.

In the third part, the research focuses on the practical application of theoretical knowledge on concrete examples. The connections between different indicators are analyzed, as well as the relationship between different levels of society and jurisdiction. This section also provides an insight into examples of good practice operating within the European area, and the research also seeks to formulate recommendations for practitioners, policy makers and stakeholders on how to develop targeted strategies that promote equal access to opportunities and facilitate the integration of these individuals into a changing economic environment of the EU. (Adams, 2005; EP, 2013)

Main objective: Based on the application of scientific methods in relation to the investigation of employability, the main goal of the research is to evaluate the employment opportunities of foreigners from the EU and third countries in the context of

digital and green transformation in the environment of the 4th industrial revolution, as well as from the perspective of the SDGs in order to formulate opportunities arising from the 5th industrial revolution revolutions.

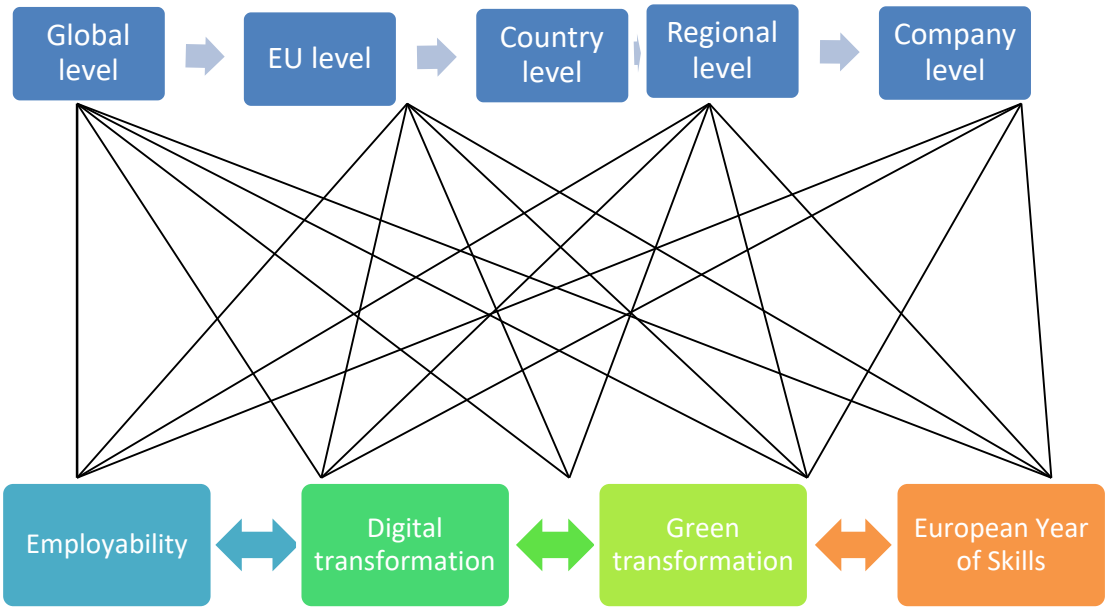
Partial objectives: We determined the relevant partial goals that helped us to better understand the procedures necessary in the investigation of the given issue, and which also determined the direction of our research. These are:

• to systematize the issue of digital skills and green skills in context Industry 4.0 and 5.0,
• to clarify the connection between entrepreneurial skills, cross-cutting skills and skills for life with the European Year of Skills 2023, (Demetrios, 2023)
• to evaluate relevant indicators mapping the labor market within the EU single market from the point of view of employment of foreigners from the EU and third countries,
• to interpret opportunities for employment of foreigners from the EU and third countries in terms of SDG 8 and Industry 5.0 (based on examples of good practice).

We aimed to fulfill all the objectives in the following steps:

• we identified relevant areas of theoretical knowledge and defined key terms, the understanding of which was necessary to achieve the goal, such as labour migration, Industry 4.0 and 5.0, employability of EU citizens and third countries in EU conditions, entrepreneurial skills, cross-cutting skills, skills for life, European Year of Skills;
• we presented an analysis of data on EU and third-country nationals on the labour market, identified opportunities and obstacles for these groups at different levels and provided examples of good practice that can be applied to support the employability and integration of these groups into the European labour market;
• the part focused on the results and discussion contains the summary of results, conclusions and recommendations that we ascertained on the basis of theoretical knowledge.

Figure 1. Visualisation of research



Source: own visualisation

RESEARCH METHODOLOGY

The research methodology describes the procedures that we applied in the selection of ways and methods of accumulation of relevant data and information, which were necessary to achieve the set objectives in the context of our research. We managed to obtain the data in question by analyzing the available literature and electronic resources from domestic and foreign authors, analyzing the labour market, statistical data and researching examples of good practice. (Balassa, 1961)

Characteristics of the research object

The object of investigation is the employability of foreigners from the EU and third countries in the context of digital and green transformation in the environment of the 4th industrial revolution. Based on this, in the practical part, we decided to focus on foreigners working in the EU and their skills necessary for successful employment on the labour market. (Bessen, 2017; Czaika, 2013)

DISCUSSIONS

Work procedures

Based on the profiling of our research, we developed the first part, which deals with relevant theoretical knowledge that was necessary for a detailed understanding of the given topic. In the second part, we defined the main objective and partial objectives that we identified, and continued with the research methodology and methods, where we described the procedures and methods that we used in the research.

In the practical part, we focused on labour market analysis, statistical data and opportunities for foreigners in the European Single Market. We subsequently used the obtained information to achieve the objective and also to make recommendations for practice and policy makers (Duvel, 2017).

Methods of obtaining information and sources

In the first part, we summarized the theoretical knowledge from the publications of domestic and foreign authors, which we obtained in the university library as well as online, as well as by referring to expert articles and research that we researched online. In the practical part, we used publicly available online information, which we processed ourselves, and answers from interviews, which we implemented as examples of good practice. (Castles, 2015)

Used methods of evaluation and interpretation of results

When processing information, we applied the following methods:

• selection, when we identified relevant information and analyses,
• synthesis, when we combined parts into a whole;
• induction, in which we drew general conclusions from the information;
• comparison, when we compared knowledge and data obtained through research;
• description, where in the practical part we described the investigated phenomena, while we processed the results using MS Office programmes where we used graphic methods from MS Word and MS Excel programmes;

• examples of good practice – we used the interview method, where we had direct contact with a competent person from a company implementing innovative methods for increasing employability.

We used the results of the labour market analysis and survey in formulating conclusions and recommendations for improving the employment of foreigners from the EU and third countries on the labour market in the context of digital and green transformation in the environment of the 4th industrial revolution. (Cieslik, 2018)

CONCLUSIONS

We can evaluate the employment prospects of EU citizens and third countries in the context of digital and green transformation in the environment of the 4th industrial revolution, as well as in the perspective of sustainable development goals to identify opportunities resulting from the 5th industrial revolution. Through the application of scientific methods, we have thoroughly researched and assessed the challenges and opportunities for these individuals in the labour market.

In the first stage of our research, we identified relevant theoretical knowledge and defined key concepts necessary to achieve the objective, such as labour migration, Industry 4.0 and 5.0, employability of EU and third country citizens, entrepreneurial skills, cross-cutting skills and life skills. The European Year of Skills 2023 initiative has emerged as a "beacon of hope" pointing to the potential to increase the employability of these individuals through the targeted development of specific skills that increase the employability of individuals.

Our research thoroughly analyzed labour market indicators, comparing the experiences of EU citizens and third-country nationals, and through this process we identified not only the barriers these groups face when entering the EU labour market, but also the myriad opportunities that arise. This process helped us to understand the current situation on the labour market, and laid the basis for recommendations and practical knowledge.

In our analysis, we also identified opportunities and barriers for these groups at different levels and provided examples of good practice that can be applied to support the employability and integration of these groups in the European labour market. We also focused on labour force migration trends within Industry 4.0 and 5.0, examining their consequences and opportunities.

Finally, the results and discussion presented our findings, conclusions and recommendations based on theoretical knowledge and analysis of data. Having provided insights into employment prospects for EU and third country foreigners, we formulated sound recommendations to improve their integration into the European labour market.

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E-KARABAKH AND BEYOND: REVEALING THE DIGITAL LANDSCAPES IN AZERBAIJAN'S LIBERATED TERRITORIES

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Abstract: *Following the second Karabakh War in 2020, Azerbaijan liberated its territories from 30 years of long-brewing Armenian occupation, which today are considered the potential economic and geopolitical landscapes for not only the socio- economic development of the country but to involve foreign investments and projects to these recovered areas. The Karabakh War of 2020 caused a change in the balance of power and status quo in the South Caucasus region as Azerbaijan in recent times started the rehabilitation and reconstruction processes, the placement of IDPs, involvement of investments, launch of tender projects, etc. to provide the socio-economic development of Karabakh region as a future E-Karabakh. The core objective of the paper is to ensure scientific insights and recommendations for the transition of the conventional Karabakh region to the digitalized so-called E-Karabakh region to enhance the economic development of the region. The authors' focus primarily delves into aspects including the advancement of a green economy and green growth policy, agriculture, and fostering a clean ecological environment in Karabakh. The article also analyzes the enhancement of ICT-based infrastructure, the integration of high digital technologies, and the potential emergence of Karabakh as a prominent hub for technology and innovation in the South Caucasus region. The paper aims to fill a gap in the existing literature by presenting valuable insights for government officials, decision-makers, and experts in this field, seeking to be a substantial scientific paper, offering policy-based information to aid in making informed and rational decisions.*

Keywords: *E-Karabakh, digital economy, economic development, Azerbaijan, green growth, innovation and sustainability.*

INTRODUCTION

The digital transformation of economies is a critical issue faced by nation-states worldwide, which involves integrating digital technology into various aspects of society, including businesses, government services, education, healthcare, agriculture, and more. Following the recent conflict resolution in the Nagorno-Karabakh region, the liberated territories of Azerbaijan have emerged as potential zones for significant geopolitical, economic, and infrastructural development. (Muradov &Hajiyeva, 2022; President.az, 2021).

The region is considered ripe for a range of projects, including the establishment of new urban centers, smart cities, and villages, alongside the development of various sectors such as green energy and information and communication technology (ICT) infrastructure. For instance, TEPSCO's strategic "Green Energy Zone" plan in liberated territories highlights sustainable development, emphasizing renewable energy sources for regional growth. ensuring efficient infrastructure restoration, enabling sustainable energy solutions for regional socio-economic advancement. (Aydin, 2023) Masdar and the Azerbaijani government signed Memorandums of Understanding for sustainable energy initiatives, focusing on solar, wind, and integrated solutions for economic growth. The comprehensive agreement between Masdar and Azerbaijan in the Karabakh and East Zangazur economic regions, inclusive of various clean energy ventures, underscores a global collaborative commitment, to fostering green energy technologies for socio-economic progression in the liberated territories. Currently, partnerships are being established with foreign companies in the relevant sectors mentioned above. For instance, SA_Partners, a company headquartered in Zurich, Switzerland, is working on a collaboration that will contribute to economic development and enhancement in the Karabakh region of Azerbaijan. The founding partner of the Swiss company, Dunya Kovari, highlighted their work on urban planning, roads, schools, and residential building construction in the districts of Zangilan, Kalbajar, and Gubadli by preparing the main business plan for these areas. (MineEnergy, 2021)

The revival of traditional economic sectors in the recently liberated territories of Azerbaijan is crucial. Over the next decade, the development of construction, industry, agriculture, and the military industry in the Karabakh region stands as a pivotal and prioritized focus in the contemporary era. Elevating their contribution to the country's GDP holds substantial promise for Azerbaijan's future economic growth. In the present age, a modern economy flourishes on knowledge, scientific advancements, high-tech innovations, and technology. Through technological innovation, the shift from conventional economic structures to an information-based economy is underway, signifying the ongoing modernization of the economy.

METHODOLOGY

Due to the scarcity of scientific papers on the economic development and integration of the Karabakh region, this study relies on qualitative analysis. The technique includes a detailed assessment of information from sources such as the Republic of Azerbaijan's Ministry of Economy, Center for Economic Reforms Analysis and Communication, Presidential reports, and policy papers from important Azerbaijani think tanks. Official reports and policy papers provided by the Ministry of Economy, Presidential reports, and reputable think tanks in Azerbaijan were thoroughly reviewed. The investigation was particularly concerned with comprehending strategies, policies, and goals for economic regeneration and integration in the Karabakh region. This entailed a thorough evaluation of the linguistic material gathered from these papers to extract critical information about the Karabakh region's economic growth objectives, infrastructural strategies, and suggested policies. The emphasis was on establishing important strategies and objectives defined for the region's traditional and digital economy development. This methodology aimed to bridge

the gap in the existing academic literature by consolidating and analyzing information from official reports, supplemented by expert insights and comparative analyses from other regions that underwent post-conflict economic recovery.

RESULTS

The economic revitalization of the Karabakh region in the post-war period has become a focal point for Azerbaijan. (Aliyeva, 2021) Even today, the realization of the idea of Karabakh University, specializing in technical and applied sciences, holds immense promise for regional development. With a curriculum spanning robotics, biotechnology, biochemistry, mechanical engineering, applied physics, and beyond, the institution can spearhead innovation. In robotics, the university may pioneer automation for industries and healthcare. Biotechnology endeavors could yield advancements in crop resilience and biomedical breakthroughs. The exploration of materials science and quantum computing in applied physics can mark strides in technology. By fostering computer science, the university contributes to cybersecurity and software solutions. Civil engineering and environmental science research promise sustainable urban planning, earthquake-resistant structures, and eco-friendly practices. This academic hub is poised to be a catalyst for socio-economic progress. By generating job opportunities and attracting skilled professionals, the university aids economic diversification. Collaborations with industries and global institutions facilitate knowledge transfer, fostering innovation and entrepreneurship. The resulting infrastructure improvements elevate overall living standards. Emphasis on renewable energy, agricultural technology, and space exploration aligns with global sustainability goals. Karabakh University, with its interdisciplinary focus, is positioned not only to address local challenges but also to contribute meaningfully to the broader scientific community, making it a key player in shaping a prosperous and sustainable future for the region.

Table 1. The Azerbaijani government has outlined plans and initiatives to transform the newly liberated areas, emphasizing several key aspects.

Infrastructure Development	There is a major focus on rebuilding and developing the infrastructure, including roads, utilities, and public services, to support the region's growth.
Smart City and Villages Projects	The intent is to create modern, technologically advanced urban centers and villages that leverage digital innovation to enhance living standards and offer sustainable and efficient services to residents.
Green Energy Initiatives	Azerbaijan's goal in the liberated regions is to promote and develop the green energy industry, including projects incorporating renewable energy sources such as solar, wind, and hydroelectric power. This not only promotes sustainable growth but also helps to lessen reliance on fossil fuels.
ICT Infrastructure	Building a strong information and communication technology infrastructure is critical for the development of many industries, stimulating

	creativity, and laying the groundwork for future technical advances.
Agricultural Development - Land Revitalization and Rehabilitation:	Efforts are being made to invest in modernizing and revitalizing agricultural practices, introducing modern technologies and methodologies to increase productivity and output. Many areas have been affected by the conflict and require rehabilitation. This includes land clearance from mines and other hazards, as well as rebuilding irrigation systems and infrastructure necessary for agriculture.
Employment and Livelihood Opportunities:	The revival of the agricultural sector will not only contribute to economic growth but also create employment opportunities for the local population, contributing to their livelihoods.

Source: President.az, Ministry of Economy of the Republic of Azerbaijan, 2023.

In the post-war period, the Karabakh region of Azerbaijan presented several opportunities related to employment and livelihood. The liberation of these territories opens avenues for economic development, job creation, and improving living standards. The development of both traditional and new sectors holds significant importance in the economic and socio-political contexts of the Karabakh region, aligning with the key national development priorities of the country. The utilization of modern technologies is crucial in understanding the trends in economic development, particularly in establishing a digital technology-driven economy. (Mammadov, et.al., 2022; Aliyev, 2022)

In Karabakh, the notion of "smart villages" symbolizes a strategic paradigm shift aimed at exploiting technology and connectivity to improve rural living conditions. It aspires not only to improve services but also to develop long-term economic prospects in rural communities. The village of Aghali, located in Azerbaijan's liberated Zangilan district, has been recognized as the first smart village in the area, combining advanced technologies with eco-friendly features. The village comprises two to three-story residential buildings, a children's garden, a medical center, a school, a water power station, and various other facilities. The development of Aghali village is based on five key components: housing, production, social services, smart village management, and alternative energy. (Hajiyeva & Karimli, 2021) Currently, the concept of a smart village in Aghali is preparing to introduce innovations in Azerbaijan's rural development sector. Additionally, several offices have been established in Aghali, including Azərpoçt (Azerbaijan Post), the "ASAN Service" multifunctional social service center, the "DOST" social support center, and the Small and Medium Entrepreneurship Development Center. This creative strategy is much more than just implementing cutting-edge technology. It is a determined effort to bridge the urban-rural gap by bringing sophisticated city services to the rural setting. (Muradov & Hajiyeva, 2022)

The goal of integrating network-driven operations is to simplify and improve various services within villages. Furthermore, the effort aims to reduce urban migration by making rural areas more appealing to residents. It envisions a situation in which contemporary amenities and efficient services are seamlessly incorporated into the fabric of traditional

village life, producing an atmosphere conducive to the growth of small and medium-sized businesses. This, in turn, creates opportunities for employment and economic growth in rural communities in the liberated territories. Based on initial projections, the Karabakh economic region is anticipated to yield an approximate 10% increase in value within the agricultural sector. This surge is expected to significantly propel the growth rate of not only the agricultural industry but also the broader economy of Azerbaijan.

Figure 1 depicts the core spheres of socio-economic integration and development of the Karabakh region.

Source: Ministry of Economy of the Republic of Azerbaijan, 2023. (President.az, 2022)

Table 2. Digital Landscape Opportunities in Karabakh

Possibilities/Advantages	Description	Impact Rating
Economic Development	Attracting digital businesses and investments in the region. Job creation through the establishment of technology and IT companies.	+++
Infrastructure Improvement	Development of digital infrastructure such as high-speed internet and data centers. Integration of smart city technologies for improved services.	++
Educational Opportunities	Establishment of technology-focused educational institutions. Access to online learning resources and programs.	+++

Cultural Preservation	Digital archives for preserving and showcasing cultural heritage. Virtual museums and exhibitions to promote local art and history.	++
Tourism Enhancement	Virtual tourism experiences to attract a global audience. Digital platforms for promoting local tourism and attractions.	++
Connectivity and Collaboration	Improved communication and collaboration between communities. Integration with global digital networks for trade and partnerships.	+++
Environmental Monitoring	Digital tools for monitoring and managing environmental resources. Implementation of smart solutions for sustainable development.	++
Emergency Response Systems	Development of digital systems for quick response to emergencies. Implementation of technology for disaster preparedness and management.	+++
Social Innovation	Encouraging digital entrepreneurship and social innovation. Fostering a culture of technological creativity and problem-solving.	+++

Source: The table was composed by the authors referring to various relevant sources including the Ministry of Economy of the Republic of Azerbaijan and the President Administration.

Table 2 outlines the multifaceted advantages of establishing digital landscapes in Karabakh, each rated for its potential impact. With a triple plus rating, economic development opportunities include attracting digital businesses and fostering job creation. Infrastructure improvements, rated double plus, focus on enhancing digital connectivity through high-speed internet and smart city technologies. The triple-plus-rated educational opportunities involve establishing technology-focused institutions and providing access to online learning resources. Cultural preservation, tourism enhancement, and environmental monitoring, each rated double plus, emphasize the importance of leveraging digital tools to safeguard heritage, attract global tourism, and promote sustainable practices. Connectivity and collaboration receive a triple plus, emphasizing improved community communication and global integration. Emergency response systems and social innovation, both rated triple plus, underscore the critical roles of digital technologies in managing crises and fostering entrepreneurial creativity. Overall, these digital initiatives promise holistic development for Karabakh, spanning economic, educational, cultural, and environmental realms.

CONCLUSIONS

The economic rejuvenation of recently liberated areas in Azerbaijan, notably in the Karabakh region, has become a pivotal priority in the contemporary era. Over the next decade, there's a distinct emphasis on advancing construction, industry, agriculture, and the military sector to substantially contribute to the country's GDP, fostering promising economic growth. In today's landscape, a thriving economy hinges on knowledge, technological advancements, and innovative approaches. Leveraging a qualitative analysis rooted in governmental reports

and authoritative think tank papers, the study unravels the intricate web of strategies, objectives, and infrastructural developments essential for the region's advancement. The paper not only underscores the evolution from a traditional to a digital economy but also emphasizes the profound socio-economic and technological advancements poised to shape the future of Karabakh. The research distinctly fills a gap in academic literature, providing a comprehensive understanding of the economic transformation in Karabakh. By offering policy-based insights, the study stands as a cornerstone, fostering informed decision-making and strategic planning, vital for the region's revitalization. The integrative and innovative approach employed within this study propels a nuanced comprehension of the unique challenges and opportunities intrinsic to the Karabakh region's economic revitalization in the digital age.

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TRANSFORMATION OF TELEMEDICINE PRACTICES THROUGH THE USE OF MULTIFUNCTIONAL EXAM DEVICES: CASE OF GEORGIA

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Abstract: *In the last decade, digital health has captured special interest of healthcare systems and stakeholders, worldwide. Particularly, in times of COVID-19 pandemics, importance and utilization of telemedicine has increased dramatically. Nevertheless, for the effective utilization of telemedicine services, confidence of medical professionals and acceptance from the side of patients carries critical importance. To achieve same quality of consultation, utilization of digital technologies, such as symptom checkers and multifunctional telemedicine exam kits became increasingly popular in digital health. The purpose of this study is to evaluate usefulness of multifunctional telemedicine exam devices, in scope of perception, attitudes and satisfaction of patients and providers (nurses and doctors). The overall objective is to identify barriers and lessons learned for successful transformation of primary healthcare and implementation of digital health, in developing country contexts. In scope of the study, evaluation pilot has been conducted with duration of five months. For the research purposes qualitative research methods were applied. In particular, focus group discussions (FGDs) were conducted with nurses operating in villages and with doctors providing virtual consultations. Furthermore, in-depth interviews were conducted with patients who received virtual consultations during the pilot project and partners of the project (administrators and coordinators). Overall, thirty-five respondents were surveyed via video/audio call. Convenience sampling was used for the selection of respondent patients and all administrative personnel (six persons) was interviewed. According to the opinions of respondents, multifunctional telemedicine devices improve effectiveness of telemedicine consultation. However, barriers and challenges were also revealed. More specifically, selection of right motivational system for providers, adequate training of involved personnel and well aligned schedules for consultations are needed. Moreover, communication issues (nurse-to-doctor and doctor-to-patient) also represent a challenge and require proper approaches.*

Keywords: *Telemedicine devices, multifunctional exam kits, transformation of telemedicine, telemedicine in rural areas.*

INTRODUCTION

Georgia is a developing country with population of 3.7 million citizens (The World Bank, 2022). Healthcare system of Georgia, currently, is in a transitioning phase, transforming to serve better needs of population. According to the WHO reports, as well as appraisals of other respectful international organizations and experts, Georgia is making progress with regard to its healthcare system's performance indicators. However, still there are many challenges to consider (World Health Organization, 2020). One of the major challenges of Georgia's healthcare system is weak primary healthcare (PHC) (World Health Organization, 2023). Currently, it is widely acknowledged that primary health care (PHC) is a foundation of health systems. Countries with strong PHC timely respond to community and individual needs, their populations have better access to and higher satisfaction with health care services.

Furthermore, PHC is a highly cost-effective mechanism in keeping people healthy via using preventative measures, managing chronic disease, and encouraging self-care. Strong primary healthcare system is patient's first point of contact which should provide integrated care - comprehensive, accessible, community-based services throughout the entire life and can satisfy the majority of patients' needs (Langlois, 2020). In Georgia, this kind of comprehensive services and integrated care are inaccessible especially for the population living in villages (Mikava&Gabritchidze, 2019). More specifically, there is a lack of accessibility to various specialists (qualified specialists, such as cardiologists, endocrinologists, psychologists etc.) and even village doctors. This is especially problematic in villages and rayon centers due to shortage of qualified specialists. The report issued by International foundation "Curatsio" – "Healthcare Barometer's 10th Issue"- outlines that 15,000 doctors work in Tbilisi (where 30% of Georgia's population lives), whereas only 8,000 doctors serve the other 70% of the country's population (Curatsio International Foundation, 2019). For instance, many towns, rayon, regions do not have children's endocrinologists at all. Because of this reason parents of the children having type I diabetes have to take their children to big cities to visit the specialist (Mikava&Gabritchidze, 2021). This is turn is related with a need for time and financial resources and puts additional burden on families. To illustrate, for medical examination or for the consultation with specialist village residents need to visit rayon medical center. In case if there is a queue or if the patient needs several consultations with various specialists or tests he may be late and miss the transport as the transportation to the village is hardly available in evening hours. For this reason patient may need to visit rayon medical center several times to complete needed medical investigation. This in turn results in additional time and financial expenditures (Rukhadze, 2018).

Still another problem, emphasized by the respondents of the research is a lack of trust towards village doctors, which is a main reason why patients do not refer frequently to them. One of the causes of distrust frequently cited by the population is a lack of professional qualification in doctors. Problems related to qualification, in turn, are caused by the absence of continuous medical education/continuous professional development system.

Above-mentioned problems, such as specialist accessibility and patient education can be solved by telemedicine. Through the utilization of electronic platforms virtual, online consultations can be conducted for patients leaving in villages. The same platform can be used for online education of doctors and patients, as well.

The role and importance of digital health has been rapidly increasing in many countries of the world, in the last decade. Furthermore, its uptake dramatically accelerated during Covid-19 pandemic and is under the spotlight. In particular, telemedicine has become an only alternative for the management and prevention of non-communicable diseases and their complications, during lockdowns and social distancing. In many countries, telemedicine was effectively used to manage COVID-19 patients, as well. For the effective utilization of telemedicine services confidence of medical professionals (providing service to patients) and acceptance from the side of patients has critical importance (Monaghesh&Hajizadeh, 2020). Moreover, telemedicine service is equally effective, compared with in-person consultation, when doctor can gather the same data/information about patient's health status as during face-to-face meeting (Romanick-Schmiedl& Raghu, 2020). Accordingly, utilization of digital technologies, such as symptom checkers, became increasingly popular in telemedicine.

1. Telemedicine Project

Currently, Ministry of Healthcare (MOH) implements telemedicine project in the regions. The purpose of this project is to strengthen primary healthcare to improve quality of medical services through quality telehealth and telemedicine services. It should be noted, that project implementation started without a clear strategy. MOH is working on strategy development at present. This project is implemented by four UN partners – WHO, UNFPA, UNICEF, UNOPS under WHO leadership. At present, telemedicine equipment (symptom checker) is installed, in fifty locations (rayon centers) (UNICEF, 2021). According to the scientific literature, sustainability and continuity of telemedicine represents even greater challenge than the initial implementation in regions. Consequently, sustainability requires relevant expertise, consideration of specific issues, utilization of change management approaches etc. Successful realization of Ministry's initiative is very important to improve outcomes in reality. In scope of previous studies our team encountered challenges with regard to initiation and set up of the above-mentioned project. During interviews, village doctors were skeptical about its successful implementation, citing number of challenges and barriers. Therefore, we decided to conduct an evaluation pilot (case study) with introduction of telemedicine examination devices in Georgia's villages.

For this purpose, Tytocare devices were chosen. Israeli firm TytoCare has invented telemedicine device, which includes an otoscope, stethoscope (for heart, lungs, and abdomen), basal thermometer, and digital camera (for skin and throat examination) and is designed to provide healthcare provider with the same type of examination data he or she would use in the office. The TytoCare Stethoscope was cleared by the FDA (U.S. Food and Drug administration) and all other devices comply with FDA requirements. TytoCare devices have passed multiple performance bench tests versus comparable devices to ensure quality results. It has obtained FDA and CE clearances, has partnered with over 150 health organizations and insurers worldwide, and strategic partners in the US, Europe, Asia and Israel. More than 6,000 clinicians use this telehealth solution and in 2020, the company performed over 650,000 telehealth examinations, globally. TytoCare device provides high-quality digital sounds of the heart and lungs, high-quality digital images and video of the ears, throat, and skin and measures heart rate and body temperature. This examination data is transferred from the device to mobile phone and through the digital application is transferred to doctor on the other end, who can provide a patient with a diagnosis, treatment plan, and prescription accordingly (Banning et al., 2022). There are several case studies demonstrating effectiveness of TytoCare in increasing access to medical services and quality of telemedicine services, in various countries. Uptake of these devices further increased during COVID-19 pandemics, as hospitals and health organizations in the US, Europe and Israel utilized them to remotely examine and diagnose quarantined patients and isolated patients at home, providing health professionals the clinical data required to make treatment decisions from a safe distance and minimizing physical contact.

It should be noted distinctly, that Tytocare has home version devices, as well (which can easily be used by households to examine children or adults, independently from medical professional, and contact doctor directly), further increasing accessibility to general physicians and various specialists for the population living in remote areas.

2. Research methodology

The purpose of this study was to evaluate usefulness of multifunctional telemedicine exam devices, in scope of perception, attitudes and satisfaction of patients and providers (nurses and doctors). The overall objective was to identify barriers and lessons learned for successful transformation of primary healthcare and implementation of digital health, in developing country contexts. Moreover, the vision was to increase awareness about telemedicine among beneficiaries and their families and engaged medical professionals.

In scope of the study, evaluation pilot has been conducted with duration of five months. More specifically, five exam kits have been imported in Georgia and distributed in five different villages. Nurses in the villages were examining patients using mentioned devices and sending collected information via mobile application to the specialists, in the capital city of Georgia. On the basis of received information doctors were conducting virtual consultations with patients remotely, or with nurses, who delivered doctor's prescription and diagnosis to patients.

For the research purposes qualitative research methods were applied. In particular, focus group discussions (FGDs) were conducted with nurses operating in villages and with doctors providing virtual consultations. Overall, three FGDs were held with nurses (in different periods throughout the pilot project duration) and six with doctors (two meetings per each group of doctors, with an interval). Furthermore, in-depth interviews were conducted with patients who received virtual consultations during the pilot project and partners of the project (administrators and coordinators). Overall, thirty-five respondents were surveyed via video/audio call. Convenience sampling was used for the selection of respondent patients and all administrative personnel (six persons) was interviewed. For each focus group question, 'main ideas' or 'themes' were summarized and highlighted using 'concept map' approach. The results of interviews were analyzed using content analysis method. The purpose of FDGs and in-depth interviews was to evaluate opinions and attitudes of professionals and patients with regard to research topic and identify needs.

3. Results and Discussions

Results of the evaluation were presented to broader audience including Ministry of Healthcare, international donor organizations assisting Ministry of Healthcare in digital transformation, insurance companies, teleclinics, clinics and hospitals, professional associations and pharmaceutical companies (those responsible on distribution of medical devices).

The target areas for the evaluation project were chosen according to the following criteria -most remote villages at the border of Georgia, in different corners/regions of the country. Overall, five different regions were chosen with several adjacent villages (Guria, Adjara, Kakheti, Shida Kartli, Samegrelo), with most need for accessibility towards doctors/specialists. The project was financed by the grant from the Embassy of Israel in Georgia.

The next step was recruitment of personnel locally responsible for examination of patients. For this purpose, four nurses were recruited and one village doctor- all residents of respective regions. The partner of the project was EKIMO – telemedicine clinic, responsible for the provision of specialists' remote consultations. Once Tytocare devices were imported

and distributed to medical personnel an online training was conducted for all involved parties. Since there is a lack of knowledge of foreign languages (English or Russian) among local medical professionals (and the general population) translation service was embedded in an online training. It should be noted, that devices and digital platform supporting it are very intuitive and easy to navigate, therefore one training conducted by Israeli specialists and another one held by organizers were sought to be sufficient. However, afterwards, individual training and online assistance were required per each nurse/doctor.

Nurses and village doctor were visiting patients at home (especially those having chronic diseases, unable to visit local outpatient cabinet etc.) and examining them, as well as those patients referring to village doctors. Overall, thousand unique patients were examined during five-month period.

According to the results of focus group discussions and in-depth interviews, major barrier for the initial stage of the project was internet problem. In some villages, due to the absence of broadband internet connection or unstable and weak connection, pairing of telemedicine examination devices with mobile phones represented a problem (Wi-fi or cellular internet is required to pair exam device with mobile phone to exchange images and recordings on a mobile application), therefore examination data couldn't be transferred. To correct this, special internet modems were purchased and distributed to nurses to enhance the connection.

Another barrier was delayed response from the doctors' side. From the first focus group discussion with nurses, reason for the low number of examinations compared to anticipated/scheduled number for the period was identified – late or no response from the telemedicine doctors. Evaluation of the reasons for delayed response led to the problem of a common account for the doctors. From the provider's side general physicians, cardiologists, oto-rhino-laryngologists, pulmonologists and dermatologists were assigned to the project, based on the device capabilities and data profiles. In an application, five nurse accounts and one doctor account were assigned for the evaluation pilot. To illustrate, once cardiologist entered the account another doctor (pulmonologist or dermatologist etc.) couldn't log in, simultaneously. After figuring out this issue, TytoCare added separate accounts for each profile doctors. This solved the previous problem; however, doctors weren't logged into the system all the time and were forgetting about the need to check whether new patient information was entered, requiring review and examination. Therefore, TytoCare took into consideration this fact and added notification function. More specifically, doctors were receiving notifications on emails, as well as, SMS on mobile once patient exam data was entered in the system. It should be outlined, that before the addition of notification function and after, telemedicine clinic partner had dedicated employee who was checking information in the system and contacting respective doctor/s reminding them for the need of consultation. This was resource and time-consuming.

As it was identified from the in-depth interviews with patients and FGD with nurses, patients in the villages were psychologically more confident, satisfied and trusting the process more, if they had synchronous (live) consultation with doctors, even though, from a medical perspective, when there was no emergency case outcome would be the same in asynchronous (store-and-forward) type of consultation (when doctor was reviewing exam data and information once he/she had free time for this and providing feedback, prescription afterwards).

To illustrate, approximately one-third of examined patients didn't have an opportunity to visit cardiologist and other specialists for more than three years. The reasons for this were various, financial constraints, immobility of patients, inability to leave family members under their care etc. Doctors and nurses during FG discussions were citing cases how emotional patients were getting once they were seeing doctor online in a real-time video-visit, crying with tears etc. However, as involved doctors/specialists were working in clinics and hospitals in a vast majority of cases there was an overlap between scheduled appointments in the clinic and entering requests for an online consultation. In the beginning of the project, it was anticipated that home examinations would take place during evening hours, after official working hours of involved doctors. However, afterwards, it was figured out that individuals in villages were busier in the evenings and first half of the day was more convenient for them to contact doctors. To solve this problem special schedules were developed and introduced to nurses/doctors, with indication of respective doctors' working hours and shifts. Throughout the evaluation pilot, we conducted two intermediate online meetings with doctors and nurses to discuss together all the existing challenges, problems and remind objectives of the project and find solutions. Furthermore, objective of these meetings was to bring together different stakeholders of the project and share perspectives, opinions. Administrative personnel were monitoring actively responsiveness to notifications and communication issues among doctors and nurses. However, despite all the measures, according to the results of Focus group discussions with nurses, they had the perception, as if they were disturbing doctors and were reluctant to remind them and tried to avoid additional contact. Furthermore, nurses demonstrated lack of motivation and initiative to outreach even greater number of individuals for exams because of this issue.

According to the results of interviews with patients, the overall satisfaction of them was high. They were satisfied because of increased accessibility towards high quality doctors/specialists working in the capital of Georgia (during interviews, they demonstrated greater trust towards specialists working in big cities). Another reason for the increased satisfaction was the multifunctional telemedicine device itself. When patients were listening to the recordings of their lung or heart sounds and observing images of otoscopy, they demonstrated amazement and increased trust in the telemedicine service.

To illustrate another perspective, several FDGs were conducted with telemedicine doctors, involved in the evaluation pilot project. Doctors also demonstrated high level of satisfaction with telemedicine exam devices and were confirming that collected information – sounds of heart tones and lung, as well as images of otoscopy, dermatoscopy and other were of the same quality as if they had examined patients in person. In scope of previous project, researcher had an experience and knowledge about the perceptions of these doctors. The results of mentioned study demonstrated lack of confidence and skepticism among the doctors towards teleconsultations (Mikava, 2022). According to the results of FGDs, utilization of telemedicine exam devices significantly increased the confidence and trust towards remote consultations among these doctors.

It should be emphasized, that throughout this project, there were several cases when serious health complications were encountered accidentally, by nurses. To illustrate, in one of this kind of cases, nurse was examining the oldest member of the household for cardiac complaints. She observed that another family member (55-year-old male) had inadequate red color on his face. When he was asked whether having any complaints, he denied having any

symptoms. However, nurse insisted and examined him with telemedicine device and forwarded collected information to the doctor. In this case, nurse realized that cardiac tones were abnormal and contacted cardiologist for synchronous teleconsultation. Cardiologist diagnosed serious arrythmia and instructed the nurse to immediately administer respective medication. According to the cardiologist, this was life threatening condition and it would be appropriate to call an ambulance. However, as nurse and other household members explained, it takes at least 50 minutes for an ambulance reach this village from rayon center and in the winter even greater time would be required. Other cases were alike, about patients not feeling symptoms and accidentally diagnosed having serious health complications.

In scientific literature, recommendations for the effective management of digital health transformation embrace utilization of change management principles. In this project, one of these principles – involvement of so called "champions" was used. One of the nurses, highly motivated, very active and most enthusiastic about telemedicine was chosen as a "champion". Furthermore, she was asked to train other nurses in utilization of the devices, to share success stories and findings with others, on a weekly basis and she was a contact person for her colleagues to refer in case of questions or difficulties (of course administrative personnel were available as well). This approach showed to be successful, as the other nurses were more freely contacting their peer and she understood better their needs.

It should be mentioned, that in scope of evaluation pilot nurses were teaching households how to use the device to examine their family members autonomously. As a result, households were learning and adapting very quickly and demonstrating substantial interest to possess the device and utilize, in the future.

CONCLUSIONS

To summarize major findings of the evaluation pilot, telemedicine exam devices increase trust and confidence in telemedicine services among doctors and patients and improve quality of remote consultations. Tytocare devices as an example of lightweight, easily portable telemedicine exam kits are highly recommended for developing country contexts, where deficit of highly qualified medical professionals in rural areas represents substantial problem. Mentioned devices should be considered as an addition and not as substitution of stationery symptom-checkers/telemedicine equipment implemented in scope of WHO/UN coordinated telemedicine project, in Georgia. Thereby, these devices increase accessibility towards medical services for the population of villages and periphery. Another comparative advantage of these portable telemedicine kits is that it can improve access and thus health condition of those patients who have restricted mobility and cannot visit rayon centers or even village ambulatories. Furthermore, availability of telemedicine exam devices for households living in rural areas and on a periphery of the country can further increase access to specialists and doctors, especially in case of children and chronic patients, thus ensuring continuity of treatment and integrated care.

To continue with the lessons learned, firstly, schedules and shifts of the doctors should be considered to assure adequate availability of respective doctors and specialists for synchronous/ live teleconsultations. In case of asynchronous consultations, patients also should be contacted by specialists to increase their satisfaction and trust; as, specialist-to-nurse

feedback loop does not seem to satisfy patients' needs fully. Moreover, adequate time should be allocated for the trainings and individual instructions for the nurses/households, despite the fact that devices are easy to use. Assigning "champion" nurses to assist peers and facilitate the processes is recommended. Special attention should be paid to the socialization among telemedicine provider doctors and local nurses, to overcome status difference and other barriers in communication. Even more, special emphasis should be put on communication aspect in telemedicine. The role and importance of adequate, sufficient communication should be explained clearly to all the stakeholders. In particular, nurses/local personnel should feel that they are important stakeholders of the process and their role is significant. Furthermore, telemedicine providers - doctors, specialists should advance their communication skills for remote consultations, accentuating clear explanation and patience with patients and/or nurses.
To conclude, according to the opinions of respondents, multifunctional telemedicine devices improve effectiveness of telemedicine consultation. However, barriers and challenges were also revealed. In particular, selection of right motivational system for providers, adequate training of involved personnel and well aligned schedules for consultations are needed. Moreover, communication issues (nurse-to-doctor and doctor-to-patient) also represent a challenge and require proper approaches.

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PERSPECTIVES OF HIGHER EDUCATION IN THE CONTEXT OF CONTEMPORARY LAWS AND SECURITY CHALLENGES

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Abstract: *The new laws of education as well as the challenges of the contemporary security environment require a new approach for the military higher education. In this regard, the paper proposes a general framework which helps us to analyze a large spectrum of factors with implications in military higher education. Moreover, there are expected premises and solutions to adapt military education to the new requirements of the contemporary society.*

Keywords: *higher education, national security, challenges, officers, competences*

INTRODUCTION

Education is one of the fundamental pillars of the evolution of any society. Moreover, it is the formal education that provides future citizens with skills values and knowledge through systematic processes (Suman, 2023). Today's society shapes our perspective of changes and brings attention to the need to rethink the entire educational environment. As Raskha L. (2021) said, learning is a form of change. On the one hand, social evolution from industrial society to a digital society, the qualitative changes brought by AI technologies that are typically based on algorithms, require us to include, in the future, adapted educational scenarios. On the other hand, the new security environment characterized by uncertainty, volatility, the changes among the world's great powers, but also by ongoing military conflicts have influenced the in-demand skills for the future workplace. Furthermore, the characteristics that define generation Z that are entering the workforce, shows us the need to adapt our old methodical practices and learning strategies to the requirements of digital natives. Occupational mobility (Sava et al., 2019:33), from both professional positions at the same level and vertical evolution perspective, becomes a mandatory requirement and can be transposed through transversal skills according to the specificity of the professional field.

The higher military education is the professional fields that need further attention in the future in relation to the level of compatibility between educational programs, competencies of higher education graduates and the contemporary work environment. The direct connection between the consequences of a volatile and less predictable security environment and the product of formal university-level education - the Romanian officer -, requires an update, in real time, of educational offers that enables an easy adaptation to the new military professional environment and the assumption of responsibilities based on the acquired skills. The accession, in the military

structures, of the representatives of generation Z comes with new challenges regarding the understanding and internalization of predefined organizational values. Even if the military academy is an atypical higher-education environment, being part of the vocational education, and the fundamental mission of the Romanian armed forces has not undergone changes, the requirements of the military work environment are shaping up to be different from those in the past.

The transposition of contemporary educational policies into a new legislative framework, updated and adapted to European standards through Law 198 and Law 199 of 2023 is imposed as a requirement for adapting to military school faculties. Even if there are not taking into consideration major changes in university degrees levels, respectively Level 1 and Level 2, yet the rethinking of Level 3 (doctorate) is a necessary one. The secondary legislation, that is currently being developed and implementation prepared, will be bring the necessary clarifications for the rethinking of doctoral studies.

1. Methodology and Research Directions

In this context, the main research subject is the impact of the security environment and the new legislative framework on educational environment of military university. In this sense, we consider it fundamental to present the proposed theoretical framework model for studying the changes in military higher education. Given that we are talking about a qualitative analysis, it is relevant to consider both the elements that define the proposed model and the relationships that establish between them.

As we mentioned, this research has a double purpose: on the one hand, the exposition of a theoretical model of analysis of the educational environment of military university and, on the other hand, the presentation of the first results of the research in relation to the current regional security challenges of the security environment of which Romania is integrated.

The research methodology focused on the concrete adaptation to interdisciplinary research. The modeling of the general framework for the analysis considered conceptual elements from distinct fields of study: education, military sciences, and legal sciences. Analysis, deduction, abstraction represented the main methods of the cognitive-structured course of the present research. The specialized literature from the period 2019-2023 as well as the current legislation are the main sources of documentation for this study.

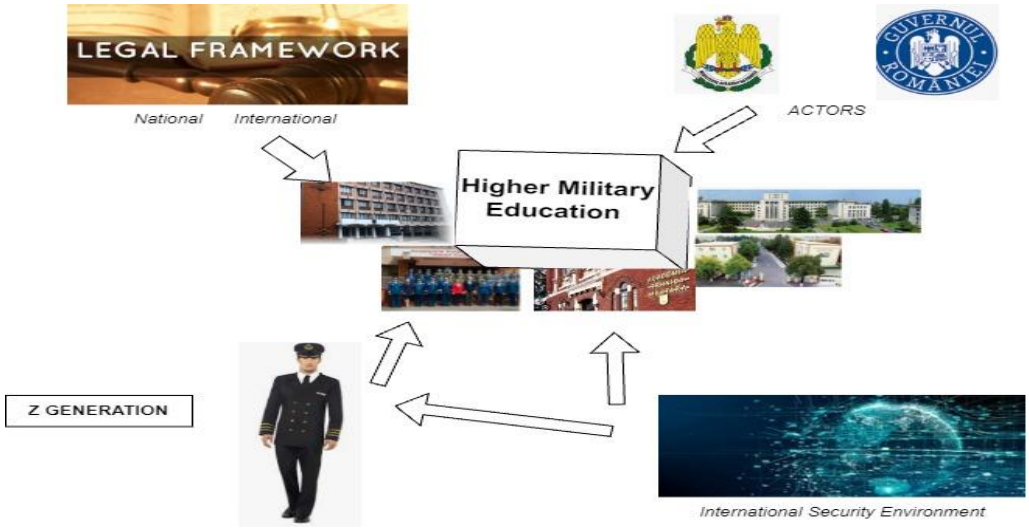
Generically, higher education aims at the developing of key skills to be able to survive both in the future professional environment and in society. In the knowledge-based society, basic skills are: technology skills, foreign languages skills, computer skills, social and entrepreneurial skills, the contemporary tendency is to replace the phrase "basic skills" with that of "key skills" (Sava et al., 2019:33). Moreover, in a society characterized by challenges of repeated adaptation to new demands of the work environment, these key competences are assumed to be transferable and multifunctional to allow the individual to use them in different situations and contexts as well as in fulfilling several kinds of objectives.

Therefore, in this world of complex and unpredictable challenges, we consider it essential to analyze military higher education in correlation with the following elements:

- (primary and secondary) European legislation with direct implications in higher education;
- the (primary and secondary) national defining legislation for Romanian higher education;
- tertiary legislation in the field of national defense with implications in the field of training and education of human resources;
- the contemporary and future military professional environment (both national and multinational; the work environment in peacetime, in crisis situations and in the case of armed conflict);
- institutional actors with a role in higher education;
- the potential human resource according to its specific particularities;
- the international security environment (regional security and global security).

We propose the following analysis model that gives us a conclusive picture of the factors influencing the military higher education in the new legislative and security context.

Figure no. 1 – Analysis Model of Romanian Military Higher Education



In accordance with the previously proposed and schematic analysis model, military higher education must be seen in an integrative framework delimited by: specific legislation (European legislation and national legislation), institutional actors involved (both at decision-making and executive level), the (global and regional) environment of international security and the defining characteristics of the potential human resource. All these elements contribute significantly to shaping the development directions of military higher education. The awareness of this integrative framework, the periodic analysis, and the follow-up of its evolution lead to the development of a pro-active behavior of all the actors involved, allowing, at the same time, the anticipation of imbalances or the need for re-adaptation.

The change of the legal framework that defines the Romanian higher education is a premise for the development of formal education developed in relation to the requirements of the present and future society, but also in accordance with the particularities of the human resource. The beginning of September marked the opening of this new perspective, through the entry into force of the primary legislation (Law 199/2023) of higher education. The expectation of the promulgation of secondary legislation on defining a legal framework of training and operationalization of learning process, however makes the military higher educational process keep its previously defined direction.

At the same time, it should be mentioned that a large part of the educational policies developed at the national level are based on the regional direction for the development of higher education given by the European Union through initiatives that sustain and promote collaborative partnerships between higher education institutions. In the military field, there is an initiative of the European Union (EMILYO) (http://www.emilyo.eu/) whose objective the exchange of young officers by creating common educational programs, or projects such as European officer model (Line of Development-16). Internationalization but also the promotion of common values, the development and implementation of improved ideas, knowledge and practices would help future European officers to integrate more easily in the new military work environment. It should be noted that the European educational model, developed by the OECD through the Education 2030 project, aims to create an educational framework oriented towards a competence-based model (OECD, 2023).

2. Security Context Analysis

From the perspective of the contemporary security environment, the current period we are going through is characterized by changes, challenges, and uncertainties. Manifestations of aggression in the international environment bring into the attention new realities. Some of these have already been experienced, others only predicted and conceptualized: hybrid warfare, hybrid threat, multi-domain operations, joint operations, and others. As we mentioned before, the military work environment is complex, and the variety of situations in which an employee can find himself confers it uniqueness. In order to understand it and to be able to foreshadow the professional perspectives of the Romanian defense sector, we propose to identify the main influencing factors and to clarify the relevant concepts that are brought to attention along with the new requirements. The particularities of the new security environment require new skills from the human resource in the Romanian army.

If Romanian officers just prepare and train in peacetime, with the aim of being able to formulate viable responses when need it, in situations of crisis or military conflict, their duties and responsibilities increase in complexity and vary according to the requirements of the operational environment. In peacetime, the level of technology development represents the main challenge in relation to adapting to the requirements of the contemporary context, in the multinational environment foreshadowed by a potential aggression on the national territory or in a crisis context wherein the response is multinational, and alongside the level of technology development there are other demands specific to the new types of confrontations.

Against the background of the aggression of the Russian Federation on Ukraine, the armed conflict that took place in the vicinity of the border of the Romanian state, led to the awareness and updating of a series of aspects concerning the national security of Romania. First and foremost, the strategic partnership with the United States of America, the essential role in strengthening capacities in support of NATO operations (Chifu, 2023:544) and our country's participation in the development of European defense capabilities, have been brought back into attention. The prospect of active involvement in these international relations and participation with military forces in different contexts, worldwide, in missions under the auspices of NATO or the EU, requires Romanian officers to have both communication skills in an international language accepted by partners and transversal skills that allow flexibility, professional mobility and permanent adaptation to new places and work requirements. Knowledge of the Romanian military environment with all the implications required by the assumption of responsibilities in local military bases is no longer sufficient. Involvement in joint training, with military forces of other states, participation in international missions under the command and in partnership with other states, requires a high capacity to adapt to new and unknown challenges.

Shaping the future professional environment must be in full agreement with the existence of a wide spectrum of technologies. In the planning of military operations, conducting military actions and logistics, digitization and robotics are in full development (Stanciu, 2023:157-169). The mentality of today's leaders correlates the resolution of crises and the achievement of victories in military confrontations with the level of technological development and, at the same time, with the technology skills. In this sense, the inclusion, in a significant percentage, in the didactic activities, of several types of technology to acquire good and profound knowledge, to build technology skills but also to analyze the possibilities of optimizing tasks specific to the work environment, is another requirement dictated by the current evolutionary trends of the security environment.

Another challenge of the contemporary security environment is to better understand the optimal way to report to hybrid military confrontations in which two or more actors, including non-state actors, use conventional and non-conventional means to achieve some strategic objectives (Lupulescu, 2023:56-68). To combat disinformation, terrorist attacks, propaganda, cyber-attacks, and manipulation Romanian army officers need to have a high capacity for analysis and critical thinking.

Worldwide, there are structures that offer training courses to develop action capabilities, using educational contents focused on eliminating individual weaknesses to obtain a competitive advantage in a multi-domain operating environment (Neeley, 2023:73-75).

Therefore, this picture of the security environment could lead to different scenarios, in relation to military higher education, such as:

- The interest in the military career could decrease, in the context of fear and insecurity among the population regarding the actions of regional or international military aggression, and therefore the military universities should adapt their study programs making them attractive as much as possible to arouse the enthusiasm of young people;

- Technological changes (the use of weapon systems but also of the computing technique built based on artificial intelligence algorithms) could radically change the military work environment, and the skills developed at university;
- The change in the operational environment could require the officers (the main product of the university study programs of the military high vocational schools) to use their transversal skills to be able to perform duties in a "new" work environment.

Based on these scenarios, we could see changes, both in study programs and in relation to the learning-evaluation models in the Romanian military higher education. These changes can be the result of an analytical and proactive behavior of the actors involved in the military higher education and can be seen in the medium or long term. On the other hand, the changes generated by the new reality can be an imprint of the present, and the reactive measures may be their key phrase.

3. New Demands in Higher Education

As an extension of the analysis of the security environment presented above, we consider will be relevant to reinforce the idea of the need for change in the university educational environment through the opinion of experts in the field of education such as Gary Hepburn (Dean of the Faculty of Continuing Education at Ryerson University) who stated that "the period we are going through will be remembered as one of the greatest transformations that learning will go through" (Hepburn, 2020).

Regarding the military professional area, military training to perform professional tasks under the conditions of principal uncertainty and variability of the globalized world requires the formation of a military man as a citizen, a self-sufficient individual and a professional (Sevruk et al., 2021:324-348). Starting from this idea, the first level of university studies will create the foundation of key professional skills, through its training programs. Considering that the military education is a part of the vocational education and the professional insertion of the officers will be carried out in organizational structures thar are clearly stated, the correlation of the requirements of the professional environment with the training of the future human resource can be easily achieved. The directions for analysis and action in the education area can be outlined only through the concrete identification of the requirements of the security environment.

The emphasis on transversal skills, such as communication in international languages, analytical thinking, teamwork, or the ability to integrate new technologies in the current activity are just some of the results highlighted following the analysis of the current security environment. Three main approaches to competencies can be identified: the educational approach, the behavioural approach and the organizational approach, a company-specific approach (Manolescu, 2020: 1-3). It is relevant to state that, in the context of this analysis, we talk about the concept of competence in accordance with its definition from the perspective of outputs, i.e. human behavior in a work environment (Ungureanu, 2022:190-215). At the same time, the new reality of the military professional environment and the requirements imposed by the volatile security context that the present, but also the future foreshadows, the need for

training future officers to acquire independence in the learning process is observed. Considered as a potential subsidiary objective of educational programs, this competence is characterized by the awareness of the need for permanent training and the assumption of continuous individual development, throughout the entire professional life. Change has become a constant in the military work environment and adaptation to new work realities has become a requirement. The new technologies, such as the equipment and military techniques used, the variety of challenges related to new types of military confrontations (example: hybrid war) (Wither, 2016), their expansion to increasingly varied fields, the need to increase and diversify the measures and tools used to promote national security and safety awareness oblige to a permanent predisposition to adapt to the new, varied, and different reality. Knowing how to adapt to potential situations radically different from everyday life, but also being able to adapt to changing environments and work processes, requires awareness and the assumption of a professional training.

Synthesizing the identified elements of the international security environment and correlating them with the military work environment by transposing them into the formal needs of future officers, we bring to your attention the following table.

CONCLUSIONS

Through this paper we tried to explore various aspects of the higher military education. We focused on the dynamic nature of education, the factors involved in defining the integrator framework, and the central role of the international security environment in the educational process. The current security context has a great influence on the Romanian university military educational environment. Pending methodological clarifications regarding the implementation of the new legal framework for the Romanian higher education, the "software update" metaphor can also be invoked in the previously exposed context. The analysis carried out shows us the forms on which this update should have effects, namely:

- military education institutions;
- curricula and the content of the study programs;
- the necessary skills and the military training system of teachers and military personnel with explicit roles and direct involvement in the educational process;
- the skills portfolio of the graduates of the study programs, with an emphasis on those that are specific to the professional orientation.

It is important to find a common body of skills for Romanian officers and to substantiate courses of action learning, to rethink the goals of Romanian higher education, thus representing a requirement to ensure the premises of performance in the defense sector. To have a strong army, first we need an educated human resource with specialized professional training in accordance with the requirements of the contemporary security environment.

The evolution of society requires us to assume that the human subject becomes a builder of his own knowledge throughout the general training program (Neacșu, 2019:86-99), and guiding the formal educational process in the military university system remains a decisive factor in promoting and ensuring national security.

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NAVIGATING THE CRYPTO JUNGLE: A ROADMAP TO UNDERSTANDING CRYPTO ASSETS AND BLOCKCHAIN

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Abstract: *The article provides a comprehensive analysis of the constantly changing and dynamic domain of blockchain technology and cryptocurrency. It explores the foundational principles that support these technologies and the significant consequences they have on the era of digitalization.*

Keywords: *Bitcoin, Blockchain, Digital asset, Borderless transactions, Cryptocurrency.*

INTRODUCTION

Virtual currencies have developed at an accelerated rate in conjunction with the Web migration of a wide variety of infrastructure and systems and the Internet's rapid evolution. Today, virtual currencies play a key role in the transformational change affecting the world economy, reflecting the expanded venues available to consumers to access goods and services (IMF, 2016). Indeed, unlike traditional currencies, virtual currencies offer a peer-to-peer exchange mechanism eliminating the need for intermediaries and central clearinghouses (IMF, 2016).

While virtual currencies are not afforded legal tender, they may still have equivalent traditional currency value (Hughes, 2015:495-504). Within this category, Bitcoin has developed and attained primary market status among virtual currencies that can be exchanged for traditional currencies (Hughes, 2015:495-504).

Bitcoin (Nakamoto, 2008) is widely recognized as the most notorious cryptocurrency and, if not the most valuable "crypto" in circulation. It is now valued at around 34.734,90 USD (https://www.google.com/finance/quote/BTC-USD) making it a high valued digital asset. As research shows, Bitcoin and cryptocurrencies in general present the characteristics of a bubble: "*it is very volatile, exhibits large kurtosis, and negative skewness*" (Camerer, 1989), but still the results are inconclusive. It is essential to emphasize that prospective buyers and consumers of such assets should exercise prudence and possess a comprehensive understanding of the associated risks. Considerable amounts of capital can be lost when dealing with such volatile assets, as demonstrated by significant examples (https://www.investopedia.com/what-went-wrong-with-ftx-6828447). From my perspective, we are dealing with the speculative value of a digital asset that is supported by its investors and marketed in a manner that seemingly offers an overnight profit utopia. While I maintain the view that the cryptocurrency mania will eventually cease to exist permanently, I cannot help but admire the technologies that gained prominence with the advent of Bitcoin—technologies that may present certain hazards but also provide numerous benefits.

1. THE BUILDING BLOCKS OF BLOCKCHAIN TECHNOLOGY

Bitcoin's main feature is the so-called "blockchain". Blockchain, a distributed ledger technology (DLT) *tries to build a decentralized, disintermediated, and distributed technology, which enables decentralized, disintermediated, and distributed modes of social coordination in a mostly decentralized, disintermediated, and distributed manner* (Quintais et al., 2019:1). It was first time popularize as being the technology behind Bitcoin (Cong et al., 2017:7). Why is it called a *ledger* (https://dictionary.cambridge.org/dictionary/english/ledger) and *distributed*? Mainly because it holds information about the users' actions and it keeps adding the information without deleting the existent ones, information that is available to every user. All the participants can see the state of transactions at any point in time and they can monitor it (https://www.ibm.com/topics/blockchain). Bitcoin was designed to be a public cryptocurrency, that anyone could access and join and in the absence of a central authority (as it was designed to be decentralized), in such a way to be safe to every user, by keeping people honest (Jeffries, 2018). As we already mentioned, the technology was popularized with the appearance of Bitcoin, but it was not something that was invented with it, as similar kind of technologies already arose in the previous century (Back, 1997). At the beginning of the chapter about blockchain we borrowed a definition that emphasizes the fact that this ledger is decentralized, so in a word independent. We continue by stressing the fact that, as we already mentioned, the use of these DLT's came to popularity with cryptocurrencies and it uses cryptography in almost all its processes, *digital ledgers use cryptographic algorithms to verify the creation and transfer of digitally represented assets over a peer-to-peer network* (Volpicelli, 2016). As cryptography is a method of protecting information through the use of codes and algorithms (Richards, 2021) the DLT's usage of cryptography is very broad and it is applied in ways such as *public key cryptography*, which is a method used to transfer a certain asset. The participant creates a digital signature with its undisclosed cryptographic credentials. Other participants of the DLT can confirm said transaction by authenticating the ledger entry with the help of a mathematical algorithm (Mills et al., 2016).

If there are potential hazards associated with bitcoin, it is reasonable to infer that blockchain technology and decentralized ledgers, which are closely related, may likewise have inherent risks. The majority of decentralized blockchains provide user anonymity, which often leads to the emergence of bad attributes. As previously stated, although its purpose is to encourage honesty among users, this does not imply that it is impervious to tampering or immune to involvement in unlawful activities. The decentralized nature of the ledger implies the absence of government or public institutional oversight to monitor fraudulent activities. Government trusted institutions like the FATF (https://www.fatf-gafi.org/en/the-fatf.html) can lose track of what could happen in transactions in blockchains, fact that led to this technology being associated with illegal and fraudulent behavior like money laundering, terrorism financing, organized crime, etc.

2. HOW BITCOIN TRANSACTIONS ARE PROCESSED USING BLOCKCHAIN TECHNOLOGY

Given Bitcoin's nature, mathematical formulas and cryptography respectively control its issuance and use (Mullan, 2014). While users' software store a public record of all transactions - the blockchain - the actual identity of the transacting parties remains anonymous, as no personal information is required to create an account on the platform or exchange Bitcoins. Elimination of a third party intermediary, such as a bank, ensures anonymity within Bitcoin transactions (Federal Reserve Board, 2014). Anonymity is furthered by the absence of reporting requirements and regulatory agencies, such as central banks and taxing authorities (Piazza, 2017: 275-276).

In the absence of a third party clearinghouse, participants are free, but not bound, to voluntarily record each transaction on the blockchain (Piazza, 2017: 275-276). However, the effectiveness of this recording method is disputable: users who record their transactions are rewarded with newly minted Bitcoins (Piazza, 2017: 275-276). On the other hand, there is no penalty associated with failing to record. This approach, which is based on incentives, helps to explain, at least in part, the continuous expansion of Bitcoin systems.

The blockchain is comprised of a series of transactions each consisting in a "block" (Tasca, 2015). Each block details the item and the consideration that was traded, the time that the transaction took place, and the identities (or at the very least, the pseudonyms) of the people that participated in the exchange. Through headers that convey information (using codes) describing the content of the transaction block that came before it and the one that comes after it, each block is "chained" to the one that came before it and the one that comes after it. Therefore, using the codes that are supplied in the header of each block, it is possible to get the transaction block that came before it, and continue doing so until one reaches the first transaction. However, despite the fact that it is feasible to track Bitcoin transactions back to the initial purchase of assets, it may be hard to trace the transaction back to specific persons. This is because the kind of exchange that was utilized makes a difference in this regard. In addition, the visibility choices chosen by the exchange may determine whether the records stored in the blockchain are accessible to the general public or are limited to authorized users and subscribers only. In the alternative, an intermediate solution has been devised in which a firm records its daily transactions on a private blockchain that is only available to authorized users, but that corporation also regularly updates and provides an aggregate version of those transactions on a blockchain that is open to the public. This solution is a hybrid of the two previous options. Because of the way it works, this kind of intermediary solution is referred to as a side chain.

Additionally, Bitcoin transactions are final and cannot be undone; the only method to reverse the impact of a transfer is via the use of voluntary refunds. Since there is no administrator, no transaction can be denied or punished in any way. There being no administrator means that no transaction may be denied or punished in any way.

Furthermore, users of Bitcoin have the choice to either retain their funds in a Bitcoin wallet, which is also known as a dark wallet when it is stored on dark web exchanges, either on their own or with the assistance of a third party, or they may convert their Bitcoin holdings back into their country's native currency. The latter choice, depending on the technique that is used, may include

the possibility that one's identity will be revealed. In point of fact, the fact that "buyer beware" is a word that is often used in the Bitcoin sector should not come as a surprise to anybody.

As was previously indicated, a further distinction between Bitcoin and conventional currencies is that there is neither a central bank nor a jurisdiction that guarantees the quantity of money that is accessible. Instead, the Bitcoin is generated via a mathematical system that does not rely on a single central administration or monitoring body. Each Bitcoin unit may be broken into fractional units thanks to the currency's math-based issuance and incentive-based transaction recording. Despite the fact that Bitcoin's current ceiling of $21 million should not be reached until the year 2140, the currency's presence and spread will be increased as a result of this feature. The limitation on the number of Bitcoins that may be mined tends to point to the cryptocurrency's nature as that of a commodity, which is a topic that will be covered in more detail in the section that follows on potential Bitcoin regulatory frameworks. However, in contrast to conventional natural commodities, Bitcoin's supply limit is only theoretically enforced, and as a result, it is readily transformable. This adds an additional layer to Bitcoin's already complicated combination of characteristics.

The use of software and services like TOR (https://www.coindesk.com/tag/tor/), dark wallets, and Bitcoin-laundering services has indeed added an extra layer of complexity to the already anonymous nature of Bitcoin transactions. This further complicates the traceability of transactions, making it challenging for authorities and regulatory bodies to track and monitor potentially illicit financial activities. While these tools were developed with certain privacy and security considerations in mind, they have been exploited for various purposes, some of which may not be in the best interest of society.

The dark web, accessed through the TOR network, provides a space where users can operate with a higher degree of anonymity. While it was initially intended for privacy-conscious individuals and those living in repressive regimes, it has also become a breeding ground for various illegal activities, such as the sale of drugs, weapons, stolen data, and other illicit goods and services. The dark web's anonymity makes it difficult for law enforcement agencies to trace and apprehend individuals involved in such activities.

Dark wallets, which are Bitcoin wallets stored on the dark web, have made it even more challenging to connect transactions to specific individuals or entities. By using these wallets, users can obscure their identities and the flow of funds, making it difficult for external observers to link wallets to individuals. Bitcoin-laundering services, on the other hand, intentionally obfuscate the source of Bitcoin transactions. These services employ various techniques to break the chain of transactions on the blockchain. For example, some services link all transactions in the same Bitcoin address and send them together, making it appear as though they were sent from a different address. Others "comingle" different series of transactions, further complicating the tracking process.

While the development of these tools may have started with legitimate privacy concerns, they have, in many cases, been exploited for illegal activities, including money laundering, tax evasion, and financing of criminal enterprises. As a result, they have come under scrutiny from regulators and law enforcement agencies.

In the digital sphere, I believe it is crucial to establish a balance between security and privacy. Although privacy is an inviolable privilege, it must not be utilized to conceal unlawful behavior. Law enforcement agencies and regulators must adjust to the ever-changing digital currency and technology landscape in order to effectively investigate and prevent criminal activities. It is imperative that innovations that facilitate transactions that are more secure and private be developed and utilized responsibly, while maintaining a comprehensive awareness of the potential societal ramifications.

IV. BEYOND BITCOIN: A WORLD OF DIVERSE CRYPTO ASSETS

In the ever-expanding world of cryptocurrencies, Bitcoin was just the beginning. While Bitcoin remains the most well-known and widely used digital currency, it's essential to recognize that it's only one player in a diverse and rapidly evolving ecosystem. The success and popularity of Bitcoin have paved the way for a multitude of alternative cryptocurrencies, often referred to as "altcoins", each with its unique features and purposes. Altcoins offer a fascinating glimpse into the endless possibilities of blockchain technology. Some were designed to address specific limitations or challenges posed by Bitcoin, such as scalability and speed, while others explore entirely new use cases beyond digital currency. Here are a few examples of diverse crypto assets that have gained prominence:

1. Ethereum (ETH): Often regarded as the second-largest cryptocurrency by market capitalization (Reiff, 2023), Ethereum introduced the concept of smart contracts (Frankenfield, 2023). These self-executing contracts have opened up a world of possibilities, enabling decentralized applications (DApps) (Frankenfield, 2023) to run on its blockchain. Ethereum has become a foundation for decentralized finance (DeFi) (Sharma, 2023) and non-fungible tokens (NFTs), pushing the boundaries of what blockchain technology can achieve.

2. Ripple (XRP): Ripple is designed for swift, low-cost cross-border transactions and has garnered significant attention from financial institutions. It focuses on improving the efficiency and security of international money transfers, challenging traditional banking systems. In order to promote the adoption of its technology, Ripple has formed strategic alliances with a multitude of banks, financial institutions, and payment service providers across the globe. The integration of Ripple's solutions into established financial infrastructures has been facilitated by these partnerships, which has also enabled the broader adoption of XRP for cross-border payments (Tradeshala, 2023).

3. Litecoin (LTC): Often dubbed "silver" to Bitcoin's "gold" (Szlezak, 2023), Litecoin offers faster transaction confirmation times and is seen as a reliable digital currency for everyday transactions.

4. Cardano (ADA): Cardano is known for its scientific approach to blockchain development, emphasizing peer-reviewed research and a focus on sustainability (Pawlak, 2022). It aims to provide a secure and scalable platform for the development of DApps and smart contracts.

5. Chainlink (LINK): Chainlink focuses on connecting smart contracts with real-world data and events, enhancing the capabilities of decentralized applications by providing them with reliable information from the outside world (Oche, 2023).

6. Polkadot (DOT): Polkadot is a multi-chain network that aims to facilitate the interoperability (Hertz, 2023) of different blockchains, creating a connected ecosystem of diverse blockchains that can interact seamlessly.

7. Stellar (XLM): Stellar concentrates on facilitating low-cost, cross-border payments (del Castillo, 2017), making it a significant player in the realm of financial inclusion and microtransactions.

These are merely a few instances of the diverse array of cryptocurrency assets that extends beyond Bitcoin. The crypto landscape is in a constant state of change, with innovative solutions and new initiatives appearing on a regular basis. Upon further exploration of the cryptocurrency realm, one will discover that every asset fulfills a distinct function, thereby fostering the ongoing expansion and diversification of the crypto space.

Investigating these alternative cryptocurrencies not only expands our comprehension of blockchain technology but also demonstrates its extraordinary capacity to disrupt and innovate across numerous industries.

I. CONCLUSIONS

Throughout our inquiry into blockchain technology and the dynamic realm of crypto assets, we have examined the fundamental underpinnings of an unprecedented technological environment that persistently influences the trajectory of our digital age. In order to summarize, it is essential to examine three interrelated facets: the fundamental components of blockchain technology, the intricacies of Bitcoin transaction processing, and the wide array of crypto assets.

Blockchain technology, with its principles of decentralization, transparency, and immutability, stands as a remarkable innovation that has the potential to disrupt various industries. The blockchain's structure, comprised of blocks linked together in a chain, ensures the integrity of data, making it resistant to tampering and fraud. The consensus mechanisms, such as proof of work (PoW) and proof of stake (PoS), determine how transactions are validated and recorded on the blockchain. These foundational aspects serve as the bedrock for trust in a trustless environment.

Bitcoin, as the pioneer of cryptocurrencies, has showcased the practical application of blockchain technology. The decentralized nature of Bitcoin, coupled with its consensus mechanism, enables secure and transparent peer-to-peer transactions. Understanding the mining process, transaction validation, and the role of miners reveals the complexity and beauty of the blockchain’s operation. This knowledge empowers individuals to participate in the Bitcoin network and recognize the value of its underlying technology.

While Bitcoin remains the most recognized and widely used cryptocurrency, it’s crucial to appreciate the wealth of alternative crypto assets that have emerged. These diverse assets introduce innovative features and functionalities, from smart contracts and decentralized applications to cross-border payment solutions. The crypto asset landscape is continuously expanding,

demonstrating that blockchain technology is adaptable and has applications beyond digital currency. This diversity illustrates the dynamic nature of the crypto ecosystem and its potential to revolutionize various sectors, from finance to healthcare and supply chain management.

In conclusion, our journey through the blockchain jungle has illuminated the transformative potential of this technology. Blockchain, with its building blocks, serves as a foundation of trust in a world where intermediaries can be replaced with transparent, secure, and immutable systems. Bitcoin, as the flagship cryptocurrency, exemplifies the power of blockchain technology in facilitating secure, borderless transactions. Beyond Bitcoin, we've seen the emergence of a vibrant ecosystem of crypto assets, each contributing to the ongoing evolution of this groundbreaking technology. As we move forward, it's clear that blockchain and crypto assets will continue to shape our digital landscape, offering new opportunities and challenges. Understanding these building blocks, transaction processing mechanisms, and the broader crypto asset ecosystem will empower individuals and businesses to navigate this evolving terrain, embracing the potential for innovation, financial inclusion, and decentralization. The future of blockchain and crypto assets holds the promise of a more interconnected, efficient, and decentralized world. It's a journey worth following, and as participants in this transformative era, we have the opportunity to contribute to its ongoing development and success.

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A HISTORICAL AND RHIZOMATIC APPROACH TO FREE SPEECH AND ITS IMPLICATIONS IN A DIGITAL WORLD

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Abstract: *Free speech is a highly debated topic, it became a topic of cultural wars, lawsuits and dishonest propaganda. This is doubled up by the finicky nature of free speech as it is. There is no sole ideal definition that can satisfy all needs. There are many barriers in regards to creating a solid foundation of thought even in an attempt to explain free speech. In this article we will attempt to look at the right to free speech as a historical ideal in American and European history and from the perspective of Deleuze and Guattari's idea of the rhizome as presented in their seminal work A Thousand Plateaus: Capitalism and Schizophrenia. We may have anything to add to such a debated topic only through the dissolution of the apparently opposed. Only by dissolving the arborescent and the rhizomatic structures we may achieve any semblance of a solution to the digitalised zeitgeist of our day to day lives.*

Keywords: *Freedom of Speech, Freedom of Expression, Rhizome, Martin Heidegger, Jill Deleuze, Felix Guattari, religious reformation.*

INTRODUCTION

In a world saturated by a cloud of obsessive consumption, we find ourselves under a peculiar constellation. Many philosophers have either predicted such issues in a form or another or have warned us. Martin Heidegger was asked during an interview with the German publication Der Spiegel was asked what can save us from the modern world, his answer was "Only a God can save us" (https://www.youtube.com/watch?v=cqFGUel8MYI&ab_channel=Fragmented).

He probably was not referring of a Christian God. Most probably he was talking more broadly of a form of spiritual unity amongst the members of society. Jean Baudrillard declared that the world has entered a stage of hyperreality or simulacrum. A point in which the real and the fake are functionally indistinguishable (Mambrol, 2016). Freedom of speech is guaranteed in most constitutions in developed or developing countries with few exceptions. We will see that from the earliest days attempts to suppress the right, to destroy it, to control it would fail but still a new threat has appeared with the development of humanity. In this article, we will try and make sense of how the right to free speech has firstly appeared, how it developed until the current day and where it is in the digital age.

1. The origin of free speech and a few select instances of battles fought to gain such rights

The first step in this enterprise of understanding the mechanics of free speech is to observe the birth of what will become the modern usance of the *freedom of expression*. We will observe the concept of *parrhesia* in ancient Athens, the Middle Ages and grandiose efforts to preserve and spread the knowledge of the ancient world, the wars for religious reform against

the Catholic Church which profoundly revitalise the notion of free speech and of course, the constitutional right to free speech of the US and its developments.

Ancient times (5th century B.C.)

Ancient Greeks, *parrhesia* or uninhibited speech is the first widely accepted concept of free speech. This idea in itself can and should be scrutinized and debated. According to David Konstan, the idea of *parrhesia* is not a fundamental right granting the freedom of expression as much as it is the result of the social lives of Athenians. If a person was not sufficiently frank they would be deemed as a coward, if they were too frank and direct they may be seen as insolent (Konstan, 2012:46). On a fundamental level, *parrhesia* was more of an expected behavioural pattern than a right onto itself. In many Greek plays and remaining texts, the notion is invoked but not strictly as a right (Konstan, 2012:4).

Parrhesia is invoked as a right in *Hippolytus* that is granted to citizens of Athens (Konstan, 2012:5). Aristotle considers it a normality amongst friends and brothers. Scholars such as Arlene Saxonhouse consider *parrhesia* to be less of a right and more of a form of speech which holds no shame even if the topic or opinion is quite rude by most standards (Konstan, 2012:7). The conception of Konstan that *parrhesia* was not a right but a result of citizenship that holds some level of social discomfort and necessary self-censorship is the one we will land on (Konstan, 2012:10). This conception, to a certain degree makes the clarification that we cannot speak of rights as they are understood today. Even if *parrhesia* is not a fundamental right as it is understood today, it's still the origin of our journey.

This is might be the explanation of why Socrates was killed as it is told to us by Plato. Socrates was found guilty of refusing the gods, the state and for corrupting the youth (Konstan, 2012:7). In his defence speech he claimed the following:" I know that my plainness of speech makes them hate me, and what is their hatred but a proof that I am speaking the truth? (Plato, 2020:7)". We will be confronted with such hypocrisies and inconsistencies through the length of free speech even in contemporary history.

Some important thinkers of The Golden Age of Islam and the Middle Ages (the 11th century to the 14th century A.D.)

After the fall of the Roman empire the west entered in a mire of territorial struggles and wars. In the meantime, the first Caliphate has developed and embarked on its road to the golden age of Islam. In this period thinkers such as Ibn Rushd (Latinised to Averroes) and Ibn Sina (Avicenna) have captured the writing of the Greek philosophers and have integrated them into Islamic teachings. This also allowed western thinkers such as Thomas Aquinas to enter in contact with the Greek classics. There are two important aspects that allowed the Islamic scholars to maintain and elaborate upon classical knowledge. The first one is the investment and competition between study centres. The primary centre of knowledge was the Bagdad House of Wisdom which served as a library, translation institute and an academy (https://courses.lumenlearning.com/suny-hccc-worldcivilization/chapter/the-islamic-golden-age/). To this centre we must also acknowledge the cities of Cordoba and Cairo. These centres of studies were crucial in translating and developing upon classical knowledge. These scholars were paid huge sums of money by the Islamic Caliphates and regal families of the age. In the case of the scholar Hunayn ibn Ishaq al-Ibadi, he was paid the equivalent of a professional athlete's salary for his translation work. Through these investments we observe the birth of

extraordinary polymaths (https://www.hamad.qa/EN/All-Events/8SRIS2018/Pages/Hunayn-ibn-Ishaq-al-Ibadi.aspx). The second one is the creation of paper. Paper was an essential tool for the wisdom of the Bagdad school to be transmitted. It was more resilient to weather, it was more absorbent so ink can be better laid upon it and hold on for longer periods and with the ingenuity of creating what can be called an early printing press system by which many people worked to create books in mass it became essential to the transmission of knowledge.

In the dark ages we see the appearance of the first universities in Paris and Bologna. This new paradigm unavoidably leads to the explicit persecution of all figureheads that even dare to propose any freedom of speech or thought. Such thinkers as Thomas Aquinas, William of Ockham or Peter Abelard who proposed that "reason is in man as God is in the world" and that" Purely philosophical assertions which do not pertain to theology should not be solemnly condemned or forbidden by anyone, because in connection with such anyone at all ought to be free to say freely what pleases him" (https://www.freespeechhistory.com/timeline-2/page/3/).

These initial wars of ideas will prove to be important. These first few ideological rebellions guided by the ideas of the ancient Greeks as preserved by Islamic scholars were fundamentally the proof that both the freedom of expression and the freedom of thought were held hostage by the catholic church. Not only was the freedom to speak or express one's self limited by church rules, but even to philosophise or think against doctrine or outside of the realm of theology was fundamentally fought against.

The Western Schism, the invention of the printing press and the religious reformation period (the 14th to the 17th century)

In the period known as the Western Schism (https://www.britannica.com/event/Western-Schism) the Roman Catholic Church had 2 popes, and later 3 popes fighting over the power of the papacy. After the 70-year period known as the Avignon Papacy (https://www.britannica.com/event/Avignon-papacy) the throne has returned to Rome. Pope Urban the 6th. One of his first actions as pope was to limit the power of the cardinals who grew to seize many rights during the Avignon period. The cardinals who were displeased with the rule of Urban 6th retreated to the city of Anagni and chose a different pope, Clement the 7th. They motivated such a choice by the way of fear, the cardinals claimed that they have chosen Urban the 6th under duress. This fundamental schism created animosity between royals and the nobility of all catholic countries that was split (https://courses.lumenlearning.com/atd-herkimer-westerncivilization/chapter/the-western-schism/).

There was an attempt to solve the issue at the Council of Pisa. The council met in 1409 and decided to choose another pope, Alexander the 5th. Shortly after, pope John the 23rd is named in place of pope Alexander the 5th. Instead of solving the issue of legitimacy, this created a three-way schism from a short period until the Council of Constance.

In 1414 the council has decided to depose pope John the 23rd. The pope of Rome, Gregory the 12th decided to resign and the claims made by the Avignon pope, Benedict the 13th were dismissed. In the year 1417 pope Martin the 5th is elected, ending the schism. This event in itself created an enormous loss of prestige for the papacy.

Another event that has occurred in the time period of the Western Schism was the rise, judgement and execution of Jan Hus (https://www.britannica.com/biography/Jan-Hus). In the year 1416 Jan Hus was burned alive due to him being considered a heretic. One of his "heresies" were the cat of preaching in Czech and believing that only the Bible contains the teachings of

God. Again, we see the suppression of free speech and the moulding of ideas in a form of attempted thought control. The death of Jan Hus would spark the Hussite wars which were fundamentally fought for religious freedoms (https://www.worldhistory.org/Hussite_Wars/). This is, again, a crack in the monopolised power of the Catholic Church which will eventually lead the period of religious reformation and the enlightenment.

Before we reach the stage where we can talk about the religious reformation we must talk about the mechanical means by which the propaganda was made accessible for the religious reformation. Johannes Gutenberg was a German inventor and craftsman that created the printing press. We know little of his personal life, most of the data that we have of him come from legal documents and the few remaining vestiges of his existence (https://www.britannica.com/biography/Johannes-Gutenberg). We know that he was the maker of the printing press in its original form and the Forty-two-Line Bible, the first fully printed book that was finalised between the years 1450 and 1455. This achievement functionally creates a mechanism to quickly created and disseminate literary works, not too dissimilar from what the Islamic academics were doing.

Martin Luther, the father of religious reformism publishes his 95 theses on the door of the Castle Church of Wittenberg, Germany in the year 1517 (https://www.britannica.com/event/Ninety-five-Theses). This gesture of defiance would spark the era of religious reformation. This is the moment that solidified the destruction of a monopole on the freedom of expression. Ulterior to this event, the protestant movement will take rise through popular support giving birth to many plots (Saint Bartholomew's day, year 1572, where French Huguenots were massacred), revolts (the peasant revolts in Germany, in the year 1542 that were directly inspired by the ideas presented by Luther) and religious wars (the thirty-year war is the prime example of a religious war). Trough the invention of the printing press many protestant pamphlets and religious writings were distributed on mass.

The religious reformation is not only the period where the Catholic Church will lose the power over who can speak, but it also represents the moment where freedom of expression and thought has shifted from a religious issue to one that is political. It is now in the hands of the states and noblemen to censor and forbid free expression that may either challenge or threaten the power they hold. The job of censorship was made much more difficult due to the immense danger posed by mass printing of literature to support the protestant cause.

A few notable instances of American censorship

The American revolution has shifted the fundamental ideals of free speech as it is the first instance of such a right being granted to a population by law. The first amendment of the US constitution grants freedom of religious expression and speech. Even so, there were numerous attempts to supress the freedom of expression. We will observe a few notable instances in legal history:

1. The Alien and Sedation Acts of 1798 is the first clear instance whereas a politician tries to supress speech. As a war with France looked to be imminent the Federalist Party enacted laws to deport any "aliens" and to imprison anyone who "print, utter, or publish…any false, scandalous, and malicious writing" (https://www.archives.gov/milestone-documents/alien-and-sedition-acts) against the governments. Notably, Benjamin Franklin Bache, the nephew of Benjamin Franklin, was arrested for libelling then president John

Adams. In 1801 president John Adams allows the Sedition Act to expire and pardons all the people arrested due to them (https://www.thefire.org/history-free-speech#timeline--23542--3).

2. The Comstock Act of 1873 (https://www.britannica.com/event/Comstock-Act) is a law named after the main force behind the lobbying campaign, the man named Anthony Comstock (https://www.britannica.com/biography/Anthony-Comstock). The law itself was meant to suppress abortion medicine and methods (https://www.pbs.org/wgbh/americanexperience/features/pill-anthony-comstocks-chastity-laws/) but it was still a form of suppression of free expression. The law in itself forbid the obscene literature and immoral or indecent materials (https://firstamendment.mtsu.edu/article/ comstock-act-of-1873/).
3. The Espionage Act of 1917 and the Sedition Act of 1918 were adopted by congress as the US was entering WW1. The idea of these laws was to fundamentally keep communists, pacifists and any other possible group of people from slandering or spreading false information during the war (https://constitutioncenter.org/the-constitution/historic-document-library/detail/ espionage-act-of-1917-and-sedition-act-of-1918-1917-1918). The Espionage Act section 3 explicitly states that if a person were to "convey false reports or false statements with intent to interfere with the operation or success of the military or naval forces of the United States" would be legally punished with a fine of 10.000 dollars (in the year 1917 would be worth about 262,436 dollars in 2023), 20 years of prison, or both (Espionage Act of 1917, sec.3). A notable court case was that of Eugene Debs against the US. The Supreme Court decided to uphold the previously enacted doctrine from the case of *Schenck vs United States*. Even after the American Congress decided to repeal the Sedition Acts in 1921 the legal system has found reasons and motives to jail various publicists and communist party members.
4. The arrest of comedian Lenny Bruce for obscenity in 1962 marks yet another instance of suppression of free speech for what we may perceive as unacceptable. In this first instance Bruce Lenny was found not guilty by the Illinois Supreme Court. After that acquittal Bruce will be in and out of jail for obscenity until his accidental overdose and subsequent death (https://firstamendment.mtsu.edu/article/lenny-bruce/). Even in death, authority has mocked and persecuted him. The police allowed journalists to come in pairs of two to photograph the dead body of Lenny Bruce as a last insult towards him, he notoriously hated having photos of him taken (http://www.thestacksreader.com/the-last-show/).

2. Free speech in the current times

In the current period, most free countries have adopted article 19 of the Declaration of Human Rights, which states that all individuals are born with the right to free thinking and to free speech. The legal text itself is clear an oddly freeing, but, if we are to look at how this idea was applied in national legislation we will notice that there are many forms of suppression, some more reasonable than others.

Free speech in France

In the case of France free speech has emerged out the French revolution. The fundamental protection for free speech is the maxim "freedom, equality, and fraternity". By these ideals both article 1 and 4 of the French Constitution (*La Constitution du 4 octobre 1958,*

art.1, art.4) grant the freedom of thought and expression. Even so, there are clear limits regarding what can be stated. A reasonable interdiction is the ban on child pornography (Article 227-33 of the *Code Penal de la Republique Frances*). Such interdictions are unfortunately necessary in order to protect minors and to allow the judiciary ignore the argument of free speech that some may abuse in a court of law.

A more controversial form of speech suppression is the "*Loi de Sécurité Globale"*. Article 24 of the aforementioned law forbids the dissemination of pictures of any police or military personnel that might indicate their identity or personal data (https://www.publicinternationallawandpolicygroup.org/lawyering-justice-blog/2020/12/13/frances-global-security-law-article-24-and-the-right-to-information). If a person would commit such an action they could spend a year in jail and they could be fined 45.000 euros. At first glance such a law may not pose any problems, it was made to defend the police force from any possible threat outside of working hours. If we are to look at the effervescent and volatile social climate of France (https://www.france24.com/en/france/20231228-riots-protests-and-climate-uprisings-2023-was-a-tumultuous-year-in-france), we realise that this law basically forbids any journalist to properly report on riots. This may be conceived as less of a way to protect the hand of the state as much as it is a way to cover and manipulate the truth in an age of governmental distrust.

Free speech in America

America's constitution has the right to free speech as the first amendment. As we have already seen, many attempts and excuses were used in order to fundamentally supress free speech. Even if there is a lot more leniency regarding what is and what is not free speech due to the common law system, the right in itself is sensitive to the political formation of the US Supreme Court. The US Supreme Court has been under major scrutiny after the decision in the case of Dobbs v. Jackson Women's Health Organization. Even if judges should technically be free of any political influence, the fundamental method by which they are chosen they unavoidably become political. They are chosen by a political entity for their political record and work in the legal field. The best possible example of such machination is Amy Coney Barrett, she repeatedly worked against the interest of workers, minority groups and in favour of companies before and during her sit as Supreme Court Justice (https://www.afj.org/nominee/amy-coney-barrett/.).

Free speech in Romania.

In Romania, article 30 of the constitution grants the freedom of expression. Point 1 of the article grants the right of individuals to express themselves through speech, trough writing, trough images, sounds and any other way of public communication. Point 2 forbids any form of censorship. Point 3 grants the right to free press and the freedom to create a public press endeavour.

Where the law shoes it's almost fearful nature are points 6 and 7. Point 6 forbids the prejudice brought to dignity, honour, private life and the right to one's own image. Point 7 bans the bad mouthing of the state or of any nation, lobbying for war, hate speech based on race, religion, class or nationality, inciting discrimination, territorial separatism or public violence or against good morals.

In those clarifications there are a few notably reasonable limits such as inciting hate due to one's race or religion but there seem to be a few intentional vague indications. What can be considered the defamation of a country? If I were to say that "every institution in Romania is corrupt and worthy of dissolution and has criminal liability for any and all tragedies such as buildings burning down due to poor inspection standards and corruption", would I be liable for defamation of the Romanian state? This is a purely hypothetical question that doesn't have a clear answer.

A clearer attempt of the government to ban speech was article 7, point (1), letter e) for the modification of the Law of National Education nr.1/2007 (Law No. 1/2011 of National Education). By this specific article the Romanian Parliament tried to forbid any discussion of gender and sexuality in universities. The Constitutional Court of Romania has decided that the article would not be constitutional, hence, it was forbidden by them (Decision nr.907 of 2020 emitted by the Constitutional Court of Romania).

2.1. What is a rhizome even and how do we use it?

Now that we have understood where freedom of speech started, observed some instances of wars fought over the right to express oneself and saw a few current legislations we must finally understand the rhizome and how to apply this philosophical instrument to our research.

The rhizome

In its original field of botany, a rhizome is a plant stem that develops horizontally underground. Another specific property of the rhizome is to create other plants as they reproduce vegetatively (without the need of pollen transfer) and create new plants from the mother plant (https://www.britannica.com/science/rhizome).

In the philosophy of Deleuze and Guattari (D and G) a rhizome is a a-central multiplicity, this concept was elaborated in their book, *A Thousand-Plateaus*. By this we understand a system of thought that has no central ideal and it creates a plethora of interlinked concepts that have no defined path.

D and G compare traditional reasoning that proposes binary structure (one idea leads to two, then two to four and so on) (Deleuze et al., 1987:5) to a tree, or, the arborescent form (Deleuze et al., 1987:8). The fundamental issue presented is the lack of strength of a simple arborescent form to comprehend ideas in an interconnected manner that may elucidate the true and profound meaning of an idea. The premise of the rhizome is that normal semiotic or logical structures can't fully understand ideas to get to the core, the multiplicity (Deleuze et al., 1987:7).

The rhizome has 6 main principles:

Principles 1 and 2 are those of connection and heterogeneity (Deleuze et al., 1987:7). By these two principles, any two points of the rhizome have a way to connect and traverse. All points we analyse are interconnected, also, they traverse not only one scientific or humanist field. The rhizome is heterogeneous, it is diverse, it is not stuck in one register or modality. A rhizome will traverse all the possible connections until it is fulfilled and multiple in itself.

The third principle is that of multiplicity. A rhizome has no primary object or subject, it is not bound to any object or subject. It must be taken as a multiplicity. The rhizome can only be defined by determinations and magnitudes. With all this, a rhizome still has clear dimensions and if those dimensions would expand or shrink we will see the birth of a new rhizome (Deleuze

et al., 1987:8). The multiplicity of the rhizome exists on one plane and if it we were to add or remove dimensions or to move the concepts we may deterritorialize the rhizome.

The forth principle, the asignifying rupture, imposes the nature of eternal reconstruction. No matter how much we may try to unearth the rhizome, it will recreate itself from the remains, either a new rhizome will spawn or a wholly new one will form (Deleuze et al., 1987:9). A great example are ants, ants are notoriously hard to get rid of precisely because they have to be wholly eliminated, and still, if a few remain a new colony may appear.

The fifth and sixth principles are those of cartography and decalcomania. By cartography we understand that, fundamentally, a rhizome is a map (Deleuze et al., 1987:12). One can enter from any point of the map. The physical map may be turned, reversed, modified, and used in many other instances. A rhizome is not a mere tracing on a map, it's not a clear line from A to B, from presupposition to conclusion. One is free to circulate through all possible roads until they find something of use to them. In the analysis of the rhizome, one is expected to create tracings from a plateau to another plateau (Deleuze et al., 1987:22) for the sake of efficient analysis. The premise of how arborescent thinking has been more detrimental for humans is reinstated (Deleuze et al., 1987:15). The proposed method to avoid the arborescent form is what the authors call Schizoanalysis (Deleuze et al., 1987:18). By Schizoanalysis one is expected to think not of the central idea, but on as many elements as possible and as they are unveiling to the budding "schizoanalyst".

The rhizomatic structure of free speech.

Now that we have the tools, we must create the concrete territory that may be filled and to understand how or if free speech is a rhizome or something else entirely.

A first possible structure is that of freedom of expression as the root and the freedom of speech as the tree. Of course, this structure is not sufficient, generally speech is used to mean all forms of expression, and those are plenty. The many forms of expression or speech cannot be easily attributed to branches or arborescent forms of thinking.

The second possible structure, and the one that fits our needs goes as follows. The freedom of thought is the central root of the rhizome, the middle or *milieu* (Deleuze et al., 1987:21) as D and G call it and that all other forms of expression are plateaus in the rhizome. This structure works for a simple reason. Not all forms of thinking get expressed, and not all forms of expression involve thinking. For the first example, we may see on the street a person we dislike, the why is unimportant. No matter how much we think of our displeasure, we will most probably not express it. For the second example, we may think of dressing codes. Whenever we get dressed we still fundamentally express ourselves. We express aesthetic notions, social status, revolt, obedience and so on. Maybe, by instinct, we pick up a shirt that has so form of a band logo and without realising we break the dress code of the occasion we attend. In such a scenario, we have committed an act of expression in a wrong context, without having a clear line of thought as to why.

From this point onwards, we will refer to our structure as the *rhizome of free expression.*

2.2. The deterritorialization of the rhizome of free expression in the digital age

So far, I have incessantly avoided the role of the internet in our little quest for knowledge. This was intentional as we needed a strong infrastructure before we observe how

the internet has truly affected not only the freedom of speech, but also the important *milieu*, the freedom of thinking.

Through history and in the current age we have observed how the rhizome of free expression was planted to develop the first roots in the pot of *parrhesia*. We have seen the Catholic Church try and unroot it with no success, only temporary suppression. As the rhizome has found new soil trough the protestant reform, through the American Revolution and getting to be reinvigorated until the development of the internet we always notice a clear pattern of repetition. Whenever the rhizome extends, authority will try and stomp it or remove it entirely. This did not destroy the rhizome of free expression, but it did reterritorialize it until today. Today, the rhizome is bound by borders imposed by authority.

As previously stated, some limits are absolutely necessary. These borders also give us clarity in regards not only to legal, but also to social limits when we express ourselves. So, what did the internet do to the rhizome of free expression?

The internet has profoundly deterritorialized the rhizome of free expression to the point that no institution can fully contain its extension and remodelling of the self. No church, no politician, no monarch, no private corporation and no law can fully contain the internet in an efficient manner. The borders imposed by states or society are all but useless in front of the vast expanse of the internet, hence the rhizome of free expression has become a superstructure of many entangled rhizomes and many connected plateaus that still hold the freedom of thought as a middle. Regardless of morals and ethics, if there is a will, there is a how. If you wish to create art but don't want to be held down by any publisher, you can do so. If you wish to harass people you can create an anonymous account on any platform to do just that.

In a strange twist of faith, private corporations have done a better job at delimitating this ultra-rhizomatic structure of free expression through terms of service. This legal structure is normally relegated to contract law, but in our world, we are bombarded by such terms from every single website that we visit. Making any account or just perusing a site will require us to accept certain terms of use such as forbidding nudity or misinformation (https://help.instagram.com/477434105621119). Again, we may see some reasonable standards regarding the way we can express ourselves, on the other hand, to maintain such huge internet traffic there must be an efficient way to control posts and discussions. One tool used is to allow other users to flag content that breaks community guidelines, after such an action is done the content will be reviewed by an algorithm.

2.3. The algorithm

An algorithm is fundamentally a set of instructions given to a machinery or a software to act upon when it is required (https://techtarget.com/whatis/definition/algorithm). Most social media sites have some sort of algorithms for a few different reasons. The first was previously mentioned, to judge if forms of expression online are not infringing general rules. A secondary, more insidious reason may be to recommend more content based on what this latter machine has learned about you. How do machines learn about us? By the information we give voluntarily to the companies and by the content that we consume and the behavioural patterns we engage in (https://blog.hootsuite.com/how-the-youtube-algorithm-works/). This later form of the algorithm may be useful for the average consumer that just wants to engage with content and find more regarding their topic of interest, but, there is a more insidious element to this.

All social media or content applications have some sort of recommendation algorithm. Even if they gage different metrics in order to establish what it recommends to a consumer, they fundamentally do the exact same thing. The job of all algorithms made to recommend content is to keep the consumer constantly browsing through endless hours of content. They are one fundamental tool shared by all major content platforms. Regardless of company, there is only one algorithm by way of function.

Using Heidegger's philosophy and H.P. Lovecraft's horror to give The Algorithm a body. Both Martin Heidegger and H.P. Lovecraft are controversial figure due to their beliefs. Regardless of that, their works may give us some tools in order to create a reasonable representation and proper explanation for The Algorithm.

In his lecture *The Question Concerning Technology*, Martin Heidegger posits the following problem: what is technology at its core? His initial analysis reveals the obvious answer, technology is a means to an end (Heidegger, 1977:5). But this answer does prove insufficient, it is technically correct, but not the whole answer. He posits that the correct way for us to use and develop technology in a correct manner is to bring it forth (Heidegger, 1977:10-13). This is a feature of old, pre-modern technology. It coexisted with nature as it brought forth characteristics that were not obvious when interacting with the necessary materials. Of modern technology, Heidegger calls it *The Challenge* (Heidegger, 1977:14). His issue with modern technology is that it reveals itself in an immediate way, everything is there, ready to use. Modern technology becomes standing reserve (Heidegger, 1977:17). Everything is readily available and present at all times; hence, it loses a part of its value.

H.P. Lovecraft is generally credited as the father of cosmic horror. His many short stories such as *The Doom That Came to Sarnath* or *The Cats of Ulthar* present the reader with a type of monster that is not clear. There is not easy to identify evil person or entity that the reader can hate, and yet, there is something disturbing that goes beyond human understanding and senses.

The Algorithm is, in Heidegger's terms, a form of standing reserve technology. But it is much more than that. If standing reserve technology is immediately available, The Algorithm gains a new dimension. Instead of it simply being a comfortable machinery, the consumer becomes the standing reserve. The real function of this creature is to understand you, the consumer. What do you like to see? What do you like to watch? What do you wish to engage with? It is an extremely insidious process of a creature of no *corpus, anima* or *animus* slowly goes trough the trial and error of understanding a human. This is beyond any reason, this is something no one predicted in science fiction in this specific format.

Humanity has created this Lovecraftian monstrosity which is an organism that is not alive. It is a pure instrument, it is a means to and end that treats humans as standing reserve. We are at it's mercy to be manipulated to consume time engaging with content. If anything, The Algorithm is not a rhizome, it is not a plateau, it is a living poison lacking in any other direction but that of gathering data and using it. This living poison slowly erodes the rhizome of free expression.

2.4. *The effect of The Algorithm on the rhizome of free expression*

There are obvious effects of The Algorithm on the rhizome of free expression such as the limitation of who can express themselves to as many people as possible. Sure, there is an element of democracy to this process. If many people love a piece of content it will be recommended further. The real danger posed by The Algorithm is that is eroding at the *milieu,* the freedom of thought.

How does this happen? Through the power of suggestion. The Algorithm is constantly throwing suggestions regarding what we should watch, listen to, buy and generally consume. A person might ask, how is this different from radio and television? And the answer is by its omnipresent nature. The average human using the internet for any reasons will be bombarded by targeted advertisement and suggestions regarding what they should offer their time, energy and money to. In this way, The Algorithm gnaws at the freedom of thinking by corrupting the consumer's general disposition while a television or a radio can be simply shut down.

The proof of this occurrence lies in some unspeakable acts that become more common as history unfolds in this cursed paradigm. Amongst such horrors we find: the growing rate of suicide amongst minors (https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6278213/), the distortion of reality by bad actors in regards to the issue of masculinity (https://www.thelexingtonline.com/blog/2023/4/17/red-pill-ideology-how-alpha-male-influencers-are-threatening-feminism), mass shooters being inspired by algorithmic recommendations (https://www.theguardian.com/us-news/2023/may/12/news-social-media-effect-mass-shootings), and the shrinking rate of literacy amongst young children (https://psmag.com/ideas/theres-a-crisis-of-reading-among-generation-z).

These are serious systemic issues that go unaddressed by most states and unavoidably grant private corporations more power over not only the finances of people, but also to the minds of human being by eroding the freedom of thought.

CONCLUSIONS

What the Catholic Church could not achieve, the control of man's thought, was finally achieved centuries later by private industry. Without realising, humanity has allowed corporations that don't have any other interest but to use the consumer as in reserve resources to limit the spread of the freedom of expression rhizome and to infect it with the living poison of The Algorithm. The proverbial "baby with a smartphone" is no longer just a usance by older generations complaining about the youth, it became a matter of global catastrophe.

In most developed or developing countries, a culture of obsessive consumption has emerged, fuelled by advertising and recommendation machinery that was designed to be of use until it became the master of the consumer.

There is no easy solution or any discovered panacea or even a happy ending to this issue, there are personal steps that individuals can take regarding their cyber security and their personal use of the internet, more so, to keep the rhizome of free expression alive in their spirit and brain.

The only real solution that can have a long-term impact is for collective action to force elected bodies to take such issues seriously and to protect the youth not from what we may personally perceive as "bad speech" but from the dangers of being easily manipulated in mass by The Algorithm.

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CONSIDERATIONS REGARDING THE CONCEPT OF COMPETITION

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Abstract: *Competition represents a fundamental aspect of the economy, involving a competitive relationship among economic agents to maximize their profit. In a competitive market, companies strive to attract customers by offering similar or substitutable products and services. This dynamic stimulates innovation, improves product quality, and promotes economic efficiency. Competition is essential for providing a greater variety of options to consumers and for limiting the market power of individual entities, having a profound impact on markets and society as a whole.*

Keywords: *competition, competitive market, antitrust regulations, theories of competition*

INTRODUCTION

Competition has increasingly become a significantly relevant phenomenon for both the economic and social sectors, representing the primary source of motivation for conducting businesses and retaining customers.

Competition can be perceived as rivalry or competition within a specific field of activity. According to the explanatory dictionary of the Romanian language, competition represents: "commercial rivalry, the economic struggle between industrialists, traders, monopolies, countries, etc., to capture the market, sell products, gain clientele, and achieve higher profits" (http://dexonline.ro/definitie/concurenta).

The approach to the concept of competition presupposes, from the outset, the existence of two or more enterprises operating within a market to attract the largest possible number of customers to achieve set objectives. Consequently, competition directs economic agents towards consumers by offering differentiated products or services that bring added value. In this sense, economic agents adopt competitive behavior, manifested through competitive relationships within a field of activity or in a particular market.

These specifications are valid both nationally and internationally. Another relevant definition is provided by the Organisation for Economic Cooperation and Development (OECD), stating: "Competition reflects the situation in a market where firms or sellers independently strive to gain clientele with the aim of achieving an economic objective, such as profits, sales, and/or market share. In this context, competition is often equivalent to rivalry. This rivalry may refer to prices, quality, services, or combinations of these or other factors valued by customers".

According to the understanding in the United States of America regarding competition, it is defined as an open confrontation, rivalry, or cooperation among economic agents, sellers, or suppliers, resulting from their specific behavior aimed at attracting consumers to ensure high and secure profits.

In a general sense, competition is described as "a confrontation between opposing tendencies that converge toward the same goal" (Goblot, 1998:267).

From the perspective of jurists, competition is a notion with variable content (Perelman et al., 1984:269). In specialized literature, competition is regarded as "the rivalry

among economic agents in the pursuit and retention of clientele" (Băcanu, 1990:50) or "a fierce struggle among economic operators conducting the same or similar activities, aiming to acquire, maintain, and expand their clientele" (Boroi, 1996:5). More specifically, it is "the confrontation between professionals engaged in similar or related activities, carried out in open market domains, to gain and retain clientele, aiming to make their own enterprise profitable"(Boroi, 1996:5; Căpățână, 1992:86; Băcanu, 1990:50).

In economic terms, competition was initially seen as a decisive factor that spontaneously ensures the division of labor among enterprises, as well as the normal conditions of production, exchanges, and consumption of goods. It represents the "invisible hand" (Denis, 1990:191-206) that, regardless of any state intervention, adapts supply and demand solely under the impulse of individual interest, naturally disciplining the entire economic activity.

Competition itself acts as a stimulus for companies, encouraging them to operate at their maximum potential to produce goods and deliver services of the highest quality at the most competitive prices. Competition drives entrepreneurial spirit and the entry of new firms into the market, rewarding efficient companies while penalizing inefficient ones.

Under ideal market conditions, companies react rapidly and flexibly to new entrants and changes in demand structure. The entry of new competitors into the market prompts adjustments in the strategies of existing firms. The ability of existing companies to adapt their position concerning new market entrants and the speed at which these strategic changes occur are indicators of a firm's efficiency and competitiveness. In light of these considerations, it would be ideal for national economies to function without the intervention of public authorities, solely based on the relationship between supply and demand, within a system that rewards efficient companies that best adapt to market requirements.

With the onset of the first regulations regarding competition, numerous jurists directed their attention to the concept of competition. This is because competition hadn't acquired a legal definition (Malaurie-Vignal, 2008:26; Nicolas-Vuillerme, 2008:32), leading to a specific legal interpretation of competition. Furthermore, disputes between economists and jurists persist, revolving around the very nature of competition law itself.

1. CONSIDERATIONS REGARDING THE HISTORY OF LEGISLATION IN THE FIELD OF COMPETITION IN CERTAIN MEMBER STATES OF THE EU

The history of competition policy involves the emergence and consolidation of a regulatory and institutional framework based on close inter-institutional relationships. The current form of competition policy is the result of convergence between the internal dynamics of policy and the existence of diverse exogenous factors (http: //ro.scribd.com/doc/94513472/58115515-Concurenta-in-UE) of a political, economic, or institutional nature.

The Treaty establishing the European Coal and Steel Community (ECSC), in 1951, through Articles 65 and 66, regulated practices in the coal, steel, and economic concentration sectors. These provisions were later incorporated into Articles 85(81) and 86(82) of the Treaty of Rome in 1957, although it was evident that these regulatory tools were not suitable for regulating other market segments (Mrejeru et al., 2003:32).

The European policy in the field of competition has been and continues to be based on Article 3(1) of the EEC Treaty (now Article 3(g) of the EU Treaty), which requires action to be taken so that "competition in the Common Market is not distorted" (http://www.ier.ro/documente/formare/Politica_concurenta.pdf). The implementation of this principle is found in Articles 85(81) - 94(89) of the EU Treaty.

These provisions refer to the Commission's control over restrictive arrangements/practices (or cartels), abusive exercise of dominant market positions, and

control over the granting of state aids. These components, specific to the beginning phase of defining economic policy objectives, continue to be the central pillars of this policy.

At the time these provisions and policies were launched, except for Germany, the member states had regulations in this area much less rigorous than those mentioned in the EEC Treaty. Belgium and Luxembourg did not have such legislation, while the Netherlands had a competition law from 1956, but it imposed very few restrictions. In Italy, monopolies and restrictive practices were regulated by the Civil Code, while in France, although specific legislation existed, it was extremely lax regarding the regulation of restrictive practices. Therefore, at that time, Germany was the only member state that had articulated legislation in the field of competition.

Due to this heterogeneity, member states had to make efforts towards adopting procedural rules to implement the provisions of the EEC Treaty before the expiration of the three-year period provided in the Treaty. Ultimately, member states reached a consensus on the content of these procedural rules, and in 1962, they were adopted under Regulation No. 17/62 (its text was largely influenced by the German system of notification, assessment, and exemption, implying centralized application that reduced the role of national authorities).

It became necessary for the drafting of rules to be done in such a way that the control of this policy remains at the supranational level, specifically within the Commission. Thus, the competition policy became the "first genuinely supranational sectoral policy", reflecting the Commission's position and efforts toward achieving a common policy, not merely coordinated collectively (http://www.ier.ro/documente/formare/Politica_concurenta.pdf).

During the initial fifteen years of its existence (1958 - 1972), the competition policy was characterized by a cumulative and coherent development of a set of political priorities that allowed the Commission to promote an assertive attitude. Clearly, during this period, institutional construction was a priority, leading to the creation of Directorate-General IV (DG IV), one of the first services of the Commission, and the appointment of a Commissioner responsible for this domain, Hans van der Groeben.

However, in 1966, the Commission released a Memorandum (Negrescu et al., 2004:8) concerning the issue of concentrations. Thus, in the early '60s, the competition protection policy was synonymous with the policy regarding restrictive practices (cartels), while other objectives, such as state aids and monopolies, were practically neglected. This attitude was partly motivated by the Commission's goal until the mid-60s, which was to encourage large European companies as a means to promote the competitiveness of the European industry within the common market. This document marked a turning point in the institution's approach.

Policy on competition has been and continues to be complementary to the concerns related to establishing the single market, as it provides a mechanism for removing trade barriers between member states, creating favorable conditions for a more complete market integration. Before 1968, the year when, broadly speaking, the stage of a customs union was achieved, Community control over subsidies and even over restrictive practices was more of an exception. With the establishment of the Common Customs Tariff (CCT) and the elimination of quotas and customs duties in intra-community trade, there was a shift in the Commission's area of interest towards non-tariff barriers (NTBs): from technical, fiscal, and administrative barriers to those involving state intervention through subsidizing the national industry (http://www.ier.ro/documente/formare/Politica_concurenta.pdf).

The need for an industrial policy was only discussed in the late 1960s, against the backdrop of concerns sparked by American interests in Europe and the increasing number of acquisitions of European companies by American firms. However, at that time, there was no consensus regarding the necessity of a European industrial strategy, despite these opinions. A series of memorandums, initially on industrial concentrations (1965), followed by an

industrial policy (1970), and a science and technology policy (1970), suggested that the issue of supranational interventionism was still under-discussed.

The subsequent period, 1973-1981, was one where external factors significantly influenced competition policy. The economic recession resulting from the oil crisis in 1973-1974 prompted the need for more reactive policies from the Community.

Building upon two reports drafted by the Commission in 1973, the Council adopted programs intended to lay the groundwork for future actions in industrial policy. One of the areas of focus was managing declining industrial sectors. In this case, the Commission had at its disposal two policy instruments: on one hand, control over state aid granted by member state governments, and on the other hand, the use of import quotas to defend the European industry against external competition (http://www.ier.ro/documente/formare/Politica_concurenta.pdf).

Just as the '60s were dominated by interventions carried out according to Article 85(81) concerning restrictive practices, the '70s were characterized by attention given to abuses related to the existence of dominant positions and, respectively, the possibilities of controlling mergers and economic concentrations. This period represented the "introduction of an institutionalized system of preventive control" (Bermini, 1983:349).

However, during those years, within the Council, there was a failure to reach a compromise between the overall anti-supranational attitude and the desire of certain member states to maintain absolute control over national industrial policies. This attitude persisted until the mid-1980s. In this context, there was also no clear consensus within the Commission on this aspect.

Concerns within the DG IV about resorting to interventionist measures in the field of competition arose following the recession of 1973. In the mid-70s, the Commission eased its stance on granting state aids as a means to combat unemployment and support declining sectors. As a result, there was a tendency to ignore state aid regulations, leading to delicate situations that began to be corrected after the mid-80s.

The period from 1982 to 2000 marked the transition to a new competition policy. The late 1970s represented a peak in criticisms directed at the Commission and the way DG IV implemented competition policy. Dominant were accusations regarding its overly centralized nature, inadequate decision-making processes, inefficient implementation procedures, heightened "sensitivity" to political pressures, and its inability to achieve set objectives.

The late 1980s marked an important moment in the evolution of this policy, becoming more transparent and quicker in decision-making. It managed to strike a new balance between neoliberal and interventionist approaches. The process of creating the single market demanded appropriate measures in the field of competition. It is a truism that once non-tariff barriers (physical, technical, fiscal) to trade are removed, firms and governments sought new ways to restrict competition and protect their national industries. The White Paper of 1985, "Completing the Internal Market", stated that: "As significant steps are taken towards completing the single market, action will need to be taken to ensure that anti-competitive practices do not take the form of new protectionist barriers that contribute to the redivision of markets".

In conclusion, the history of the evolution of competition policy represents a "juxtaposition of passive periods with active ones, of cumulative periods of expansion of policy domains", by both extending and deepening the objectives pursued within it. Thus, there has been a shift from the emphasis in the 1960s on restrictive practices to policies aimed against monopolies in the 1970s and those directed toward state aids and control of concentrations (Mrejeru et al., 2003:32) in the 1980s and 90s, while policy expanded into new industrial sectors.

2. CONSIDERATIONS REGARDING THE LEGISLATIVE HISTORY IN THE FIELD OF COMPETITION IN ROMANIA

During the pre-war and interwar period, specific regulations on competition law were introduced in Romania:

- The Law on itinerant trade from 1884
- The Unfair Competition Law from 1932, which regulated only acts of unfair competition consisting of confusion and false indications of origin.
- The Decree for the regulation and control of cartels from 1937
- Law no. 26 from 1939 regarding monopolistic agreements.

For Romania, the period between 1945 and 1989 was marked by the establishment and imposition of the communist bloc. During this time, clear provisions or concepts regarding competition were non-existent. State monopoly prevailed, along with a strong policy of closing borders and constant state control over exports and imports. Therefore, the aforementioned regulations had no effect, and no new regulations emerged. Commercial law and competition legislation were overshadowed by state protectionism and the auspices of communism.

After 1990, with the liberalization of both domestic and foreign markets, which allowed for the revival of economic competitiveness, legal norms concerning competition regulation emerged in Romanian legislation:

- The Constitution guarantees trade freedom and the protection of fair competition in Article 134.
- Law no. 11/1991 on combating unfair competition, modified by Law no. 298/2001.
- Law no. 21/1996 on competition.
- Law no. 31/1996 regarding the state monopoly regime.
- Law no. 143/1996 concerning state aid.

Competition Law no. 21/1996, republished in 2016, prohibits agreements that distort competition, notably those fixing prices. Initially, Romanian law, through Article 36 paragraph 1 of Law no. 15/1990, and Article 5 of Law no. 21/1996 in its original form, declared "association decisions" as prohibited, adopting and poorly translating the European text. Doctrine (Căpățână, 1993:43-44) criticized the Romanian legislator's formulation at that time, ultimately leading to the modification of Article 5, prohibiting "decisions of associations of undertakings".

Romania's competition system aims to advance consumer interests and protect the free movement of goods in a competitive economy, regulating access to markets for competitors and, to some extent, ensuring consumers 'freedom of choice and sellers' freedom from constraint.

Considering the positive and stimulating role that competition plays in economic activity, competition law must establish the necessary legal framework for its manifestation. In this regard, the Constitution of Romania itself provides that the state must ensure "freedom of trade, protection of fair competition, and the creation of a favorable framework for the exploitation of all production factors".

In the Romanian market economy, the exercise of competition constitutes a right of any economic agent. Like any right recognized and protected by law, the right to competition must be exercised in good faith, without violating the rights and freedoms of other economic agents, and in compliance with the law and good morals. Only if competition is conducted within these limits is it considered lawful or fair, and therefore, protected by law. In the case of abusive exercise of the right to competition, using means not permitted by law to attract customers, competition becomes unlawful, and as a result, it is prohibited and sanctioned. As such conduct of competition is damaging to the harmed economic agents as well as to the

entire commercial activity, Romanian legislation in this field establishes certain measures aimed at eliminating such consequences.

3. CONCEPTS AND THEORIES REGARDING COMPETITION

The almost unanimous viewpoint in the specialized literature is that "the most important regulatory force in the market economy is competition" (Moșteanu, 2000:13), representing the engine that drives and energizes economic activity (Vidican, 2022:65). Considering competition as one of the fundamental elements of the market economy, the concept of competition has emerged and developed since the beginnings of political economy as a science.

Adam Smith's Theory

The philosopher and economist Adam Smith, in his work "The Wealth of Nations, An Inquiry into the Nature and Causes of the Wealth of Nations" (http://ro.scribd.com/doc/49700422/Teoriile-concurentei), laid the foundation for the concept of competition. He formulated the famous theory of the "invisible hand", which states that from the collision of selfish particular interests of individuals, an overall balance in the market economy emerges, enabling its efficient and harmonious functioning. This equilibrium is capable of ensuring not only the gain and prosperity of individual agents but also the common good and general interest. According to A. Smith's theory, only the freedom of competition is a guarantee of progress.

The Concept of Pure and Perfect Competition

This concept was developed by L. Walras, a representative of the Lausanne School of Mathematics. His model allowed for the analysis of the price formation mechanism under conditions of free competition. According to this concept, a perfect market simultaneously meets five conditions (http://ro.scribd.com/doc/49700422/Teoriile-concurentei):

- Atomistic participants (a very large number of sellers and buyers exist).
- Homogeneous products (goods sold in these markets are absolutely identical in quality and appearance, making it indifferent to consumers from which seller they obtain the product).
- Market fluidity (free entry of new producers into the market).
- Perfect mobility of factors of production (their free movement from one industry to another).
- Market transparency (free circulation of information about all conditions of product sale on the market, including quality, quantity, price, etc.).

Presently, it can be observed that almost none of the aforementioned conditions are respected, and a market that fulfills all five principles does not exist in reality. However, the model of pure and perfect competition must be considered an axiom whose properties need not be proven or validated by reality. This model of competition cannot be a representation of reality, but it can exist as a principle. In the present day, it can serve as a theoretical basis for empirical explanations of modern market structures.

The theory of the french economist A. A. Cournot

French economist A. A. Cournot laid the foundations for the theory that explains the formation of quantities and prices in monopoly and oligopoly market situations. He examined real market models, which proved to be very different from the model proposed later by L. Walras. For this purpose, Cournot simulated various situations in which sellers, by choosing the quantity they wanted to sell, could influence their own profit as well as that of their competitors. The French neoclassical economist Bertrand criticized A. A. Cournot's approach

and proposed studying competition not through quantities but through prices (http://ro.scribd.com/doc/49700422/Teoriile-concurentei).

During the same period, the English economist Edgeworth proposed a barter model that theoretically addressed the problem of bilateral monopoly when two agents negotiate the exchange of goods they hold before the exchange takes place.

A. Marshall's Theory

Starting in 1920, influenced by the contradictory processes occurring in the economy, economists returned to the central idea that markets should be conceived in terms of pure and perfect competition.

The English economist A. Marshall, with his model of partial economic equilibrium, marked the beginning of studying specific situations of competition, introducing and defining for the first time the notion of economies of scale. Thus, it is observed that the market is not simply a space where anonymous individuals meet, without any power to influence the exchange structures, specific to the market of pure and perfect competition.

Marshall raised a problem that was widely debated by theorists, namely defining the concept of pure competition versus perfect competition (http://ro.scribd.com/doc/49700422/Teoriile-concurentei). Therefore, while the first concept refers to the existence of a large number of producers within the analyzed market, the second one presupposes the additional condition of free entry into the market. An alternative to perfect competition was practical or workable competition, a concept belonging to J. M. Clark, which attempts to objectively reflect the real situation in the economy.

Thus, competition policy should aim to achieve workable, practical competition in a normal competitive environment that stimulates the initiative of economic agents. This type of competition is considered to express the very conditions established within the European Economic Community by the Treaty of Rome in 1957. The term "workable competition" is still used in both economic and legal domains when describing market conditions within the European Union.

The Theory of Monopolistic Competition

J. Robinson and E. H. Chamberlin studied one of the forms of imperfect competition, known as monopolistic competition (http://ro.scribd.com/doc/49700422/Teoriile-concurentei). Their studies concluded that the presence of a large number of suppliers does not automatically lead to equilibrium in the competitive market. They argued that product differentiation caused by advertising and economies of scale determines prices, and oligopolistic coordination allows firms to avoid excessive competition and ensure maximum profits. The Austrian economist J. A. Schumpeter also focused his studies on monopolistic competition, meticulously analyzing market players and the profits they generate. He emphasized the role of the state in regulating markets with monopolistic competition. Schumpeter's greatest merit lies in his concept of the nature of competition.

According to Schumpeter, competition "is the driving force behind the process of creative destruction and, consequently, economic progress." He considered capitalism, by its nature, a system that radically changes its economic structure from within, continually destroying outdated elements and creating new ones.

F. Von Hajek's Theory

F. Von Hayek, the famous Austrian neoliberal, also addresses competition, but he begins by denying the concept of pure and perfect competition (http://ro.scribd.com/doc/49700422/Teoriile-concurentei). One of his arguments is that economic agents in a market do not possess information to the same extent, and their behavior is dictated by entrepreneurs' knowledge, that is, information. Von Hayek views competition as "a dynamic behavioral process rooted in the subjective perception of participants about subjective reality".

Contemporary Theories on Competition

During the second half of the 20th century, due to changes occurring in both national and international competitive environments, debates about competition gained momentum. In this period, discussions on competition mainly focused on two aspects:

- The attitude of various economists towards the economic power of firms, i.e., their ability to influence the market (other economic agents, price formation, factor mobility, etc.).
- The degree of state intervention in the exercise of freedom of competition through competition policy.

Analyzing the ideas and theories regarding these two aspects, it can be concluded that some contemporary economists adopt a critical attitude towards the economic power held by large firms. They emphasize the active role of economic agents who, instead of accepting predetermined conditions, alter them in their favor. These economists acknowledge that enterprises have the power to exploit market imperfections and to reduce or even suspend competitive play in their favor, to the detriment of current or potential competitors.

J.S. Bain's Theory of Entry Barriers

One of the most renowned economists who advocated for these ideas was J.S. Bain, a representative of the structuralist movement at the Harvard School of Economics. Bain's theory emphasizes the absence of new firms entering markets where prices are higher than average production costs (ordinarily, this situation should prompt new firms to enter the industry due to evident profit opportunities — selling price > average production cost). He assumed that firms wishing to enter the market are at a disadvantage compared to those already established, as the latter possess advantages in absolute costs, economies of scale, or product differentiation. According to Bain, these disadvantages represent significant barriers to entry into the industry. He identifies four types of barriers to entry (http://ro.scribd.com/doc/ 49700422/Teoriile-concurentei):

- Absolute advantages held by existing firms in the market.
- Product differentiation.
- Economies of scale.
- Legal barriers that hinder firm mobility.

The concept of the domination effect

Developed by F. Rerroux and J. Lhomme, representatives of the French sociological school, they studied economic power and asymmetry between dominant firms and their competitors. These two authors aim to introduce power and asymmetry phenomena into industrial relationships. They believe that some economic agents, by resorting to various forms of concentration and associations, create asymmetries within markets, thereby creating the "domination effect"(http://ro.scribd.com/doc/49700422/Teoriile-concurentei).

From the above, it follows that the concept of competition has deviated from the "absolute competition", which coincides with a market situation characterized by the presence of a large number of independent bidders (the condition of atomicity).

In this context, the concept of a competitive market has been replaced by the concept of a contestable market. This concept was first elaborated by the American economist, a representative of the Chicago school, W. Baumol, according to whom, the contestable market is a market that verifies the following two conditions:

- Stigler's condition (1982), according to which the absence of entry barriers is determined by the similarity of cost conditions for already established firms and for potential competitors.
- The situation in which potential competitors have the possibility to enter and exit the market without irrecoverable costs.

Therefore, the contestable market is a competitive market that absorbs monopoly. By elaborating the concept of a contestable market, there was a desire to change the negative attitude towards monopolies. Therefore, it was agreed that the existence of monopolies in different markets is not necessarily a negative phenomenon, provided that these monopolies do not raise entry barriers into the industry to artificially maintain their monopoly position.

However, in the 1990s, there was a certain change in direction, public unease shifting in favor of revitalizing antitrust legislation. In fact, the laissez-faire policy of the 1980s and the structuralist approach (http://ro.scribd.com/doc/49700422/Teoriile-concurentei) of the 1960s represent two extreme positions, from which theorists and practitioners seek to develop a more nuanced, pragmatic approach to market structures, reflected by evaluating specific competitive conditions on a case-by-case basis.

CONCLUSIONS

The concept of competition is fundamental in economics and refers to the competitive relationship between economic agents aiming to maximize their profit by offering similar or substitutable goods and services in the market. Competition is essential for the efficient functioning of markets and presents several key considerations (Vidican, 2023:72-77), including:

- Stimulator of economic efficiency: Competition encourages innovation, improves quality, and reduces costs to attract customers. Economic agents are motivated to be efficient in production and distribution to remain competitive.
- Benefits for consumers: Market competition leads to a greater variety of products and services, superior quality, and lower prices for consumers. Choice among different suppliers benefits consumers.
- Limiting market power: Healthy competition limits the ability of a single entity to control prices or dictate market conditions, thus protecting consumers and stimulating innovation and quality.
- Regulation and antitrust: To ensure fair competition and prevent anticompetitive behavior, governments adopt rules and antitrust laws to discourage monopolistic practices or cartels that can distort the market.
- Economic diversity: Competition maintains market diversity, allowing the entry and existence of various business sizes, from small and medium-sized enterprises to multinational corporations.
- Influence on inequality: Sometimes, competition can contribute to increasing economic inequality as larger or more powerful entities may have significant advantages in competition over smaller or weaker ones.
- Innovation and progress: Competition can stimulate innovation and technological progress, as competing companies are motivated to constantly improve their products or services to remain competitive in the market.

These considerations highlight the breadth and importance of various aspects of competition in the economy and in everyday life.

The concept of competition has evolved over time alongside economic, social, and technological changes. The evolution of this concept has been influenced by various economic theories and changes in market structures and the behavior of economic agents. Among the main stages and key aspects of the evolution of the concept of competition, we can mention:

- Perfect Competition: The initial theory of perfect competition was presented in classical economic theory. This model describes a market with many buyers and sellers, identical products, perfect information, no barriers to entry and exit, and the absence of

market power held by any single economic agent. However, this model is often considered idealized and inadequate to describe many real-world markets.

- Monopolistic Competition: The theory of monopolistic competition adds elements of differentiation of products and services, where companies attempt to make their products/services unique and create some market power through marketing and branding.
- Oligopoly and Cartels: Oligopoly describes markets dominated by a small number of large producers, and cartels represent agreements among these producers to control supply, prices, and sometimes the quality of products. Antitrust legislation has attempted to regulate and discourage anti-competitive forms of behavior.
- Globalization and Technology: Technological advancements and globalization have fundamentally changed the landscape of competition. Markets are now interconnected globally, and digital technologies have allowed the emergence of new business models and platforms that can rapidly change the nature of competition.
- Competition and Regulation: In many areas, regulations have adapted to address new challenges and changes in competition. Sometimes, regulations have been created to promote competition and prevent anti-competitive practices, while at other times to correct market inequalities or distortions.
- Digital Economy and Competition: The emergence of the digital economy has brought new challenges to the concept of competition. Large technology companies have become focal points in discussions about market power, data, and privacy, raising questions about how these entities should be regulated and monitored.

The evolution of the concept of competition continues with changes in technology, globalization, and regulation. Adapting to new economic conditions and challenges is essential to ensure healthy competition and benefits for consumers and society.

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THE LEGAL ENTITY: ACTIVE SUBJECT OF THE CRIME

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Abstract: *In recent times there was an increase in criminality among legal entities due, in particular, to economic and financial factors. In this paper I wish to find an answer to the question of whether this form of criminal liability of the legal entity is necessary and at the same time effective by strengthening the current and contemporary legislation both in our country and in other countries. Since fiscal or financial crime is in a continuous procedure of amplification, it is important to be informed about the repercussions that the criminal acts committed by legal entities attract. The Romanian legislator has seen the problem of holding the legal entity criminally liable ever since the amendment of the Old Criminal Code by Law no. 278/2006 updating our legislation with the European one. Therefore, the criminal liability of the legal entity is currently regulated in the national legislation by the Criminal Code in force. This work offers a broad vision on the nature, respectively the foundations of the legal liability of the legal entity as an active subject of the crime, on the beginnings and evolution of this institution. I consider that a clear delimitation of the form and content of the guilt is necessary when we talk about the legal entity, a clear regulation of the intention and recklessness of the legal entity in order to be able to identify a different guilt of the natural person as an organ, so that in the situation where the natural person cannot be identified or cannot be criminally liable, the criminal liability of the legal entity can be engaged. The work is structured in such a way as to offer us both a theoretical and a practical part in order to better understand the issue of criminal liability of the legal entity. The case in this paper is from the judicial practice of the Economic Crime Investigation Service within the Bihor County Police Inspectorate.*

Key words*: legal entity, active subject, crime, criminal liability*

1. Retrospective view of the legal entity

The institution of criminal liability of the legal entity is actually one new concept, outlined only at the end of the 19th century, in the common law system. Over the years, there have been several situations in which collectives/groups have faced criminal charges for the committed acts. Hugo Grotius, one of the founders of modern international law, tells us that Emperor Theodosius of Byzantium punished the city of Antioch, closing its theatres and baths and withdrawing its title of metropolis. king Septimius Severus destroyed Byzantium by taking its baths, theatres and ornaments. (Antoniu, 1996:9). In the Middle Ages, in law canonically, it was accepted that some communities can commit crimes, and therefore can be penalized, cities for example could be punished with the demolition of walls, the payment of particularly harsh fines.

In 1670, in France was issued a Royal Ordinance that instituted the criminal liability of local communities (villages, towns, fairs), also providing for the sanctions that were to be

applied in the event of a conflicting relationship. The period of application of this act ended with the outlining of the new principles of the French Revolution. (Streteanu, 1997:64).

The first regulation in accordance with the law on the criminal sanctioning of a legal entity was provided in art. 19 index 1 of the Criminal Code of 1968, (these provisions were in force from April 16, 1997 until January 31, 2014, when the Criminal Code of 1968 was repealed and replaced by the Criminal Code of 2009) but the courts and prosecutors' offices had a reluctance to such innovation in the years that followed. Thus, with the passing of the years, gradually, the courts adopted in judicial practice decisions regarding the criminal liability of the legal entity.

As we can see, the Recommendation of the Council of Europe no. (88)18 regarding the liability of companies for the commission of crimes, specifying in its first paragraph the fact that the considerable damage caused to people by a large number of crimes committed, in terms of activities that are specific to companies (Recommendation of the Council of Europe no. (88)18 regarding the liability of companies for committing crimes) we can deduce the fact that, the evolution of society, the economic and social development of states has also brought with it the increase in criminality, especially among commercial companies, for example through evasion fiscal. The provisions of the Criminal Code of 1968 regarding the legal entity were also maintained in the Criminal Code entered into force on February 1, 2014, art. 135.

2. Active subject-legal entity

With the amendment of the Criminal Code of 1968 by Law no. 278/2006 introduced art. 19 ind. 1 regarding the manner in which the legal entity is liable from a criminal point of view. This change took place against the background of the development of the expanding market economy and the appearance of a very large number of legal entities in search of obtaining as much profit as possible and as quickly as possible.

The provisions of the Criminal Code from 1968 were also maintained in the New Criminal Code (February 1, 2014), being provided for in article number 135:

"(1) The legal entity, with the exception of the state and public authorities, is criminally liable for crimes committed in the performance of the object of activity or in the interest or on behalf of the legal entity

(2) Public institutions are not criminally liable for crimes committed in the exercise of an activity that cannot be the subject of the private domain

*(3) The criminal liability of the legal entity does not exclude the criminal liability of the natural person who contributed to the commission of the same act" (*Criminal Code, art. 135 para. 1-3).

Currently, the criminal liability of the legal entity is regulated in the Criminal Code in force in Title VI, entitled Criminal liability of the legal entity (Popoviciu, 2014:156). The introduction of the way in which a legal entity is penalized within our legislation has been a particularly important topic both at the national and international level. Thus, there were a multitude of recommendations of the Council of Europe, as well as Conventions issued at the European level that sought to neutralize criminality committed through legal entities.

2.1. Analysis of the doctrine brought to the idea in which the legal entity is held criminally liable

At the doctrinal level, there are two theories regarding the criminal sanctioning of a legal entity:

- ***Theory of the fiction of the legal entity*** supports the fact that it is excluded for a legal entity to be subject to criminal sanctions, because it does not have its own entity. These legal entities are seen as entities incapable of committing crimes, they are seen as entities used by natural persons to commit crimes, so that the guilt does not belong to them, but to the natural persons who actually commit the acts. In support of this theory, several arguments were put forward, such as the lack of responsibility of the legal entity, namely the fact that the legal entity cannot feel the effects of the sanctions applied, they also affect the human factor, the individual involved in the actual activity.
- ***Theory of the reality of the legal entity*** it is also the one adopted by the national legislation in criminal matters based on the fact that the legal entity is an entity endowed with its own will and conscience. So, this theory sees the legal entity as an indisputable reality, to which specific punishments can be applied to the legal entity and which are effective in rectifying its deviant behaviour.

The criminal liability of the legal entity appears as a necessity of today's society, because the criminal phenomenon in which legal entities are involved is booming. Often, natural persons use moral ones to commit crimes or expressly constitute them in this sense in order to avoid criminal liability by exposing the legal entity constituted in this sense. The legislator also provided for this aspect, establishing the fact that a legal entity is not criminally liable if a natural person committed the same criminal act.

Based on the principle of the uniqueness of criminal liability, for the commission of criminal acts there can be only one punishment, therefore the courts are responsible for establishing the person responsible and imputing the criminal activity.

2.2. The conditions regarding the criminal liability of the legal entity

In order for a legal entity to be criminally liable, it is necessary for it to possess a legal existence, legal capacity and the crimes must be committed in the achievement of the objectives regarding its activity or be in its interest or on behalf of that legal entity. These conditions must be met cumulatively.

✓ **The living form of the legal entity**

In order to be able to talk about how a person is criminally liable, it is necessary to possess a legal existence. Speaking of legal existence, we mean the existence of civil rights and obligations that a form of organization has or is bound by. The legal entity is characterized by the existence of an independent organization, its own patrimony, legal and moral object of activity that must correspond to the global interest of society. Depending on their specifics, legal entities acquire legal existence in different ways, as they are for-profit or non-profit.

- Legal entities that have a profit-making purpose, such as firms, national companies and independent registries, agricultural societies, groups that have an economic interest acquire legal existence once they are registered with the Trade Register.
- Associations and foundations, fall under the typology of non-profit legal entities, acquire legal existence from the moment they are registered in the Register of Associations and Foundations, which can be found in the court registry, and federations from the moment they are registered

in the Register of Federations located at the court registry. The legal existence of these legal entities is lost at the time of their dissolution.

- Political parties represent legal entities of public type, (Art. 1 of Law no. 14 of 2003 on political parties, with subsequent additions and amendments) acquires legal existence from the moment a court decision remains final, regarding an admission of an application for registration. (Art. 22 of Law no. 14 of 2003). It should be noted that these legal entities can only bear some of the complementary penalties provided by the criminal legislation. They cannot be subject to dissolution or suspension of activity.
- Religious organizations can be recognized as legal entities by a decision of the Government, the loss of this quality takes place, in the same way, by a decision of the Government.

✓ **Legal capacity**

The legal capacity of the legal entity represents its ability to be criminally liable and bear the consequences/effects of its own criminal activities. A legal entity acquires criminal legal capacity when it is established in compliance with the legal provisions, to have acquired legal existence and not to be part of the category of legal entities exempted from criminal liability. Thus, according to the provisions of art. 135 of the Criminal Code, the state and public authorities are excluded from criminal liability for all crimes committed for the achievement of the activity objectives. According to paragraph number 2 of article number 135 of the Criminal Code, a public institution will never be penalized from a criminal point of view for all crimes committed in the performance of the field of activity that we cannot include in the private field.

The state cannot be the subject of criminal liability, because it is the one that prosecutes natural and legal entities who do not comply with the legal framework. It benefits from absolute and general jurisdiction, its criminal liability is exempted from sanctions regarding the acts committed in relation to the exercise of state authority, nor regarding those acts that concern the private domain of the national state. (Lascu, 2010:66). The state may be subject to civil or international sanctions. Public authorities cannot be criminally liable, because they do not have legal capacity and cannot be passive subjects of crimes. This category includes: the Parliament, the President of Romania, the Government, the local councils, the elected mayors, the prefect, the county councils, the courts, the CSM.

Public institutions do not have the capacity to be criminally sanctioned for acts committed regarding an activity that cannot be assigned to the private domain. This category includes: the National Institute of Magistracy, the Institute of Forensic Medicine named after Mina Minovici, the Institute of Forensic Expertise, the National Bank of Romania, etc.

✓ **Committing the crime in the pursuit of the objective or in the interest or on behalf of a legal entity**

The commission of the crime related to the field of activity requires that the committed acts relate directly to the field in which the legal entity operates, to the main activities it carries out in order to achieve the purpose for which it was established.

There are, however, crimes that, due to their constitutive content, cannot be the object of the criminal activity of legal entities, such as rape, incest, perjury, etc.

Committing a crime in the name of the legal entity requires that the committing person acts as a representative, having an official capacity, and without the deed being carried out for the benefit of the legal entity or in achieving its activity objective.

3. Legal entity - party to the criminal process

The objective basis for which a legal entity is criminally liable is the commission of a crime in compliance with the conditions for which a legal entity is sanctioned from the point of view of the Romanian criminal code. (Diaconu, 2010:60). In order for a legal entity to be criminally liable, on the one hand, the commission of a crime must be established, and on the other hand, the committed crime must be in a certain relationship with the legal entity, that is, be determined by the object of activity of this one. In the legislator's view, it is sufficient to establish that the crime was committed by a representative of the legal entity, by a certain employee of the same or by a person acting to fulfil his object, in his own name or for the benefit of a legal entity.

Certain problems were identified in the development of an effective sanctioning system, characterized by flexibility and diversity, adapted to the nature and specific way of organization and operation of the legal entity, which would allow the choice of the most appropriate measures to prevent and combat illegal activities committed by and through them, it concerned the doctrine and national legislations of the last decades, becoming a favourite topic for international organizations and meetings.

One of the identified obstacles to the reconciliation of institutions of criminal liability and legal entities is the criminal punishment and, in particular, the principle of (individualization) of the personality of the punishments which assume that they would oppose the application of the punishment to a person, who did not individually commit a criminal act. If the representative of a company committed the crime, the other associates who did not participate in it should not, in principle, bear the consequences (Randafir, 2021:54).

The legal entity has a general criminal responsibility for any crime in which he can participate as an author, co-author, accomplice or instigator, directly for his own act and not for the act of others. The Romanian Penal Code from 1937, also called the Penal Code of Charles II, provided for 15 safety measures, of which three of these measures could only be taken against moral persons, for example closing the premises, dissolution and suspension. The Penal Code of 1969 did not maintain the provisions of the Charles II Penal Code regarding the application of security measures for legal entities, as a result between 1969 and 2004 in our country legal entities could only be charged with civil or contravention liability, respectively the criminal liability of these moral persons could not be admitted.

In 2006, by law 278/2006, the rule of liability of the legal (moral) person was established for the first time in Romania. In doctrine three conditions have been outlined for engaging the criminal liability of the legal entity:

- **"The deed must be committed by a natural person who has the ability to engage criminally the legal entity**"(Căşuneanu, 2007:165). It is about engaging the criminal liability of the legal entity for the crimes committed by its employees, regardless of whether they are management or executive bodies.
- **"The fact to be imputable to the legal entity".** In our legislation, the principle was adopted according to which the natural person who has the ability to engage personally and the legal

entity can be anywhere in its hierarchy. Under these conditions, it is necessary to establish in which cases the acts of these persons can also be imputed to the legal entity, because when the act is committed against the legal entity, it will have the status of injured party and the act cannot be imputed to it, even if the author is an organ or his representative.

- **"It is committed in carrying out its object of activity.**"(Antoniu, 2002:164). We can see from the constitutive act of the legal entity, regardless of whether it is a person with or without patrimonial purpose, which is its object of activity, is committed in the interest of the legal entity. The legal entity, with the exception of public authorities, is liable to criminal liability for an act provided for by the criminal law if there is one of the following conditions:

- , the legal entity is guilty of failing to fulfil or improperly fulfilling the direct provisions of the laws that establish duties or prohibitions for the performance of a certain activity;
- the legal entity is guilty of carrying out an activity that does not correspond to the articles of incorporation or the declared purposes;

the act that causes or creates the danger of causing damage in considerable proportions to the person, society or the state was committed in the interest of this legal entity or was admitted, sanctioned, approved, used by the body or person empowered with management functions of the respective legal entity" (Bobos, 1975:119).

Legal entities, with the exception of public authorities, are criminally liable for crimes for the commission of which a sanction is provided for legal entities.

Talking about the connection of the criminal sanctioning of a legal entity with the criminal sanctioning of a natural person who collaborated in the commission of the same act, in the specific criminal doctrine the opinion was supported that a difference should be made according to the material element of the crime that was committed by a natural person who fulfils the function of an organ or a subordinate thereof, in the case of the first situation the rule should be cumulation and the second situation non-cumulation, or cumulation should be provided only in the case of crimes committed with the form of guilt of intention ."(Mitrache et al., 2009:195).

The Romanian law does not provide for such distinctions, so we can say that it is possible to combine the liability of the legal entity and the liability of the natural person, organ, representative or subordinate in any situation.

4. Penalties applicable to the legal entity

As the greatest threat to an individual would be the loss of freedom, an equivalent threat to the company is the loss of its profit. Since such a loss „strike" the essential purpose of the company, the fine has the potential of a preventive factor. The fine could lead the convicted entity to discipline or dismiss those responsible, who put the company at risk of the law, thus the sanction applied playing a role of filter of its human resources, this being the main punishment as far as legal entities are concerned.

The fine consists in the payment of a sum of money, it constitutes a direct threat to the patrimony of the convicted legal entity. If the legal entity, in bad faith, avoids paying the fixed fine, the court may replace the unpaid amount of the fine with the pursuit of its patrimony. The application of the fine allows the judge to individualize the punishment, taking into account the nature and seriousness of the crime committed and the damages caused, also taking into account the economic and financial situation of the legal entity.

The model according to which the amount of the fine is determined is represented by the system of fine days, according to which the amount of a fine day that is between one hundred and five thousand lei will be multiplied by the number of fine days.

Fines for legal entities are prescribed in five years.

Complementary penalties applied to the legal entity as provided for in article number 136 paragraph 3 letter a to f:

- dissolution of a legal entity
- suspension of an activity or other activities of the legal entity for a period of three months to three years
- closing certain work points of a legal entity for a period of three months to three years
- prohibition to participate in public procurement procedures for a period of one to three years
- placement under judicial supervision
- posting or publishing a conviction

5. Criminal sanctioning of the legal entity - case study

I chose to present a case from the judicial practice of the County Police Inspectorate of Bihor County - the Economic Crime Investigation Service.

On 16.06.2008, the police bodies within the Bihor County Police Inspectorate - the Economic Crime Investigation Service, self-reported the fact that SC X&Y SRL Oradea was established in March 2013 by the accused DJI and VR, the defendant DJI being the administrator. On 16.07.2013 the two defendants assigned the social shares to the defendant PRV, who later became an administrator.

The facts, according to the defendant DJI, is that in the period June - 02.08.2013 he posted several ads on the internet and in the print media for the recruitment of people for employment abroad with a work contract. Over 400 people responded to these announcements and these people were asked to pay the amount of X lei/person for psychological evaluation, money that was collected by DJs. Later, a number of 354 people who were notified by phone by the company's employees, were requested the sum of X euro/person for the transport on the route Oradea - Bremen (Germany). By promising an advantageous work contract in Germany, he misled about 300 people from whom he collected sums of money, causing damage in the total amount of approximately YYY,000 lei, meet the constitutive elements of the crime of **deception**, provided for and punished by article 244 paragraphs 1 and 2 of the Criminal Code with the application of article 35 paragraph 2 of the Criminal Code. And the fact that the sums of money obtained by DJI by committing the crime of fraud were either deposited in bank accounts opened in his name and in the name of his father DZ, or were used for the purchase of movable goods, or were transferred in cash to other persons in order to gives an appearance of legality to the income and operations, meets the constitutive elements of the crime of money laundering, an act provided for and punished by article 29 paragraph 1 letter a and b of Law 656/2002, with the application of article 38 letter a of the Criminal Code.

The facts according to the defendant VR, who participated together with the defendant DJI between June and 02.08.2013 in the posting of several announcements on the Internet and in the print media for the recruitment of people for employment abroad with a work contract. More than X00 people responded to these announcements and these people were requested to pay the sum of Y lei/person for psychological evaluation, money that was collected by DJI

Later, to a number of 354 people who were notified by phone by the company's employees, they were requested the amount of 130 euros/person for the transport on the route Oradea - Bremen (Germany). By promising an advantageous employment contract in Germany, he misled about 350 people from whom DJI collected sums of money, causing damage in the total amount of about YYY,000 lei. Defendant VR assisted Defendant DJI in raising the sums of money, also benefiting from a portion of those sums. All these meet the constitutive elements of the crime of deception, provided for and punished by article 244 paragraphs 1 and 2 of the Criminal Code with the application of article 35 paragraph 2 of the Criminal Code. And the fact that the sums of money obtained from DJI, sums of money resulting from the commission of the crime of fraud, were used for the purchase of movable goods, meets the constitutive elements of the crime of money laundering, an act provided for and punished by article 29 paragraph 1 letter c of Law 656/2002, all with the application of article 38 letter of the Criminal Code.

The facts according to the defendant PRV, who participated together with the two defendants DJI and VR in misleading the injured parties through his capacity as legal administrator of SC X&Y SRL Oradea for the last 2 weeks of activity, benefiting from the proceeds in the amount of X.600 Euro dated August 2, 2013, meets the constitutive elements of the crime of fraud, provided for and punished by article 244 paragraphs 1 and 2 of the Criminal Code with the application of article 38 paragraph 2 of the Criminal Code.

The deed committed by SC X&Y SRL Oradea, whose de jure and de facto administrators in the period June - 02.08.2013 they posted several announcements on the internet and in the print media for the recruitment of people for employment abroad with a work contract. More than Y00 people responded to these announcements and these people were asked to pay the sum of Y lei/person for psychological evaluation. Later, a number of 354 people who were notified by phone by the company's employees, were requested the sum of X euro/person for the transport on the route Oradea - Bremen (Germany). By promising an advantageous work contract in Germany, he misled approximately 350 people from whom he collected sums of money, causing damage in the total amount of approximately YYY,000 lei, meets the constitutive elements of the crime of cheating, an act provided for and punished by article 244 paragraphs 1 and 2 with the application of article 35 paragraph 2 of the Criminal Code. And the fact that the sums of money obtained by the administrators of SC X&Y SRL Oradea by committing the crime of fraud were either deposited in bank accounts, or were used for the purchase of movable goods, or were transferred in cash to other people to give an appearance of legality revenues and operations, meets the constitutive elements of the crime of money laundering, an act provided for and punished by article number 29 paragraph 1 letter a and b of Law 656/2002, with the application of article 38 letter a of the Criminal Code.

The facts according to the defendant CA, who at the age of 25, being a student, without legitimate income, as it also results from the checks carried out, having budget-conscious parents, managed from illicit incomes from the sale of telephones (from theft crimes) and cars to buy a luxury car (AUDI Q7) and a motorcycle (SUZUKI). meet the constitutive elements of the crime of money laundering, an act provided for and punished by article 29 paragraph 1 letter b and c of Law 656/2002, with the application of article 38 letter a of the Criminal Code.

CONCLUSIONS

In our current society there are many people who, in addition to their physical existence, constitute either individually or collectively in entities endowed with legal existence.

The primary thing is, however, that these legal entities seek to obtain as much profit as possible, this process can be short-lived, carried out in a relatively short time, or there may be situations in which this process can take longer, the legal entity encountering difficulties in making a profit or maybe even bankruptcy.

In these situations, various temptations, mechanisms and means may appear which, apparently for the time being, are profitable, but which may ultimately lead to the performance of activities that fall within the criminal sphere. All activities of legal entities led to criminalization by the Romanian legislator of the facts for which it is possible to engage the criminal liability of the legal entity and the conditions that make this possible.

Criminality based on the activity of legal entities is a categorical reality, in many situations it was found that legal entities were created and used by natural persons as tools or as cover masks to carry out various criminal activities.

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CRIMINAL PUNISHMENT OF JUVENILE OFFENDERS

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Abstract: *Both prevention and combating the domain of juvenile delinquency are considered special problems, because among the conditions of criminal responsibility is also the age of the perpetrator. Taking into account that minors can make more mistakes, but also the fact that they can be re-educated more easily, the legislator established a special program for sanctioning minor criminals. The punishments applied to minors who are criminally responsible were completely abandoned, they being replaced by a regime made up exclusively of educational measures, the process of their elaboration being generally inspired by Spanish, French and German law. There was a need for a special regulation of the criminal liability of minors because they do not have a complete psychophysical development, they do not have enough social experience, they have a personality that is extremely easy to influence, these being sometimes also due to the deficiencies recorded on the educational level.*

Keywords: *discernment, freedom, minor, educational measures*

1. Limits of criminal liability

Within the criminality phenomenon in general, an important segment is occupied by the criminality of minors (Popoviciu, 2014:439). Taking into account the fact that the intervention of the criminal liability of minors is necessary only when they can understand the consequences of their actions, being masters of their own will, the Romanian criminal legislator established the limits of the criminal responsibility of minor offenders, these can be found in art. 113 of the Criminal Code presented in three stages:

The first stage, up to the age of 14, in which the minor has an absolute presumption of innocence, because he is unable to understand the gravity of the acts committed in violation of the law, being considered indiscriminate. Therefore, up to this age, the minor is not criminally liable, the minority constituting a cause of attributable, under the conditions of art. 27 Criminal Code. (Toader, 2014:214)

Also, it is absolutely excluded that he knows the provisions of the criminal law. The Child Protection Commission can take measures regarding them, namely: keeping the child in his own family, specialized supervision, placement of the child in the extended or substitute family, placement of the child in a specialized residential centre.

The second stage is between the ages of 14 and 16, where there is considered to be a relative presumption of guilt. This presumption is based on the presence or absence of discernment, evaluated following psychiatric and psychological expertise ordered by the court, as well as the social investigation. Discernment represents both the mental capacity of a person to realize whether the deed has a socially dangerous character, and the capacity to manifest his will in committing it.

The third stage, between 16 and 18 years, in which the minor is criminally responsible according to the law, because he is actually presumed to have discernment, being able to understand the seriousness of the committed act. However, it is considered that this capacity is not fully formed, justifying the sanctioning regime applied, different from that of adults.

In art. 114 para. (1) The Penal Code states that minors aged between 14 and 18 shall be subject to a non-custodial measure. These measures have an action and a finality that are more effective for physical, mental or moral development.

The choice of the measure is made on the basis of an evaluation report and according to the general criteria for individualization provided for in art. 74 of the Penal Code, represented by: the seriousness of the crime, the dangerousness of the criminal, the circumstances and the way in which the crime was committed, the means used, the state of danger created, the nature and seriousness of the result produced, the reason, the purpose, the nature and frequency of the crimes, the conduct after the commission the crime, the level of education, the age, the state of health and the family and social situation of the minor.

2. Regime of non-custodial educational measures

Non-custodial educational measures are criminal law sanctions that are applied independently, when crimes are committed by minor offenders and it is desired as a result to educate or re-educate them through supervision, school or professional training (Neagu, 2019:628-629). Although the minor performs an educational measure, which is predominantly instructive in nature, this must not interfere with the principle of the child's best interest, as well as with respect for the fundamental rights and freedoms provided for in the Constitution. These are called "non-derivative" because they are carried out in freedom, more precisely in the community of which the minor is a part, wanting to strengthen his bond with the family and his involvement in the ongoing programs, activities that have the role of forming the concept of responsibility and respect for what surrounds him.

The non-custodial educational measures are, in the ascending order of their severity: civic training course, supervision, recording at weekends and daily assistance.

2.1. Civic training courses

The concept of civic training represents training and education aimed at raising awareness and assimilating positive and dominant moral and social norms in society. Mainly, the child's civic training is handled by the family and the school, being the objective of primary socialization.

Among the main causes that lead to the social maladjustment of adolescents and the adherence to anti-norms and non-values are the negative socialization groups and the educational incapacity of the parents or family disorganization. The result of these situations is reflected in the personality of teenagers, who have a negative, even antisocial orientation. They adopt a behaviour that is in contradiction with moral and civic norms, even breaking the criminal law. As an organization, the internship is divided into sessions that can be periodic or continuous, and which cannot exceed periods of 4 months. The training revolves around the crime committed, so the modules that the minor goes through are adapted according to its seriousness, while also taking into account the age and personality of the minor enrolled in the respective internship.

2.2. Oversight

The measure of supervision is suitable for minors who commit crimes during the time they were supposed to participate in school or vocational training courses, but also for those who are frequently and repeatedly absent or in the case of school dropouts. Parents, guardians, trusted persons or relatives are the persons who can take care of the implementation of the measure, without the direct involvement of the Probation Service, its role being only monitoring. Supervision is ensured both directly and indirectly, by contacting the teaching staff. Thus, although it is not necessary for the student to have certain learning results, the permanent control will motivate him in this sense, because all deviations, including absences, are reported to the Probation Service.

The measure consists in guiding and controlling the minor, for a variable period of between two and six months, being coordinated by the Probation Service, wanting to ensure that the minor participates in school courses and does not come into contact with people who can negatively influence them development.

2.3. Check-in at the end of the week

It is represented by the minor's obligation to stay at home on Saturdays and Sundays, measures that are taken over a period of between 4 and 12 weeks. The ban takes place during consecutive weekends, starting from Saturday 00:00 until Sunday 24:00, under the supervision of the adult with whom the minor lives. However, there is an exception to this measure, namely the fact that he can leave the home in case of an obligation to participate in certain programs or activities imposed by the court.

2.4. Daily assistance

Unlike the other measures, in the case of daily assistance the Probation Service is more involved, as it establishes and supervises the program that the minor must follow for a period of 3 to 6 months, which includes the schedule and conditions for carrying out activities. The daily schedule is established by mutual agreement between the minor's family and the Counsellor responsible for the case, within the Probation Service competent to exercise supervision. Although it significantly restricts the possibility of the minor and his parents to establish a daily schedule, the family can propose activities that they would like to do, but they will only be introduced if they are compatible with the purpose of the measure and can contribute to correcting the behaviour of the young person. The program is designed based on a schedule that takes into account the needs of the minor, but also the prohibitions and obligations imposed by the court. In case of disagreement, the schedule is established by the judge delegated with the execution. (Pascu, 2016:688)

The purpose of the program is the harmonious development of the minor; thus, he will focus on activities that involve social relations, organizing how to spend free time and capitalizing on his skills. (Pascu, 2016:688)

3. Regime of custodial educational measures

Custodial educational measures are applied in situations where non-custodial educational measures are not sufficient to correct the minor. They are considered measures of last resort and must be applied for a short period of time.

There are two situations in which this can be appreciated. A first situation is when the minor commits a serious crime, when the penalty for the crime committed is imprisonment of 7 years or more times life imprisonment (for example, rape, murder, robbery). The second situation, in which these measures can be applied, is when the minor committed a crime, for which an educational measure was applied to him that was executed or the execution of which began before the commission of the crime for which he is judged.

The measures can be executed before he turns 18, after he turns 18, but also before and after he turns 18, a situation in which it must be specified that, if the minor has turned 18 on the date of the sentence, the court can order the execution of the measure in the penitentiary.

Thus, these educational measures are an exception, because they remove the minor from the family environment, this procedure being justified by the seriousness of the crime he committed or the repetition of the criminal behaviour. Although he is taken from his natural environment, he is permanently maintained in contact with his family and community, also benefiting from protection and assistance from specialized staff.

The custodial educational measures, in ascending order of their severity, are:

- Internment in an educational centre, for a duration of one to 3 years
- Internment in a detention centre, for a period of 2 to 5 years, exceptionally, from 5 to 15 years, in the case of committing very serious crimes.

The purpose pursued by the execution of these measures is to reintegrate into society the person who was interned, at the same time wanting to make them responsible, in order to prevent the commission of new crimes.

3.1. Admission to an educational centre

Internment in an educational centre is considered to be the mildest custodial educational measure. (Toader, 2014:225) This measure is carried out by interning the minor in a special institute, which aims at his recovery, for a period between one and 3 years.

Educational centres are specialized institutions subordinate to the National Administration of Penitentiaries whose role is to reintegrate minors and young people who have committed criminal acts. Intended for special educational measures and with the main purpose of supporting the person in terms of appropriate physical and mental development, they benefit from minimum safety measures. The internment measure is executed in an open regime, in which minors can move unaccompanied and carry out recreational activities, along with performing work inside or outside the centre, without supervision.

A two-pronged defence strategy is applied, as each society appears against the danger of the proliferation of antisocial acts, and the minor's protection against factors that would jeopardize the proper development of his personality.

Although the execution regime is common to all interned persons, each minor has a specially designed program, individualized according to his own conduct, comprising distinct components, specifically adapted to each interned person, for a balanced psychosocial and physical development, thus responding as best as possible to his own needs. The minor is also helped by the family, involved in educational and therapeutic activities, whose role is to restructure the parent-child relationship, thus preserving and developing relationships with the external environment.

3.2. Admission to a detention centre

The detention centre can be defined as a specialized institution that deals with people admitted through social rehabilitation, more precisely with minors who have committed criminal acts. Since the centres have a guard and supervision regime, the minors are carefully monitored by staff with appropriate professional qualifications, following intensive programs of school instruction and vocational training, individualized according to each one's abilities. The centres have a specialized staff that deals with the activities of psychological and social, medical, religious and cultural assistance, but also for sports and recreational activities. They are assisted by staff with security, surveillance and escort duties. Specialized equipment is used in the centres to ensure the fulfilment of the main purpose. The difference between the educational centre and the detention centre is given by the supervision regime and intensive programs.

Two categories of fixed limits are established for determining the duration of the punishment to be applied. The court decides how much time is necessary for the minor to reintegrate socially by being admitted to a detention centre, depending on the general criteria for individualization: between 2 and 5 years, as a general rule, and between 5 and 15 years, if the punishment provided by law for the crime committed is imprisonment for 20 years or more times life imprisonment. (Pascu, 2016:701)

CONCLUSIONS

Educational measures are special criminal law sanctions, regulated to be ordered only in relation to criminally responsible minors and whose purpose is to educate or re-educate them through school and professional training and by cultivating in their consciousness respect for social values. Thus, we can say that educational measures can only be ordered in the situation where the minor has committed a crime, due to the fact that in Romanian criminal law they are regulated as consequences of criminal liability. These aim at reintegration into society, by respecting social values, with the aim of achieving a change in the conscience of the juvenile offender.

Unlike combating crime among adults, preventing and combating the phenomenon of juvenile delinquency raises special problems, determined by the characteristics of the minority status. The psychological development of the person is indicated by his age. The meaning and consequences of acts are better understood when the person has the ability to appreciate the danger that the committed act presents to social values.

In conclusion, Romanian criminal law provides for a series of punitive and recovery measures for minors who have committed criminal acts, the legislator taking into account both the vitiated judgment of young age and the need to be criminally liable, where appropriate, and the appropriate sanction.

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APPLICATION OF ROMANIAN LAW TO CRIMES COMMITTED BY ROMANIANS ABROAD

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Abstract: *This article gives a general presentation on the application of the principle of personality of the criminal law, it is structured in six essential points, presenting the definition, conditions of application, exceptions to the application, jurisdiction of the courts, special issues in the matter, as well as a brief comparison with other European legal systems regarding the application of this principle and contains a presentation of a practical case, from the jurisprudence of national courts regarding the application of Romanian criminal law to crimes committed by Romanians abroad.*

Key words*: criminal law, the jurisprudence of national courts, the principle of the personality of the criminal law*

1. General notions regarding the application of the principle of personality of the criminal law

The Criminal Code regulates the principle of the personality of the criminal law in art. 9, according to which: "(1) The Romanian criminal law applies to crimes committed outside the territory of the country by a Romanian citizen or a Romanian legal entity, if the penalty provided for by the Romanian criminal law is life imprisonment or imprisonment for more than 10 years. (2) In the other cases, the Romanian criminal law applies to crimes committed outside the territory of the country by a Romanian citizen or a Romanian legal person, if the act is also provided as a crime by the criminal law of the country where it was committed or if it was committed in a place not subject to the jurisdiction of any State."

Through this principle, the incidence of the Romanian criminal law is ensured in relation to the quality of the one who commits the crime (Popoviciu, 2014:114).

The quality of being a Romanian citizen or a Romanian legal person must be taken into account when committing the crime, because the state defends, through its consular and embassy representatives, the interests of Romanian citizens abroad. Romanian citizens must respect the laws of our country even if they are in a foreign territory. It can be stated that, in order to be held criminally liable, it is sufficient for the act to be criminalized by the Romanian criminal law, for the offender to be a Romanian citizen and for there to be no reason to prevent the initiation of the criminal action.

Starting from considerations of judicial practice and doctrine, the Romanian legislator understood to take measures to avoid the unnecessary agglomeration of the judicial bodies with cases that will not be able to be resolved in a reasonable time due to the impossibility of their implementation, namely:

- fulfilling the condition of double criminality, for crimes of lesser and medium gravity, sanctioned with sentences of up to 10 years in prison,

-*"The initiation of the criminal action is done with the prior authorization of the general prosecutor of the prosecutor's office attached to the court of appeal in whose territorial range the prosecutor's office first notified is located or, as the case may be, of the general prosecutor of the prosecutor's office attached to the High Court of Cassation and Justice."*- art. 9, para. 3, sentence 1 Criminal Code.

Therefore, the current Penal Code has introduced an additional requirement of procedure, providing that: *„the initiation of the criminal action is done with the prior authorization of the general prosecutor of the public prosecutor's office attached to the court of appeal in whose territorial range the first notified public prosecutor's office is located or, as the case may be, the general prosecutor of the public prosecutor's office attached to the high court of Cassation and Justice"*(regarding the crimes that are tried in the first instance by the supreme court), following the analysis of the opportunity to bring the suspect to criminal liability based on the Romanian criminal law or the opportunity to continue the criminal investigation and send to court a case in which probation would be difficult to administer; the criminal investigation body can, however, start the criminal investigation and carry out research documents regarding the act, can order the further criminal investigation against the suspect, but, in the absence of prior authorization, it cannot initiate the criminal action and order the referral to court .

According to art. 73 Criminal Code, if a crime that is prosecuted and judged in Romania by applying the principle of personality (art. 9 Criminal Code) was the subject of a criminal case also before foreign judicial bodies, *„the part of the punishment, as well as the duration of preventive custodial measures executed outside the territory of the country, are deducted from the duration of the punishment applied for the same crime in Romania."*. These provisions *„applies accordingly also if the penalty served is a fine"*.

This principle is also known as the principle *active nationality* being meant to complement situations not covered by the principle of territoriality. It appears regulated in most criminal legislation, based on reasons related to the close connection between Romanian citizens (natural persons or legal entities), on the one hand, and the Romanian state, on the other (Rusu, 2014:101).

2. Conditions of application

The conditions of application of the principle of personality of the criminal law are:

1. The perpetrator must be a Romanian citizen or a Romanian legal person at the time of committing the crime. By Romanian citizen is meant the natural person who, at the time of committing the crime, had Romanian citizenship, even if he also had other citizenships of other states. By Romanian legal person, it is understood, according to art. 135 Criminal Code:*"(1) The legal person, with the exception of the state and public authorities, is criminally liable for crimes committed in the pursuit of the object of activity or in the interest or on behalf of the legal person. (2) Public institutions are not criminally liable for crimes committed in the exercise of an activity that cannot be the subject of the private domain. (3) The criminal liability of the legal person does not exclude the criminal liability of the natural person who contributed to the commission of the same act."*

2. The deed committed outside the territory of the country must be prescribed as a crime both by the Romanian criminal law and by the criminal law of the country where the crime was committed, if the punishment provided by the Romanian law is at most 10 years imprisonment. The law does not specify anything about double criminality, so it can be concluded, naturally, that there is no need for formal identity between the criminalization texts. It is important to criminalize the respective act in the content of the two legislations, the form of the crime or the form of participation being irrelevant.

The addition made by the current Penal Code regarding the requirement that the crime be provided for both by the Romanian criminal law and by the criminal law of the country where it was committed, in the case of crimes with a low or medium danger, is likely to avoid the application of the criminal law Romanian citizens or Romanian legal entities who have not committed any criminal offense outside the country according to foreign law, if their acts are nevertheless provided as crimes only by Romanian criminal law (Udroiu, 2014:29).

3. The act was committed in a space that is not subject to any state jurisdiction, but is, instead, criminalized by Romanian criminal law. It follows that the deed must be committed outside the territory of Romania or in a space that is not subject to the jurisdiction of any state. In this hypothesis, we can be in the presence of only an act of execution, instigation, complicity, or in the presence of only the result of the crime or a part of this result on the territory of Romania, becoming an incident to the principle of territoriality of the criminal law according to art. 8 of the Criminal Code.

This principle is applied exclusively and unconditionally, in the manner that the act is investigated and judged by the Romanian courts, taking into account, however, when individualizing the criminal sanction, the harshness of the sanction applied by the other state in case there was such a sanction applied (Rusu, 2014:102).

3. Exceptions to the application of the principle of personality of the criminal law

The exclusive and unconditional application is not made absolutely, there are exceptions. Such an exception from the application of art. 9 Criminal Code is provided by the provisions of art. 135 para. 1 of Law no. 302/2004 on extradition, republished pursuant to art. III of Law no. 51/2021. According to this legal text: "(1) A person in respect of whom a final judgment has been issued on the territory of a member state of the Schengen area cannot be prosecuted or tried for the same acts if, in case of conviction, the judgment has been executed, it is being executed or can no longer be executed according to the law of the state that pronounced the sentence."

This provision is an application of the principle *ne bis in idem*, and therefore the prosecutor will have to order the classification, and the court the termination of the criminal process, if there is a final judgment of conviction of the same person, for the same deed by the foreign courts (Udroiu, 2014:30).

According to art. 135 para. 2 of Law no. 302/2004 the above provisions do not apply if:

"a) the acts covered by the foreign judgment were committed in whole or in part on the territory of Romania. In this case, the exception does not apply if the facts were committed in part on the territory of the member state where the judgment was rendered;

b) the facts covered by the foreign judgment constitute a crime against national security or against other essential interests of Romania;

c) the acts covered by the foreign judgment were committed by a Romanian civil servant in breach of his official duties."

Instead, according to para. 3 of the same legal text:*" (3) The exceptions mentioned in para. (2) does not apply when, for the same facts, the Member State concerned requested to take over the criminal prosecution or granted the extradition of the person in question."*

4. Application of the principle of personality of the criminal law in a case with international drug trafficking as its object

The Călărași Court heard the criminal case concerning the AV defendants sent to court for committing the crimes of: "international drug trafficking „provided by art. 3 paragraph 1 of Law no. 143/2000 and "unlawful procurement of dangerous drugs", provided by art. 2 para. 1 of Law 143/2000, all with the application of art. 38 para. 1 of the Criminal Code and ZF sent to court for committing the crimes of "international trafficking in dangerous drugs", provided by art. 3 paragraph 1 of Law 143/2000 and "possession of dangerous drugs for personal consumption", provided by art. 4 para. 1 of Law 143/2000, all with the application of art. 38 paragraph 1 Criminal Code.

The court, on the present criminal case, held that, by indictment no. 18D/P/2017 of the Prosecutor's Office attached to the ÎCCJ – DIICOT – BT Călărași, the AV defendants were sent to court for committing the crimes of: "international drug trafficking", provided by art. 3 paragraph 1 of Law no. 143/2000 and "unlawful procurement of dangerous drugs", provided by art. 2 para. 1 of Law 143/2000, all with the application of art. 38 paragraph 1 Criminal Code and ZF for committing the crimes of "international drug trafficking", provided by art. 3 paragraph 1 of Law 143/2000 and "possession of dangerous drugs for personal consumption", provided by art. 4 para. 1 of Law 143/2000, all with the application of art. 38 paragraph 1 Criminal Code.

It was essentially noted through the act of referral to the court that the defendant AV, on 11.03.2017, while she was in Italy, placed in a package the amount of 8.24 grams of cannabis, which she shipped to Romania, through an international courier company, a parcel that was received by the defendant ZF, a fact that meets the constitutive elements of the crime of "introducing dangerous drugs into the country without the right", provided by art. 3 paragraph 1 of Law 143/2000. The same defendant, during March 2017, while she was in Italy, unlawfully procured from an Italian citizen, the amount of 8.24 grams of cannabis, an act that meets the constitutive elements of the crime of "unlawful procurement of drugs of risk", provided by art. 2 para. 1 of Law 143/2000.

In the charge of the defendant ZF, it was noted that on 15.03.2017, he was detected by the police after he picked up from the headquarters of an international courier company a parcel that he received as the recipient, which contained the amount of 8.24 grams of cannabis, which he received based on a prior agreement he had with co-defendant AV, who purchased the drugs from Italy, a fact that meets the constitutive elements of the crime of "introducing drugs into the country risk „provided by art. 3 paragraph 1 of Law 143/2000. The same defendant, from the moment of receiving the package, until the moment of being caught red-handed and

opening the package, possessed the amount of 8.24 grams of cannabis, for personal consumption, a fact that meets the constitutive elements of the crime of "possession of drugs for consumption own*"*, provided by art. 4 para. 1 of Law 143/2000.

In the course of the criminal investigation, the following means of evidence were administered: ex officio referral report, accused statements, suspect statements, witness statements, flagrant report, photographic plates, technical-scientific report, evidence of introduction to the Chamber of Criminal Bodies, criminal record sheets.

The case was registered at the Călărași Court under no. 1028/116/2017, on 30.06.2017.

By the conclusion of the meeting in the council chamber dated 24.08.2017, the legality of the referral to the court with the indictment no. 18D/P/2017 of the Prosecutor's Office attached to the ÎCCJ - DIICOT - BT Călărași, the administration of the evidence and the execution of the criminal investigation documents was found, and the trial of the case regarding the defendants AV and ZF was ordered

On September 21, 2017, during the trial on the merits of the case, the two defendants told the court that they wanted the trial to be based on the simplified procedure, fully admitting the crimes, as they were retained in the indictment and based on the evidence administered in the criminal investigation phase.

Considering this recognition position of the defendants, the court considers the following factual situation:

On 13.03.2017, the judicial police bodies of the Călărași Territorial Office - the Călărași Organized Crime Service, notified themselves ex officio and started conducting investigations under the aspect of committing the crime of "introduction of dangerous drugs into the country*"*, provided by art. 3 paragraph 1 of Law 143/2000. In the referral document prepared by the judicial police bodies, it is noted that a person named AV, who resides in Italy, would send dangerous drugs, which he would hide in postal parcels, to the named ZF, who lives in the municipality of Călăraşi, the latter proceeding, after receiving the cannabis, to sell it to consumers who are part of his entourage.

Following this notification, the judicial police bodies established by specific methods that, on 15.03.2017, two days after the registration of the criminal investigation file, ZF would receive and pick up from a courier company a parcel sent by AV that would contain dangerous drugs, namely cannabis. As a consequence, an activity was organized to catch the defendant ZF in the act, who was picked up after he presented himself at the headquarters of the courier company Posta Atlassib and came into possession of a package sent from Italy by the defendant AV, in the name or.

Next, the defendant ZF was taken to the headquarters of the Călăraşi Organized Crime Service, together with the witness CVT and, in his presence, the package was opened, a circumstance in which it was found that it contained items of clothing, shoes and two mobile phones. Inside a pair of sports shoes, brand Nike, a package of wet wipes was discovered in which a plastic bag was hidden, which contained an olive-green substance with a pungent smell, a substance that was raised for expert examination, packed in a MAI type envelope, and sealed with the MAI seal no. xxx. When asked what he knew about the detected substance, the defendant ZF stated that he was a drug user, namely cannabis, and "that quantity was sent by his concubine AV, who was in Italy, to work*"*.

By the Ordinance of 15.03.2017, it was ordered that a technical-scientific assessment be carried out in the case, by a specialist from the Central Drug Analysis and Profile Laboratory, in order to establish whether the sample taken from the parcel contains psychotropic narcotic substances, subject to the established regime by Law 143/2000 and what is the mass of evidence. From the Technical-Scientific Findings Report no. xxx of 13.04.2017 of the Central Drug Analysis and Profile Laboratory, it follows that the sample in the case regarding ZF and AV consists of 8.24 grams of cannabis. Cannabis is part of Annex Table no. III to Law 143/2000, the sample contains tetrahydrocannabinol, a psychotropic substance, biosynthesized by the cannabis plant, and the amount of 7.90 grams of cannabis, remaining in the sample, after the laboratory analyses, was handed over to the criminal investigation body.

With proof no. xxx of 05.05.2017, the police introduced to the Criminal Bodies Chamber of the IGPR - DCJSCO the amount of 7.90 grams of cannabis, which is to be confiscated by the court. Being heard, the two defendants, during the criminal investigation, admitted to committing the crimes they were charged with and exposed the concrete circumstances in which they committed the facts that form the object of the investigations, in the manner in which they were brought to their attention.

During the criminal investigation, it was ordered by ordinance to extend the criminal investigation against AV regarding the commission of the crime of "unlawful procurement of dangerous drugs", provided by art. 2 para. 1 of Law no. 143/2000, considering that her act of acquiring, while she was in Italy, the amount of 8.24 grams of cannabis, meets the constitutive elements of the offense provided for by art. 2 para. 1 of Law 143/2000.

Finding that there is double criminality and considering the provisions of art. 9 of the Criminal Code, which establishes the principle of the personality of the criminal law, the General Prosecutor of the Public Prosecutor's Office attached to the High Court of Cassation and Justice was requested to authorize the initiation of criminal proceedings against the suspect AV for committing the crime of "unlawful procurement of dangerous drugs", provided by art. 2 para. 1 of Law 143/2000, act committed on the territory of Italy.

By the Ordinance of 20.06.2017 it was ordered, based on art. 9 para. 3 Criminal Code related to art. 16 para. 1 lit. e) Code of criminal procedure and art. 309 of the Criminal Procedure Code, authorizing the initiation of criminal proceedings against the suspected AV for committing the crime of "unlawful procurement of dangerous drugs", provided by art. 2 para. 1 of Law 143/2000. These confessions of the defendants are corroborated with the other evidence administered in the case, namely witness statements, photographic plates, minutes of red-handed arrest, report of technical-scientific findings.

From the statement of the witness CVT, a person criminally convicted for committing the offense provided for in art. 2 para. 1 of Law 143/2000, in a criminal case previously solved by the Directorate for the Investigation of Organized Crime and Terrorism - Călărași Territorial Office, it appears that he is the one who accompanied the defendant ZF to the courier company headquarters with the stated purpose of both to purchase part of the objects sent by the defendant AV The witness showed that he went with the defendant ZF to the headquarters of the courier company, to pick up a package sent from Italy, by his concubine, only the defendant entered the premises, and he waited for him outside, inside the car they travelled with. After the defendant took possession of the package and they were preparing to leave, they were summoned by police workers, who asked them to accompany them to the premises, in order to

carry out a control on the package picked up by the defendant, shipped from Italy, by his concubine. The witness also stated that the package in question was unsealed by police workers in the presence of him and the defendant, the circumstance in which it was found that inside a brown sports shoe, inscribed "Nike Air Max", there was a package of wet wipes, which contained inside a small transparent plastic bag, in which there were green-olive vegetable fragments.

In the case, it was decided, by the reasoned ordinance of 14.03.2017, to authorize the use of collaborators and undercover investigators, with the aim of obtaining the data and information necessary to prove the criminal activity carried out by the defendant ZF

The SC witness stated that he has known the defendant ZF for a long time and knows about him that he has been a high-risk drug user since he was 13-14 years old, since he went to Italy with his family. He confirmed that the defendant returned to the country at the end of 2016 - the beginning of 2017, by which he learned that shortly after his return to Romania, he received from his concubine, AV, a package containing hidden about 100 grams of cannabis, drugs that he partly possessed and consumed daily, but which he also sold to make money to support himself, to consuming people who were part of his entourage. The witness also specified that, through the relationship he had with the defendant ZF, he learned directly from him that, on 15.03.2017, he was going to receive from the defendant AV, located in Italy, a package in which to hide a quantity of drugs, identical to those that the defendant had sent previously. From the relations communicated by "Posta Atlassib"- Courier Rapid, the company through which the defendant AV sent the parcel containing drugs into the country, it follows that the defendant ZF is registered in the database as the recipient of the following shipments, the sender being AV: a parcel shipment dated 28.01 .2017, with the defendant AV as the sender, with the place of departure Rossolini Italy, the place of destination Călărași, consignee ZF; a parcel shipment dated 12.03.2017, with AV as the sender, with the place of departure Rossolini, Italy, the place of destination Călărași, consignee ZF

Compared to the above, it finds that, in law, the act of the defendant AV who, on 11.03.2017, while she was in Italy, placed in a package the amount of 8.24 grams of cannabis, which sent to Romania, through an international courier company, the package that was received by the defendant ZF, meets the constituent elements of the crime of "introducing dangerous drugs into the country without the right", provided by art. 3 paragraph 1 of Law 143/2000. The act of the same defendant who, during March 2017, while in Italy, unlawfully procured from an Italian citizen the amount of 8.24 grams of cannabis, meets the constituent elements of the crime of "unlawful procurement of drugs of risk", provided by art. 2 para. 1 of Law 143/2000.

The fact of the defendant ZF who, on 15.03.2017, was detected by the police after he picked up from the headquarters of an international courier company a package that he received as the recipient, which contained the amount of 8.24 grams of cannabis, which he received based on a prior agreement he had with co-defendant AV, who purchased the drugs in Italy, meets the constituent elements of the crime of "importing into the country dangerous drugs „provided by art. 3 paragraph 1 of Law 143/2000. The act of the defendant ZF, who, from the moment he received the corner, until the moment he was caught in the act and the package was opened, possessed the quantity of 8.24 grams of cannabis, for his own consumption, meets the

constitutive elements of the crime of "possession of drugs for the purpose of consumption own „provided by art. 4 para. 1 of Law 143/2000.

When individualizing the punishments for the two defendants, the court takes into account the real circumstances in which the acts were committed, the manner and circumstances of their commission, the personal circumstances, not being known to have criminal antecedents, the sincere attitude of recognition and regret, as well as the general criteria for individualizing the punishment provided by art. 72 of the previous Criminal Code.

In view of these circumstances, the court considers that the purpose of the punishment can be achieved even without its execution in detention, which is why the provisions of art. 91 of the Criminal Code, regarding the suspension of the execution of the sentence under supervision, with the defendants following that during the term of supervision they will fulfil the obligations imposed in full, representing supervision measures.

At the same time, their attention was drawn to the provisions of art. 96 Criminal Code, regarding the revocation of the suspension of the sentence under supervision.

Based on art. 16 para. 1 of Law 143/2000 ordered the special confiscation for the benefit of the state from the defendant ZF of the drugs that were the object of the crime, drugs located at the IGPR - DCJSEO Crime Body Chamber with evidence no. xxx/5.05.2017.

Based on art. 17 para. 1 of Law 143/2000 ordered the destruction of drugs seized for confiscation, with the preservation of counter-evidence (sintact.ro).

CONCLUSIONS

Criminal laws are applied, like all laws, in space on a certain territory, subject to a sovereignty, given by art. 8 Criminal Code and for a certain duration, as a result of a criminal policy, generated by economic and socio-cultural factors. From the moment of entry into force, the criminal law is mandatory for all Romanian citizens, and the crime can also be committed outside the territory of Romania, by a Romanian citizen, foreign citizen, or stateless, who lives in the country or has dual citizenship. As in all social phenomena, so also in the case of crime, respectively criminality, space is a reference factor. Criminal acts are committed in a certain space, that is, on a territory, in a given place.

The effectiveness of the criminal law is limited not only in time, but also in space, in the sense that it extends its effects to the territory over which the state exercises its sovereignty.

State sovereignty, i.e., the exercise of political power under certain conditions of independence, unity, etc. it takes place in a certain delimited geographical-political territory, in accordance with international conventions. The entire legislation elaborated and adopted by the legislative bodies of the state operates on the extent of this territory.

Referring to the criminal legislation, we will say that it, with all the means of combating criminality that it organizes, acts on a determined territory.The application of the Romanian criminal law, according to the principle of territoriality, is exclusive and unconditional, in the sense that the Romanian courts are not bound by the solutions handed down by the foreign courts, in the event that the foreign citizen or stateless person has also been tried abroad for the acts committed in Romania, the judgments of foreign courts not having res judicata authority. In the same sense, if the criminal process was terminated on the grounds that there are causes that remove the criminal nature of the deed or criminal liability, the termination solution does not prevent the perpetrator from being judged according to Romanian law.

In the case of crimes committed under the conditions of art. 8, art. 9, art. 10 or art. 11 Criminal Code, the punishment part, as well as the duration of preventive measures depriving of liberty executed outside the territory of the country are subtracted from the duration of the punishment applied for the same punishment in Romania. The rule also applies accordingly if the penalty served outside the country is a fine (Rusu, 2014:95).

The principle of the personality of the criminal law complements the principle of the territoriality of the criminal law which alone cannot cover all the situations that may arise in judicial practice in relation to the application of the Romanian criminal law in space. The concept of this principle consists in the fact that Romanian citizens and Romanian legal entities are obliged to respect the laws of our state even when they are abroad. By including the principle of personality in the package of principles governing the application of the criminal law in space, the legislator of the new Criminal Code considered that the fight against crime cannot be conceived only within the limits of the territoriality principle of the criminal law. Therefore, it was considered necessary that the requirements of the Romanian criminal law be respected also outside the territory of the country by Romanian citizens and Romanian legal entities. By stipulating the principle of personality in the Criminal Code, the Romanian legislator gave effectiveness to the Romanian criminal law beyond the borders of the country.

Based on the principle of personality, the Romanian citizen (or Romanian legal entity) who was tried for crimes committed abroad and subjected to the execution of a sentence or benefited from a cause of termination of the criminal process, can be held criminally liable by the judicial bodies in the country.

It is no less true that, if there were no principle of personality in the criminal law, in relation to crimes committed by Romanian citizens or Romanian legal entities abroad, the principle of territoriality would be inoperative, and such persons, who have disregarded the national criminal law, they could not be held criminally liable under Romanian criminal law.

To eliminate this shortcoming, the legislator of the current Criminal Code provided in art. 9 the principle of the personality of the criminal law as an expression of the guarantees granted by the Romanian Constitution to the rights of Romanian citizens. Thus, the Romanian criminal law protects Romanian citizens and Romanian legal entities, and the Constitution guarantees their rights, so that, wherever they are, it requires them to behave in accordance with the requirements of the criminal law abroad.

The reason for this principle is of a practical nature, its role being to avoid the impunity of our nationals, natural or legal persons, when they commit crimes abroad (Dobrinoiu, 2012).

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FUNDAMENTAL INSTITUTIONS OF CRIMINAL LAW

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Abstract: *The article entitled "The fundamental institutions of criminal law" presents a particularly generous and important theme. I will present the three fundamental institutions from a theoretical point of view and by exemplifying them practically through cases. These fundamental institutions are the main pillars of criminal law, around them gravitate all the other specialized institutions that form criminal law as a branch of law. Criminal law provides, as a consequence of committing crimes, specific criminal law sanctions that are applied to criminals through the most severe (legal) form of legal liability, criminal liability. Thus, in the synthesis of the essential features most often indicated by doctrine within the definition of criminal law, it can be appreciated as representing a branch of law that aims to ensure social defence (social order and discipline), carrying out a control of an individual's conduct and behaviour from society to the highest degree undesirable, through the action of preventing and combating the criminal phenomenon, establishing and regulating: the categories of acts that are assessed, at a given moment, as crimes, the corresponding (legal) liability for committing them; the specific sanctions in which this legal-criminal liability is to be realized.*

Key words*: criminal law, crime, criminal sanction, legal liability*

1. The fundamental institutions of criminal law

It is known that the notion of illicit appears in the specialized language in relation to a certain action that is permitted or not by the social order, that is, by the rules that discipline social life. It can be stated that this notion concerns a reality prior to the appearance of law.

"At a time when the social order was ensured by traditional rules (customs), or by ethical or religious rules, the attitude of disobedience, non-respect of these rules constituted an impermissible act, i.e. illicit (licere - to allow) against which the coercive measures ordered by the primitive authority that ensured order within the social group (the advice of the elders), measures that went as far as excluding the recalcitrant from the group, which was equivalent to the death penalty, the isolated individual not being able to face the difficulties of material life" (Antoniu, 2010:21). The emergence of law determined the emergence of the notion of illegality, i.e., non-compliance with the rules established by means of legal norms. The rule of law ensures the realization of the legal order, that is, an order based on the rule of law and which took over the most important regulations that ensured the social order in the past. Just as the legal order is a part of the social order, coexisting in social life with it, so the notion of illicit continues to exist alongside the notion of illegal (Antoniu, 2010:21).

"The first notion expresses a disobedience to the rules that govern the social order, and the second disobedience to the rules that govern the legal order, that is, the order that is achieved through the rules of law.

The sphere of non-permitted (illegal) acts is much larger than illegal acts, being included in this sphere also acts that are not violations of the law (for example, they are violations of the rules of politeness, coexistence, etc.). An act may be ostensibly illegal, but in essence be permissible (for example, an act committed in self-defence or necessity). If everything that is legal is also allowed, there are also exceptional situations when the apparently illegal act is still allowed" (Antoniu, 2010:22). The most serious violation of what is allowed in society forms the field of reference of criminal law.

According to a panoramic view of the legal-criminal field of reference, criminal law could be conceived as being polarized around two dimensions:

a) a material or substantial one, representing the acceptance of the criminal law definition

b) another, formal or procedural, represented by the regulations, the whole of which configures the system of criminal procedural law (the procedural side of criminal law) (Michinici-Mărculesu et al., 2017:4).

As the main instrument of criminal policy, criminal law aims to defend social values essential for the existence and development of a society against the criminal phenomenon (Michinici-Mărculesu et al., 2017:4). The defence of the behavioural order, as a social goal, belongs to the state, which will repress any individual opposition that deviates from the regulation of a certain kind of social relations. Penal law criminalizes those manifestations of persons that constitute crimes, that is, serious acts in society, antisocial manifestations with a high social danger, considered and appreciated as criminal activities.

Therefore, criminal law, from an institutional point of view, is the fundamental branch of the legal system, which includes all the legal norms regarding crime, criminal liability and criminal sanctions.

From the very definition of law as it is formulated by law theorists, its three fundamental institutions emerge:

- the crime
- criminal liability
- criminal sanctions.

2. The crime

The first of the fundamental institutions of criminal law has an express definition contained in the provisions of the Criminal Code.

According to art. 15 para. 1 Criminal Code "The crime is the deed committed by the criminal law, committed with guilt, unjustified and imputable to the person who committed it". This definition abandons the material concept of the crime and realizes the orientation towards the formal concept of the crime.

The definition of the crime as it is formulated by the Romanian legislator presents four essential features at first glance:

a) First of all, for an act to be a crime, it must be prescribed by the criminal law.

The existence of typicality indicates that a certain deed presents a danger to society, so that it must be criminalized, all its recipients must know it and adopt a behaviour according to it (Rinceanu, 2010:20). Otherwise, they would be subject to the rigors of the criminal law, which provide for the application of sanctions.

The typicality of the act forms a necessary condition.

From the "provision of the act in the criminal law" the objective side and the subjective side of the content of the crime can be deduced.

b) Secondly, from the definition of the crime, the characteristic regarding the attitude of the perpetrator is deduced, consisting of guilt.

The act provided by the criminal law and committed by a person through action or inaction is not a simple mechanical act, but a conscious manifestation.

The facts are externalizations of the complex mental processes that occurred in the subject, starting from the processing of sensations and inner impulses to the formation of the reasons for action or inaction, to the specification of the goal, the adoption of the decision, its transmission to the effector organ, and ending with the correction of the volitional act (the reverse connection) to the extent of the realization of the act of will (Vasiliu, 1972:88).

All the while, the subject has the representation of how his action or inaction is unfolding and has the opportunity to direct his will.

Only by using these skills does the person manifest himself consciously, and the crime can only be conceived as a conscious manifestation of the person.

To the extent that the person does not manifest in this way, for example in the case of reflex acts or subconscious impulses or in any other situations when the person's behaviour is not conscious, we are not faced with an action or inaction likely to attract the incidence of the criminal law.

c) Thirdly, the act must be unjustified.

This means that the act must be illegal.

Indeed, there are situations in which the deed, although it is prohibited by law, does not have an illegal character.

It is about those situations in which the law allows and does not sanction the commission of an act provided for by the criminal law. This happens when one of the justifying causes is incident in a case: self-defence, state of necessity, exercise of a right or fulfilment of an obligation, consent of the injured person

d) Fourthly, the deed must be imputable to the person who committed it.

This essential feature of the crime is the foundation of the principle of subjective responsibility in criminal law.

In order for a person to be liable from a criminal point of view, it is necessary that the deed he committed can be blamed on him, that is, he had the representation of the deed and its consequences and the opportunity to act according to the law, but he did not.

Attributability is removed in the presence of the causes of non-attributable: physical coercion, moral coercion, non-imputable excess, minority of the perpetrator, irresponsibility, intoxication, error, fortuitous event.

The essential features of the crime are not confused with the content of the crime.

The content of the offense consists of four elements:

1. The subjects of the crime are the natural or legal persons who are involved in the criminal activity:

- either actively, in which case they are called active subjects of the crime
- either passively, by bearing the consequences of the crime, in which case they are called passive subjects.

2. The object of the crime consists of social values and the set of relationships that arise around these values that are protected by law and that are damaged by committing the crime.

3. The objective side of the crime which in turn consists of the material element, i.e., the action or inaction prohibited by the criminal law, i.e., the criminal act. Only the external actions of the person, seen as manifestations of will, as concrete acts aimed at achieving a goal, do not constitute an act in the sense of the criminal law. People's thoughts or the mere outward expression of the intention to commit a crime will never have this criminal character.

Only from the moment when a person's harmful plans have materialized, in actions or inactions likely to produce socially dangerous consequences, we can speak of the existence of a deed in the sense of the criminal law (Boroi, 2010:102). By the notion of deed is meant not only the external activity of man, but also the result produced by this activity, i.e., the change it produced or could produce in the surrounding world (Vasiliu, 1972:89).

The act susceptible of criminal consequences is regarded by the law in the complex of its dynamic process, as an energy in action with an obvious causal aptitude. So, the causal relationship between the deed and the socially dangerous consequence produced is also part of the objective side of the crime. Finally, the notion of deed in the sense of criminal law presupposes an action or an inaction of man, committed either directly or by means of another energy set in motion by man. The requirement is explainable because criminal law regulates social relations, that is, relations that are born between people. It follows from this that any other source of changes in the external world (such as: natural events, animal reactions) does not fall within the scope of criminal acts (Vasiliu, 1972:89).

4. The subjective side of the crime includes guilt as the mental attitude of the criminal before the crime and the consequences of the crime (Pașca, 2012:174). In order for a crime to exist, it is necessary that the deed provided for by the criminal law be committed with guilt.

This presupposes that the subject has acted with that mental position on which the law conditions the existence of the crime:

- intention
- blame
- intention exceeded.

Guilt presupposes a certain evaluation in the conscience of the subject of the character of the action or inaction and its consequences as provided by the criminal law. Only to the extent that the deed is committed with guilt, it can be said with grounds that it reflects the personality of the offender, and the criminal sanction will effectively contribute to his correction.

3. Criminal sanctions

The socially dangerous act constitutes a crime only if the law provides for the application of a criminal sanction. The criminal sanction constitutes, therefore, the obvious proof of the existence of a generic social danger of the deed, and the limits of the sanction represent the measure of this danger.

An antisocial manifestation, no matter how embarrassing, does not have the character of a crime if the criminal law does not incriminate it and does not punish it (Popoviciu, 2014:345).

With a more synthetic, but comprehensive formula, it can be said that the criminal sanction is the sanction specific to criminal law, a sanction that the judge applies to the one who disregards a rule of criminal law (Vasiliu, 1972:383). As a legal institution, sanctions are a creation of positive law that exists only when the law provides for it (nulla poem sine lege).

From an institutional point of view, criminal sanctions constitute the third basic institution of criminal law, along with crime and criminal liability. As a means of achieving the purpose of the criminal law through coercive measures, criminal sanctions represent the negative assessment of the act committed by the criminal, as well as the equivalent of the degree of social danger of the respective crime (Vasiliu, 1972:383).

The legislator considers one of the following sanctions in terms of criminal sanctions:

- the punishments
- safety measures
- educational measures.

Penalties are those measures provided for in Title III of the criminal code and which include penalties that apply to the natural person and penalties that apply to the legal person.

The penalties are:

- main punishments
- complementary punishments and
- accessory penalties.

The safety measures, like the educational measures applicable to the minor, have a protective nature (preventive measures) and are not included in the notion of punishment. However, when the term criminal sanction or criminal law sanction is used, both punishments and safety measures and educational measures are understood.

As far as security measures are concerned, the basis for taking them is the state of danger of the person who has committed an act provided for by the criminal law, a state that must be removed (Duvac et al., 2019:678). Committing a crime or an act provided for by the criminal law is not proof that the perpetrator presents a state of danger, this is only a symptom that shows that he can be dangerous and at the same time the starting point of this state. The state of danger must be proven in order to impose a safety measure against a perpetrator.

Safety measures are those measures provided for in Title IV of the Criminal Code and they are:

"a) obligation to medical treatment;

b) medical hospitalization;

c) prohibition of occupying a position or exercising a profession;

d) special confiscation.

e) extended confiscation".

In the science of criminal law, it has become indisputable that minor criminals have to receive, first of all, through measures with a predominantly educational content, and not through measures with an accentuated repressive character, such as punishments.

That is why, in order to respond to the needs of the fight against juvenile delinquency, a special sanctioning system consisting exclusively of educational measures was regulated.

Within this system, the following educational measures were instituted, in relation to the needs of the re-education of the minor offender:

- non-custodial educational measures
- custodial educational measures.

"The non-custodial educational measures are:
a) civic training;
b) supervision;
c) registration at the weekend;
d) daily assistance.
The custodial educational measures are:
a) incarceration in an educational centre;
b) incarceration in a detention centre".

4. Criminal liability

The institution of criminal liability is imposed by the need to ensure a full match between the seriousness of the act and the responsibility of the perpetrator.The characteristics it presents and the legal and social function it fulfils make criminal liability an important legal institution, with its own configuration and features.

Criminal responsibility has a deep social content and reflects the state's concern to hold accountable those who have committed crimes (Mircea, 1987:11).

Criminal liability as a form of legal liability consists in the offender's obligation to bear the consequences (main penalties, accessory and complementary penalties, safety measures, educational measures) of the offense committed. This obligation is correlative to the state's right to prosecute and sanction the perpetrator.

Both, the right and the obligation, make up the content of the criminal legal report.

Criminal liability, like any type of liability, determines the requirement to bear the consequences of an act that does not comply with the rules of conduct and consists in the obligation of a person who has committed an act provided for by the criminal law, to suffer the consequences of the act committed, namely to submit to criminal sanctions (Vasiliu, 1972:500).

Criminal liability is regulated in the Romanian Criminal Code in several provisions (Neagu, 2021:299):

- According to art. 15 para. 2 Criminal Code: "the offense is the only basis for criminal liability". This aspect means that criminal liability can only arise if a crime has been committed.

Other regulations regarding the offense in the Criminal Code are also found in the case of minors, when it is a cause of non-attributability, in the case of competition between the causes of aggravation and those of mitigation, when the criminal liability of the minor is regulated, or the criminal liability of the person legal, or in Title VII of the General Part of the Criminal Code where "Causes that remove criminal liability" are provided (Neagu, 2021:299).

5. Criminal liability as a result of the commission of a crime

Felony is the most serious violation of the law. This cannot go unpunished, which is why the law provides for the penalties that apply to each individual crime. In order to be able to hold the perpetrator accountable, it is necessary for him to commit the act with guilt.

Guilt presupposes, first of all, a voluntary action or omission of the subject. If the subject did not want the act committed, it cannot be imputed to him, because there is no guilt and therefore the incidence of the criminal law is excluded.

I will exemplify with a case in which the data was modified to be adapted to the theme:

Based on art. 233 Criminal Code with the application of art. 38 para. 1 Criminal Code, the defendant BA was sentenced to 6 years in prison (injured party BA).

Based on art. 233 of the Criminal Code, with the application of art. 38 para. 1 Criminal Code, the same defendant was sentenced to 8 years and 6 months in prison (injured party TA).

Thus, the court held:

1. In the evening of 03.06.2021 at around 22.30, while the injured party BA was moving towards her home, on AF str. near the pedestrian crossing, she was accosted by the defendant, who scratched her arms and in the area chest, trying to snatch her purse, but the injured party resisted and managed to escape. The defendant followed the injured party and reached her on street B. where he snatched her purse containing a mobile phone and a wallet containing the sum of 2000 lei, a Raiffeisen Bank card and an identity card.

During the same evening, the injured party filed a complaint with the Oradea Municipal Police. From the conclusions of the medico-legal report, it follows that the injured party suffered post-traumatic injuries that required 4 days of medical care to heal.

On 07/06/2021, during the presentation for recognition from the group, carried out by the police, in the presence of assisting witnesses, the injured party indicated the defendant BA, as the one who, on the evening of 06/03/2021, dispossessed her by violence of her possessions. In the minutes concluded on this occasion, signed by all parties, in the presence of the defender, without any objection, the statement of the injured party BA was recorded, as follows: "the person who attacked me by snatching my bag of goods, is definitely the one from position 4 -a from the group. I am 100% that this is the author".

2. On the night of 3.12.2021 at around 11:20 p.m., the injured party TA went to the home on Transylvania Street in the municipality of Oradea, entered the staircase of the building and then the elevator, intending to go up to the 7th floor.

As soon as she got into the elevator, the defendant came in after her and grabbed her by the neck, hit her several times in the face and head, after which he snatched her purse containing a mobile phone, the purse in which she had the amount of 2500 lei and an identity card. The injured party, following the blows received, suffered injuries (his jaw was broken), being hospitalized between 4.12.2021-16.12.2021 at the Surgery Clinic of the Oradea County Emergency Clinical Hospital.

On 04.12.2021, the injured party filed a complaint with the Oradea Municipal Police.

From the conclusions of the forensic report, it follows that the injured party suffered post-traumatic injuries that required 70 days of medical care to heal.

On 25.07.2022, on the occasion of the presentation for recognition from the group, carried out by the police bodies, in the presence of assistant witnesses, the injured party indicated the defendant BA, as the one who entered with her on the evening of 3.12.2021 in the elevator of the building, and after the elevator started to move, he hit her several times and stole her purse containing several goods.

In the minutes concluded on this occasion, signed by all parties, without any objection, the statement of the injured party TA was recorded, as follows: "the person from the fourth position in the group, from left to right, is the person who on 03.12. 2021 at around 11:20 p.m. he entered the elevator of the Bxx building on Transylvania Street no. xx and after he started moving, he punched me several times and stripped me of a purse in which I had several goods"

The injured party heard, in the public hearing on 09.11.2022, indicated the defendant BA as the person who attacked her in the elevator of the building on the night of 3.12.2021. The guilt of the defendant is retained, from the evidence administered in the case, following which the sanction provided for by law will be applied as a result of the criminal liability.

CONCLUSIONS

From the very definition of law as it is formulated by law theorists, its three fundamental institutions emerge:

- the crime
- criminal liability
- criminal sanctions.

The first of the fundamental institutions of criminal law has an express definition contained in the provisions of the Criminal Code. The institution of criminal liability is imposed by the need to ensure a full match between the seriousness of the act and the responsibility of the perpetrator. The institution of criminal sanctions complements the application of the Romanian criminal law by committing crimes.

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BALLISTIC INTERPRETATION OF GUNSHOT TRACKS

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Abstract: *This article deals with Ballistic interpretation of gunshot traces by presenting the main theoretical and practical aspects, which are related to forensic ballistics, firearms, traces left by them and some elements of forensic tactics and technique.*

Keywords: *firearms, judicial ballistics, gunshot marks, ballistics expertise.*

1. The main tracks

The category of main traces includes: the weapon found at the crime scene, bullets, cartridges, burned tubes, perforations (bullet entry and exit holes), blind channels (penetration traces) and surface traces of ricochets.

a) The weapon found at the scene

In the situation where the crime was committed with a firearm, it is necessary to search for that weapon with which the crime was committed, because it is one of the main means of evidence. After the weapon is found, it will be identified with the help of burnt tubes and bullets, it will be fixed by photography, and then a description will be drawn up in the report. The preliminary examination of the weapon aims to emphasize fingerprints on the bed, trigger and trigger guard, on the barrel or sleeve of the bolt, in the case of pistols, on the magazine and on the cartridges in it, including hairs, blood stains and particles of soil and paint. It must be established whether the weapon has been blocked or not, because in this way the possibility of suicide can be excluded, and if the weapon has all the components, these things must be specified in the report.

Figure 1. The weapon found at the scene (.9mm Glock pistol) and the burnt tubes resulting from the shooting

b) The bullets

They will be looked for everywhere at the crime scene, on the floor or embedded in the floor, in the walls and ceiling, in the door or window frame, in the furniture, in the ground or on the ground, in the grass, in the corpse and in its clothing.

c) Burnt tubes

They will be examined to determine the marks of the recent shooting. In view of the examination, the fresh lustre of the metal and the smell of unburned powder will be followed, and in the case of hunting weapons, the muzzle will be analysed, this being proof of the fact that a hunting weapon was used. If the cartridge was self-made, with the help of graphic expertise, the person who made it can be identified. Burnt tubes will be preserved in the condition from which they were picked up, they will not be cleaned or deleted, being packed separately, specifying the date and place of their finding.

d) Perforations (bullet entry and exit holes)

The perforations are composed of inlet and outlet holes if the lens through which it penetrated is thin, and if the lens is thick the perforation will contain the channel between the two holes in addition to the inlet and outlet holes. The entrance and exit holes are differentiated by specific characteristics on the basis of which the direction of penetration of the bullet and the angle at which it penetrated will be determined. At the entrance holes will be found the friction ring, which is formed by the combustion products of the powder, the metal particles of the bullet and the grease deposits.

It is possible for the bullet to fragment or deform as it passes through the body, resulting in tissue and skin tearing in a manner different from that of an intact projectile. If the projectile penetrates the stomach, heart or other organs that are consistent with water it will tear these organs apart. In these cases, the exit hole will be very large, sometimes it may even be missing due to the explosion of the organ.

If the bullet passes through the glass, it will create a larger exit hole than the entry hole because the shards from the glassy material are pushed forward. The outlet in this case has a conical shape. Similar to these characteristics are those of the exit hole in a cranial bone.

Figure 2. Entrance through a glass pane

If the bullet passes through wood, the exit hole will have similar characteristics to the exit hole. If the wood is dry the exit hole will be larger than the bullet calibre and if the wood is green or wet the exit hole will be smaller than the bullet diameter. In a thin, flat board, the exit hole will have splinters and in the case of sheet metal, the edges of the exit hole will fold in the direction of bullet entry.

The Case of the Perla Hairdresser Massacre

On March 5, 2012 at 5:30 p.m. in the Perla salon on Ștefan cel Mare Road in Sector 2, Bucharest, Gheorghe Vlădan went armed to his wife's workplace and started shooting. As a result of the attack, two people died, six others were injured.

At 2 p.m. the attacker came to the salon, where after arguing with his wife, he threatened her that he would take revenge on her. Vlădan returned to the salon with a Glock semi-automatic pistol, calibre 9 mm, which he legally owned as a police officer. At 17:30, after a short talk with his wife, Felicia, and Mariana Bendre, the cashier of the salon, he opened fire, shooting 8 people. He unloaded all the ammunition from the gun's magazine, 11 bullets in total, one of which was fired through the window, which was later recovered by forensics from a children's playground. Vladan took out his Glock pistol and shot his wife in the chest, then fired 3 bullets into the cashier, one in the head and two in the chest. Later, he also shot three customers of the salon, two customers of the barbershop and an employee of the salon. Of the eight people who were shot, the cashier who was shot in the head died on the spot, and the attacker's wife, who was wounded in the chest area, died at the hospital. Three injured people each arrived at the Elias and Floareasca hospitals. A 32-year-old woman who was shot in the right thigh, a 56-year-old man who was shot in the left knee (the bullet remained in the leg) and another woman in her 40s arrived at Elias Hospital years old who had both calves pierced by a bullet, which left the body but which fractured the tibia. A 56-year-old man and a 54-year-old woman arrived at the Floreasca hospital, both with gunshot wounds to the chest and a 56-year-old man shot in the knee.

After unloading the charger, Vlădan left the hair salon and hid in a Transelectrica headquarters, where he was asked by the institution guard what happened, he replied: "Nothing happened, everything is over, you can call the Police. I did something stupid." Two police officers arrived at the scene and noticed that several people were injured and a man was armed, later disarming him, immobilizing him and handcuffing him. After the attacker was interrogated by investigators at the Transelectrica headquarters, he was sent to the prosecutor's office for hearings, and then to the National Institute of Forensic Medicine, where his biological samples were collected. On February 12, 2013, Gheorghe Vlădan was tried and sentenced to life imprisonment.

Figure 3. The entry hole through the hood of a car (metal)

Figure 4. Entrance hole through a wooden board

e) Blind canals (penetration marks).

They feature a large inlet and a plugged channel. The distinction between penetration marks and puncture marks is that in the case of penetration marks, the bullet always remains in the object hit. The entrance holes of the blind canals show the same characteristics as the perforation marks.

Depending on the density of the material penetrated, the angle of impact of the obstacle and the kinetic force, the shape of the entrance holes is determined. In the case of materials such as brick, concrete, porcelain, pronounced breaks and even the breaking of the object will be created, and in the case of plastic materials, wood, processed leather, metal, holes with a diameter close to the diameter of the projectile will be created. If the materials are elastic the inlet and channel will be difficult to see.

f) Bounce marks.

Ricochet is a repulsion of the projectile from the surface of an object, due to the small angle of incidence. Repulsions are greater the lower the density of the object, and the distance the bullet travels after ricocheting is greater the smaller the angle of ricochet and the higher the bullet's speed. These traces are in the form of a groove that presents a final turn to the left or to the right, depending on the rotational movement of the bullet. The ricochet leads to the modification of the trajectory of the projectile, thereby making it possible to hit objects or people who were initially on a different firing trajectory. This must be taken into account by judicial authorities when determining the place of origin and direction.

2. Expertise of the main traces

By the examination of the main traces of a shot we mean the research of the entrance and exit holes, and the channels formed by the human body or by the objects with which the bullet comes into contact.

The first question that arises when examining the holes is whether or not the holes are due to a firearm. To answer this question, it will be necessary to study the general characteristics of the hole at the entrance of the bullet, these characteristics being different depending on the type of object in which it was shot. The shape of the entrance hole must be taken into account, because it can be quite easily confused with the traces of other objects that can pierce, therefore certain individual characteristics will be taken into account, which have features close to the secondary factors of shooting: rings of friction and metallization, traces of soot, tattoos, burns and tears caused by gases.

If there are several entrances and exit holes, it is necessary to clarify certain aspects regarding the type of bullet or bullets fired, the weapon or weapons used, the direction and distance of the shot. These aspects will be clarified with the help of the comparative examination between the traces in the case and the traces of the experimental shots, the latter being carried out with weapons similar to the one found at the scene.

CONCLUSIONS

The ballistic-judicial expertise is a part of the forensic ballistics that deals with the identification of the type of weapon, the calibre, the model of the weapon, as well as the related ammunition, in the case of committing a crime in which such a weapon is also

involved. Ballistics expertise is ordered, either by the criminal investigation body, or ex officio by the court, according to the Code of Criminal Procedure.
In order to carry out the ballistic interpretation of gunshot traces, the mastery of specialized knowledge in both the legal and forensic fields is required, as well as general knowledge in multiple fields of technique and science.

The most important part of the study of firearms is the one related to ballistics, because it deals with the identification of the weapons and the means used.
This expertise is carried out by an expert, who is part of specialized laboratories or Institutes, and it is the person who carries out the expertise and who is not responsible for it in his own name, but the laboratory or institute of which he is a part.

The most important part of the forensic ballistics' examination takes place in the forensic laboratories where the expert is assigned to perform it. There are cases when the expert does not have enough information and data, then he will have to turn to the criminal prosecution body, which is obliged to provide the expert with the data at his disposal so that he can carry out the expertise in the most efficient way.

With the help of some laboratory techniques, through comparative analyses, specific methods and going over certain steps such as checking the integrity of the packaging and the seals applied to the weapons received from the criminal investigation body, the contents of the packaging with the mentions contained in the act by which the expertise was ordered, studying the questions addressed to the expert, careful research of the materials, in order to establish the nature and order of the examinations to be carried out and the methods to be used, the carrying out of experimental firings, the separate examination of the marks in dispute and of the comparison models, the comparative examination, and at the end formulating the conclusions, the expert performs the expertise.

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