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THE MAIN ROLE OF THE INTERNATIONAL TRIBUNAL IN ACCORDANCE WITH PREVENTING AND REPRESSING INTERNATIONAL CRIMES

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Astract

In international criminal law, a great role had the Military Courts at Nuremberg and Tokyo, which on the one hand, contributed decisively in their judgments to the shaping of important institutions of international criminal responsibility of individuals as agents of the State, and on the other hand, have demonstrated the need for permanent and strong international criminal jurisdictions.

Keywords: *international crime, International Criminal Court, sentences.*

Introduction

Thus, their judgments were the perfect solution to punish criminals regardless of their citizenship and place of perpetrating international crimes that laid the groundwork for an institutionalized system of prevention and repression of the most serious international crimes - war crimes. However, these ad hoc international courts, have, first of all, a punitive character and then a preventive one for international criminal responsibility.

Considering the serious situations that threaten international peace and security in different countries or even parts of the world, the solution was the establishment of a permanent international criminal jurisdiction, which would have that extra-national and non-territorial character, the latter being an "obstacle" in committing the crimes, because the possibility of equivalence from criminal liability shall be reduced to the maximum.

Sentences of the International Criminal Court

International Criminal Court (ICC) sentences, as permanent specialized court complementary to jurisdiction with national courts, are designed to play a role in the prevention and suppression for the worst international infractions (international crimes).

This justification can be found in the Act of Incorporation - the Rome Statute – in the Preamble, specifying that individuals (including women and children) have suffered from the atrocities of the 20th century, which have encroached on the peace, security and wellness of all mankind, that the punishment of the perpetrators of international crimes helps prevent these acts and that it is incumbent on every State to exercise its criminal jurisdiction over all persons responsible for perpetrating international crimes.

In the Rome Statute is set out an exhaustive list of culpable acts of greater severity which constitutes international crimes and is punishable in accordance with the Act, such as genocide, crimes against humanity, war crimes, and crime of aggression.[1]

[1] Art. 51 in the Rome Statute.

For example, the first act of the jurisdiction of the ICC, adopted on March 14, 2012 by the Attorney Thomas Lubanga Dyilo[2], envisages the criminal liability to the group leader of rebellion of the Congolese Patriots Union in the Democratic Republic of Congo, for actions taken during the period of September 2002 - august 2003, during the armed conflict in Ituri region between different ethnic (at least three) groups. ICC sentence refers only to a single international crime, in which the defendant was charged and found guilty, a part of the category of war crimes, conscription and enlistment of children under the age of 15, into armed forces or groups or using them to active participation in hostilities.[3]

The ICC has shown countless times, expressly in the sentence (paragraph 896 for example) that examined the actions of the defendant only in the recruitment or enrolment of children under 15 years, not making the pronouncement to other offences, such as torture or rape and sexual slavery, even if the subjects claimed to be victims of these and the existing material evidence substantiated the alleged violations, because the Prosecutor had not included the accusations, The Court, therefore, in the light of art. 74 of the Statute being unable to rule on the facts and circumstances which were not in the charges presented by the Prosecutor's Office.

Therefore, the first international crime over which the ICC has adopted the sentence of condemnation is the recruitment or enlistment of children under the age of 15 years into armed forces or groups or using them to effective participation in hostilities.

ICC made a statement that these children are vulnerable and have suffered from armed conflict (paragraph 605 for example) the recruitment or enlistment under the minimum age of 15 years in the forces and/or armed groups having long-term adverse repercussions and not predictable for the future of the adults' psycho-emotional state.

Punishing international crimes whose victims are children, fall into the insurance standards, the promotion of international peace and security, standards supported by world States at the broadest scale.

By this sentence, the ICC has done a delimitation of the types of conduct that constitute the international crime objectively analysed, thus, the recruitment in armed forces or groups of children under 15 years of age, constitute forced inclusion of the subjects in the armed groups, and enrolment in the armed groups include assuming (intending voluntarily to be part of the armed forces).

Therefore, the recruitment has a coercive character and enrolment – a voluntary character (paragraph 607, 608 of the Sentence).

However, in the light of the crime analysis, the Court found that there are differences between the notions of recruitment and enrolment (paragraph 618), children are vulnerable and easily influenced, as the character is apparent, and adults are responsible for knowingly enlisting the children under the age of 15 years on armed staff.

As such, the consent of children enrolled is not a legal consent in accordance with the rules recognized by international law in general, as well as of international humanitarian law and international human rights law in particular.

Paragraph 622 of the Sentence shows that the use of children in hostilities requires the participation, in addition to direct participation in combat and the active participation in the fighting, as well as adjacent activities, investigation, intelligence agents, couriers, checkpoints, diversions.

In accordance with paragraphs 870-872 of the Sentence, children under 18 years (mostly aged 12 years old, being discovered cases of participation of children aged 8-11 years) have been trained in specialized military units of small (approximately 45 members) tasked with ensuring the security of the subjects of the Supreme high command.

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[2] CPI, Situation in Congo Democrat Republic, by Attorney Thomas Lubanga Dyilo, decision on March 14, 2012, published to http://www.icc-cpi.int/iccdocs/doc/doc137938.pdf (accesed on 30.03.2012).

[3] Art. 8 ln. 2 let. e pt. VII of the Rome Statute.

The children from Kadogo units were personal guardians of military generals, being instructed to accompany members of commandment, to oversee their security in official duties, but also outside of the exercise. There are also the situations that the military units included the teenage girls of 13 and 14 years old, who "out of military service obligations" were obliged to engage in sexual relations with members of staff (paragraph 874 from the Sentence).

Although in the 624 pages of sentence, ICC does not say expressly and clearly the prevention and repression of the entire international crimes, the prevention and repression of international crimes finds its reflection in analysing the subject of crime and punishable conduct on the part of the International Criminal Court.[4]

The establishment and the work of the ICC itself demonstrates that prevention and suppression of international crime, of increased gravity such as war crimes, where the victim is a special-topic – the child, is one of the fundamental functions of international criminal jurisdiction.

This function acquires a special significance concerning the ICC, given the fact that the ICC is the only court of criminal jurisdiction in the world at the present time. Of course, the ad-hoc international criminal tribunals contributed substantially to the promotion and realization of the function of repression and prevention of the most serious crimes worldwide, but utterly ICC has its role in building an international society conscious of the irreversible consequences of international crimes.

Through ICC pronouncement and subsequent implementation of the provisions of the conviction (14 years imprisonment), they based legally and praxeologically the function of repression and prevention of international crimes, demonstrating an active role of the ICC as an International umpire, and not one latent, as some jurists and doctrinal people have assigned until recently.

A particular role for prevention and repression of crimes was attributed to international judicial laws handed down by ad-hoc courts of criminal international jurisdiction.

Thus, by resolution 827 of the UN Security Council of 25 May 1993[5] stipulates that the establishment of the International Criminal Tribunal for the former Yugoslavia (ICTIu) aims to stop committing such crimes and prosecuting persons guilty of committing them. Thus, art. 1 of the Statute of ICTIu provides that it has jurisdiction to prosecute persons responsible for serious violations of international humanitarian law committed in the territory of the former Yugoslavia since 1991.[6]

Thus, in this optic, the documents to be handed down by ICTIu highlight the repression of atrocities committed by persons who, in a secondary way point to general deterrence (addressed to an undeterminable abstract subject) and special prevention (addressed to a determinable subject in the conflict zone).

For instance, in the judgment of 6 September 2011[7] pronounced by ICTIu, the Serbian General, Chief of the General staff of the Yugoslav Army, Momčilo Perišic was found guilty of committing crimes during the siege of Sarajevo, favouring the crimes in Zagreb, instigating and assisting the serious crimes committed in Srebrenica (excepting the crime of mass extermination of Bosnian Muslim population).

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[4] D. Sârcu, *Rolul actului jurisdicţional internaţional in cultură şi civilizaţie românească*, 2013, nr. 1-12, p. 23

[5]Resolution CS ONU no. 827, adopted at 25 May 1993, published on http://www.icty.org/x/file/Legal%20Library/Statute/statut 827_1993_fr.pdf (accessed on 7.11.2011).

[6]The Statute of the International Criminal Tribunal for former Iugoslavia, the latest amendaments of September 2009 published on http:/www.icty.org/x/files/Legal%20Library/statute_sept09_fr.pdf (accessed on 08.12.2011).

[7]Prosecutor v. Momčilo Perišic, the judgment of ICTIu, 6th September 2011, published on http://www.icty.org/x/cases/perisic/tjug/en/110906judgement.pdf (accessed on 09.05.2012).

Momĉilo Perišic was found guilty ICTIu, for committing crimes against humanity (murder, inhumane treatment, persecution on political, racial or religious reasons) and crimes of infringement of the rules and practices of the war (murder, attacks on civilian populations) and sentenced to 27 years in prison.

Conclusions

As such, undeniably, this sentence contribute to the prevention and suppression of international crimes, such as crimes against humanity, thus, the sentences issued by international criminal courts, perpetuates an absolutely special significance, given the international climate, in particular with regard to the current massive violations of human rights and fundamental freedoms in the near and Middle East States and beyond.

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FROM ISLAM TO JIHAD COGNITION
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Abstract

We hope that a world which crossed over the multi-polarism, stood in the bipolar era and recognized another evolution in the unipolar world contested by some civilizations will transform itself in a multipolar world. Will this world bring peace and prosperity that we so much wish for or will it break the global world and will it be the source of these conflicts full of blood.

I consider that the answer is just our resources of imposing ourselves a unique way of existence pax ***globala****.*

The best option for humanity is the multi-polarities and the constructive dialogue without imposing any kind of orientation and without making any considerations that a civilization is more important and the other is less significant.

All the civilizations imposed their impressions upon the common developments and all the civilizations have the moral responsibilities of keeping the power centers balance for the fruition of constructive projects and avoiding the negative effects upon human development.

Keywords : Islam, Jihad, fundamentalism. Terrorism, Faith, Shiites, Sunnis, Kamikaze, ISIS

From Islam to Jihad cognition

It's not the first time that we hear the word „fundamentalism", which, mostly, is linked with the adjective „Islamic" and newly with „terrorism". What those Islam mean? What does the Islamic fundamentalism pursue? The answers come by themselves. Islam is the junction between God and man. If we refer to religions there is a Christian fundamentalism, as a Judaic one, and outside religion we talk about a materialist-scientist fundamentalism, about a Stalinist ideological fundamentalism, communist or about a philosophical fundamentalism, all these presenting, each in part, to be the only holder of the absolute truth which they try to impose to others even through force[1].

In a close connection to this there is another term that the collective conscience – either from insufficient knowledge or through the pressure of some ideological campaigns considers it an instrument, the vehicle of fundamentalism which is „Jihad", usually translated by „holly war", that in the European and western conception means violence and terrorism.

Islamic demographic

In numbers, the Earth population, in the XXI century, has reached an unpreceded record in history. Two million years had been needed until the population of the planet reached a billion, in 1804. The second billion was reached in 1927, the third in 1960, the fourth in 1974, the fifth in 1987, and the sixth at the beginning of 2000, and in present the population of earth is of 7,5 billion people. It is expected that, in the following 20-25 years, the global population to reach the approximate of 8 billion, of which 1.86 in the less developed countries and just 0.37 billion

[1] Foreign Policy Romania, january/february 2014

in the developed countries, the difference is found in the medium category countries which would create serious problems even in the security department.

In these circumstances, Islam represents the most dynamic religion being situated on the second position, after Christianity, considering the number of the followers. Today about 1.3 billion people are Muslims. These are being found on all the continents, from South Asia, North and East Africa, North India and from Caucasian region to Middle East.

Arab Islamic core

According to U.S. Department of State's Annual Report on International Religious Freedom, in 2013 in Europe where registered more than 23 million of resident Muslims, while is USA, there are 9 million, in China approximately 70 million. Indonesia is the country with the biggest Muslim population, approximately 120 million (World Population, 2012). With a population of 213 million people, Indonesia is the fourth country of the world and the biggest Islamic country[2].

Islamic belief

Islam appeared in the Arabic Peninsula in VII-th century A.D., area in which the Bedouin tribes practiced Semitic polytheism, ally being the feminine goddess, Allah's correspondent. Worshiping, according to the Coran, idols as Wadd, Suwa, Yagut, these facing their sights towards Mecca, „ the black stone", a meteor, maybe god Houbal, the importance of which was so big that was quoted as that god through excellency: Allah.

From the VII-th century, Muslims believe in one god which is Allah; in Mohammad, which is a prophet sent by God, and also in Coran which is a collection of revelations made by God. The Coran contains God's words in a literary sense and it is called the word of God (kalam Alah). There are six elementary beliefs shared by all Muslims:

1. Belief in God, the only one worth to worship.
2. Belief in all the prophets and messengers (sent by God).
3. Belief in the books sent by God.
4. Belief in angels.
5. Belief in the judgement day (Oiyamah) and resurrection.
6. Belief in the Muslim destiny: „ I believe in God and Its angels, and in its Scripts; and in its Messengers; and in the Day After; and in the Faith, that Good and Bad are from God, and the resurrection after death. I declare that there isn't anything worth to worship except God; and I declare that Mohammad is his Messenger".

Muslim and Christian beliefs have a lot of common aspects. Even though it is closed to Christianity through belief, the Muslim society is different through moral[3]:

- What is called hypocrisy or lie in the Christian society, in the Arab behavior, it is of good education and decency, the truth is hold by God and even if the man lives on earth in a convenience world in which truth has no part, here is the biggest psychological gap in between the two societies;
- In Christianity, the first behest is to love God, the second is to love your closest, as in Islamic the first behest is to confess your beliefs in God, and the second is to respect the Coran in the community. If the second behest of Christianity leads us to create charity works, the second Muslim behest is given two interpretations by the specialists. The first of them leads us to what we know as „terrorism" and takes in counter, „Jihad", term that is translated as „holly war" but which in Arab language means „effort, fight"; some of the Muslims think that the obligation would consist in fighting against the unbelievers until the Islamic order is settled around the world, from which results the aggressive character of the Islamic religion. The second reveals that it's about mobilizing the masses to resist an outside threat or aggression;
- The humility imitated after Christ, in the Christian belief, is not found in the Islamic belief, where it is exalted the power: "*The Islam does not know the weakness, the sorrow, the submission and the humiliation because God loves the powerful creatures: for them Heaven is*

[2] Vasile Simileanu, Crizele şi conflictele spaţiului islamic, Top Form Publishing House , 2009

[3] Bârna C, Terorismul şi religia islamică, Geopolitica Magazine, Bucharest, 2014

reserved. God execrates the beings who let themselves oppressed and humiliated, these will suffer the anguish of the Gehenna";

- The One who bears away from the rule must do it really discrete according to the perception: „ If you sin, hide yourselves" because God does not see but what the community sees; it can be observed in this case the huge difference to the Christin moral: for a Christian „ the confession of the sin is halfway forgiven " while for a Muslim „ the confessed sin cannot be forgiven";
- In the Muslim society, according to the Coran, there are provided punishments: the law of the talion (in retaliation by way of retaliation - Sura 2:178), the 100 whip smacks for adulteress pair (XXIV, 2), cutting the hand of the thief (Sura 5: 38), the death of the unbelievers (Sura 4: 89), and also, the sympathies are just in favor of a Muslim "brother".

The Judaism shares a lot with Islam. In the Coran God reveals that Muslims share the same belief as the people of the book and that they will tell them: "We have faith in what it was sent to us and in what it was sent to you. Our God and your God is the same One and we bow towards him."(Coran, 29-46)

All the followers of these three great religions: believe in resurrection, Heaven and Hell and angels and they also believe that God created the whole Universe out of nothing and that just He rules over all that exists with His ubiquity; they think that God created the man and the living beings in a miraculous way and that the man has his soul given by God; God created our lives with a certain destiny; beside Jesus, Moses or Mohammad, God sent a lot of prophets as Noah, Abraham, Isaac and Joseph during the history. The fact that the Muslims do not make any distinction among the prophets it is related in the following: The messenger believed in what His Lord sent him and the believers think the same. All believe in God, His angels, His books and His messengers. We will not make any difference among His messengers. They say: "We hear and listen. Forgive us Gog. You are the end of the journey"(Coran, Verse 2: Sura 285). The Muslim prayer is made just towards God and not to Mohammad or any other prophet. The Islam has an extended history of events during fifteen centuries of existence, added in continental areas (in the VI-XIV-th centuries it was covered a third part of the known world).

Shiites and Sunnis

The terms of Shiites and Sunnis can be frequently heard in the news broadcast referring to the intern conflicts from Iraq and in general referring to the Muslim world. The religion affects each aspect of the Muslim life, and the understanding of the differences between the Shiites and the Sunnis is important for a better appreciation of the things happening in the Middle East. The Sunnis Muslims form a big majority in the Islamic world community, the term "Sunnah" means "the path" or "example" and it refers to the example of the prophet Mohammad. Therefore all the Islamic groups consider Sunnah together with the Coran, The Holy Scripts of the Islam, as compulsory. Because the term Sunnah means the path can also have the purpose to make the distinction between the Sunni Muslims and the Shiites Muslims, which follows an alternative way. [4]

In the VII-th century, Mohammad founded the Muslim religion, and established the first Islamic state with the capital at Medina, city situated in the west of the South Arabia. After his death began the fights for power, which determined a schism in the Islamic religion. In the following period, a series of political rivalries appeared in-between the Shiites and the Sunnis. The Shiism will encounter splits.

The Sunnis from today, in number of approximately 900 million are Abu Bakr´s partisans. Their name came from the fact that they acceded to the Sunnah, the interpretation of the Coran transmitted by oral speech. They considered that they have a more freely vision, in their vision, the descendant of the prophet Mohammad, the khalifs must not be chosen on inborn matters. They are spread in four schools or rites that recognize each other: malekism, hanifism, sapphism

[4] Pierre Salinger, Eric Laurent- Război în Golf. Dosarul Secret, Tinerama Publishing House, 1999

and not least hanabalism, the Sunnis are the ones that today respect the religion as Mohammad, the Coran and Sunnah the sacred books did.

The Shiites, today approximately 100 million of Ali´s partisans, are living in Iran, the south of Iraq, Syria, Lebanon, India, Pakistan and Palestine. They recognize as holy bellwether the imams.

At the end of the XX-th century some Shiites leaders and the Iranian political leader Ayatollah Khomeini, supported the proximity and solidarity of a Sunni group. After the death of the Iranian leader, dissensions between the two parts appeared. As a matter of fact that was the only and the last moment in which the two groups seemed to be opened for discussions.

The Jihad – The principal cause of the terrorism?

In the sense of the Islamic society President from North America, dr. Siddîqî, the Jihad is one of the worst misunderstood and deformed aspects of Islam. There is, with certainty, a lot of Muslims who use this concept in an untruthful way, trying to accomplish their political purposes, discrediting Islam and the Muslim community. Therefore, what is Jihad?

According to the "Dictionnaire Arabe- Francaise- Anglais "(Paris, 1992), the term Jihad has its origin in the verb „djahada", which means diligent, to make effort, and in the abstract noun juhd, through which it is designated the effort in general, intensity of force for obtaining the purpose. Just through a simple consultation of the Islam sources can be seen that the jihad means "to hand in the effort, the insistence upon the path of God". The general significance of the jihad notion is "the effort sustained by a certain aim". The Jihad has a lot of senses, its basis being "to fight, to hand in the effort on the right path". Trying to simplify, we can say that the Great Jihad exists and it represents the fight with yourself and the Small Jihad which implies a physical fight, combative.

Therefore, it can be considered that Muslims apprehend through Jihad the use of all the energies and resources for obtaining a favor of Allah. This is a continuous process. In the first phase of this process a Muslim learns to control his own desires and bad intentions. This Jihad is inside the being and is the bases of the profound Jihad, that means bringing the justice and to bear away the bad from life and society.

The contemporary notion of Jihad is reinvented and personalized after 11 September 2001, in a war of the Islamic fundamentalists with the rest of the world (with the ones that do not obey the will of Allah).

The international social-political perception, it is externalized, in some way with the association of the terrorist attacks and the suicidal terrorism from the Islamic world. Identifying the Islamic world with terrorist acts from all over the world is relative. I consider that we must avoid a conviction "in corpore" of the Islamic community for the terrorist attacks executed by extremist members. That is why it is tried today, more and more, a dissociation between Islam and the suicidal bombers more or less that in the Coran the suicidal is forbidden. The delimitation efforts and even the official denial come from the intellectuals, leaders and the important people of the Islamic world, one of the most important being Sheikh Mohamed Sayed Tantawi, the imam of the Al-Azhar institute of Cairo and the highest authority of the Sunnis Islam.

In their acknowledgement, most of them do not wish anything but revenge and here we cannot speak about Islam and about what is permitted and not permuted. We can speak about a political sense or of revenge, any other but not Islam. To take the life which God gave you is a big sin, as it is to take other life.

The suicidal terrorism is a relatively new term, which appeared on an international scale has no founds in the international law. "The birth certificate" of the modern suicidal terrorism is considered to be the suicidal bombing with a trap vehicle committed by Hezbollah against USA Embassy from Beirut on 18 April 1983. The ex CIA agent, Robert Baer, the eyewitness of the event noted: " in the zero point of the explosion, the seven story building of the American Embassy was lifted from the ground, it remained suspended is air for a couple of seconds- that seamed an eternity- then collapsed in a big ash, debris and papers"[5]. A month later an elegant

Mercedes passed the American base control from Beirut and exploded, appreciated to be the biggest non-nuclear deflagration, in history. The American base registered 241 deaths and over 100 wounded.

Kamikaze or "the divine wind"

The story of the suicidal fighter is not new. History is full of heroic death and warriors who contemn life. (theirs and others). The Second World War established the word kamikaze. There were Japanese pilots who crushed with their planes in the ally carrier. But there were Russian soldiers who waited with the grenades on their chest in front of German tanks. And even the soldiers from the Resistance. A historical example of people, transformation through education, in machines that produce violence is even the torpedo people used by the Germans and Japanese in the Second World War.

Kamikaze, or the self-sacrifice, was a modern application of the samurai Bushido code. In the autumn of 1944, the admiral Takjiro Onishi put in practice the Ooka or "the cherry flower" project. In April 1945, in the Okinawa battle over 2000 Japanese planes hit the American ships destroying more than 300 ships and killing over 5000 American soldiers.

The mobilization of the kamikaze pilots, appreciated as the biggest in history, is a reference circumstance even for the Muslim world. The last letters of the kamikaze terrorists to their families had been written a little before their last flight, that indicates the fact that while some of them fulfilled the suicidal act with enthusiasm, others were looking at an assignment which must be done. The self-sacrifice is not a defeat, a loss but a choice through which the mudjahid, free as he never was before, filled with love, reports the victory (Rauffer, 1997).

Decrypting the kamikaze psychology inexplicable remains the attempt committed by Nobil Belkacemi, a 15 year old boy. Using a trap car, he caused on 8 September 2007, a bomb explosion in the east of Algeria, which caused 30 deaths. His family was not aware with his implication in terrorist acts. His mother and grandmother found out about the news from an reporter of the Algerian Al- Chourouk newspaper, hardly accepting the reality.

Islam versus terrorism?

The analyzes of the phenomena evolution on global scale reveals that the beginning of the 3-rd millennium brought a major modification upon the "world security components". A big interest is the understanding of the significance that comes to the acceptation of "Islamic terrorism"[6].

The terrorist attacks from World Trade Center created a powerful connection between Islam and terrorism, the Jihad receiving unjustified connotations. All the 19 terrorists how detonated the planes in the 11 September attacks were Muslims.

In this context the construction of an image in which Islam gives birth to terrorism is easy to understand. We would be tempted to believe in this theory, because of the four types of punishment (cutting the head, crucifying, mutilation an exile) applies to those who oppose the Islam according to the circumstances, next to the tribute pay, show the used methods of the Muslims for imposing their religion, but the truth is far from their acceptations. Even if the terrorist have Muslim identities, the terror which they perpetuate cannot be tagged as Islamic terror (Harun Yahya, 2012). Christianity is a religion based on love that does not accept violence. This thing can be asked just through an update of a historic moment: "they (the cruciate) have killed all the poor people and Turkeys that they found…either women or men" (Francorum, 1992).

A vast study made in the Muslim world contradicts the perception of the West upon Islam (Vieru, 2013). Realized in 6 years, in 40 Muslim Countries in Africa, Asia, Europe and Middle East, the study has been done by Gallup Institute, shortly after the attends on 11 September 2001, when president George Bush rhetorically asked: " Why do they hate us?." And he responds: "They hate our liberties, the liberty of religion, speech, vote and not agreeing with each other"[7].

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[5] Coughlin, Con (2014). *Khomeini's Ghost. The Iranian Revolution and the Rise of Militant Islam.* New York, NY: Harper Collins Publishers

[6] Anghel Andreescu, Nicolae Radu, Jihadul islamic, Ministerului Internelor şi Reformei Administrative Publishing House, 2008

Against this interpretation, the study made on 1,3 billion Muslims in the world brings in attention the fact that the majority admires the West, for its democracy, for its liberties and technological progress. God forbids the believers to help the unfaithful who did not fight against Muslims and did not banish them from their houses and treat them with justice, because God loves the right ones (Translation of the senses, 1998). "Allah does not stop you to offer good to others who did not fight against you, because of religion, and did not banish you from your houses but, be good and right because Allah loves the right ones."(Coran, Surat „al Mumtahina", 60:8); fight by Allah´s path against those who fight with you, but not start the fight, because Allah does not love the ones which start the fight"! (Surat al-Baqara, 2:190). What the Muslims dislike is to be imposed by the Western traditions, promiscuity, pornography and public indecency, been considered dangerous for the Islamic world.

The Islam admits the right of each citizen from an Islamic state of Islam recognizes the right of every citizen of an Islamic state not to be unduly infringed the privacy of his life, the Coran being the proof in this sense : " do not spy on each other" (Coran 49:12). "Do not enter in other houses but yours only if you have the approval of the owners" (Coran, 24:27). "Worship God and do not associate anything with him. Be good with your parents and your relatives and orphans and poor, and with the neighbors that are close and with the neighbors that are not close to you and with your attenders and travelers and your slaves. God does not love anyone proud and boastful". (Coran, 4:36)

The message of "Iraq Resistance"

Considering only this verses it can be appreciated that Muslim religion does not have anything in common with the extremis and the anti-Americanism. In sustaining the fact that Islam does not have anything in common with the extremism comes the message "Iraq Resistance": "People from all over the world! These words are addressed to the ones who, from the day of invasion have fought for survival under the imposed sanctions by the criminal regimes of Great Britain and USA. We are simple people who chose principles instead of fear. We endured crimes and punishments that we consider true weapons of mass destruction. Years of years of agony and despair, meanwhile the United Nations were making commerce with our petrol resources in the name of stability and world peace. Over 2 million innocent people have died waiting for hope that ended just with the occupation of the country and the theft of our resources.

After the crimes of the USA and GB administration in Iraq, we decided our future, the future of each resistance fight from the human history.

It's our duty as it is our right to resist against the foreign troupe occupation, of the nations that will be morally and economically responsible for what their governmental alleged have destroyed and stolen from our territory.

We have not travelled against oceans and seas for occupying GB and USA and we are not responsible for the 11 September events. These are some of the lies that these criminals present to cover their true plans of obtaining control upon the energetically resources of the world despite the development of China and a powerful united Europe. It is the irony of faith that the Iraq people must confront with this huge conflict fully expended, in the name of the whole sleeping world.

Today we make another call to you, the ones from ISIS.

We are not asking for weapons or forces to fight, because we have enough. We ask you to make a common front against war and sanctions. A front governed by wisdom and knowledge, a front which will bring reform and order. New institutions that will replace the corrupt ones, stop using the American dollar, use Euro or other currencies. Reduce or stop the consumption of products coming from GB or USA. Make the Zionism stop before the world will be destroyed.

[7] Vasile Simileanu, Statele islamice. Actori geopolitici contemporani, Top Form Publishing House, 2009

Educate the ones that do not believe in the real nature of this conflict, as well as the ones, in their careless, do not believe that media is as important as they admit[8].

We want as many video cameras there can be to show the world the true defeat. The enemy is routed. They are afraid of a resistance move that they cannot observe or anticipate. Now we will chose where, when and how we attack. And if our ancestors brought the first spark of civilization, we will redefine the notion of conquer. Today we write a new chapter regarding the urban war.

It is good to know that helping the Iraq people you help yourselves, because tomorrow can bring you similar destructions.

This conflict is no more localized. Therefor we can say that the world will stay forever a prisoner of a continuous fear, of which the American people suffer in general. We will keep them here in Iraq to end their resources, battle effectives and will of fight. We will kill them with the same amount they stolen or even more. We will dislodge, afterwards we will put end to the theft of oil, making their planes useless.

As fast as we establish a group, as sooner they will fall down. To the American soldiers we address the following: "you can choose to fight in a barbaric way with us. Abandon the arms and search refugee in our mosques, churches and houses. We will protect you and we will exit you from Iraq, as we did with a lot of you before that. Go to your houses, families and dear ones. It is not your fight, just if you fight for a good cause in Iraq".

We thank you all, including those from GB and USA who got out in streets to protest against this war and against globalization. We also thank France, Germany and other states for their position which in this moment where considered wise and balanced. "

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FEW ASPECTS ON THE PROCEDURE OF NOTIFICATION FOR A PRELIMINARY RULING IN CRIMINAL MATTERS IN COMPARISON WITH THE ONES FOR CIVIL MATTERS

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Abstract:
The article aims to continue the scientific research of a legislative instrument for the prevention of a divergent judicial practice, namely the procedure for notifying the High Court of Cassation and Justice to issue a preliminary ruling for solving certain law matters, this time performing a comparative analysis between the texts of the criminal and civil procedure code.

Key words: *Criminal Procedure Code, Civil Procedure Code, High Court of Cassation and Justice, preliminary ruling, binding interpretation, unification of the judicial practices*

Introduction

In the light of the new legislative reforms[1]*, the authors of the codes have considered predictable the fact that the entrance into force of new texts may generate divergences in the interpretation of certain matters of law, reason for which was created a new procedural mechanism, "novel" for the Romanian procedural legislation, with the role of standardizing the interpretation of provisions and to prevent the apparition of a non-unitary practice of the courts.*

This procedure is known as the solving of certain law matters, by decisions of the High Court of Cassation and Justice which are generally binding for the courts, in insuring the unitary interpretation and application of the laws.

Main text

The Supreme Court, the High Court of Cassation and Justice, based on its constitutional role stated by Art 126 Para 3 of the revised and amended[2] Romanian Constitution, has the quality of ruling to solve certain matters of law, on whose clarification depends the solution of a pending litigation. A similar institution can also be found in France, this is why it is considered by literature[3] that the Romanian legislator has as role model the institution for requesting a preliminary ruling from the French legislation.

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[1] We mention that both procedure codes, criminal and civil, have simultaneously entered into force, on 1 February 2014.
[2] Aiming its competence in insuring the unitary interpretation and application of the law by the courts.
[3] I Deleanu, *Noul cod de procedură civilă comentat*, 1st Vol., C.H. Beck Publ.-house, Bucharest, 2013, p. 705.

Other authors consider that both institutions, the French[4] and the Romanian[5] one, have as role model the procedure of preliminary questions addressed by the national jurisdictions of Member States to the Court of Justice of the European Union, the only one with competence to unitary interpret the law of the European Union[6].

In the Recitals referring to the new Code of Criminal Procedure[7] in the form sent to the Parliament, it is shown that the motive of inserting such procedure is "the creation of a new mechanism for the unification of the judicial practice to contribute, together with the referral in the interests of the law, the creation of a predictable jurisprudence which will lead to the reduction of the criminal trial". "To ensure the efficiency of this new mechanism, the decision of the High Court of Cassation and Justice, published in the Official Gazette, shall have a binding force both for the court which requested the solution of the matter of law, as well as for all the other courts"[8].

1. In criminal matters, the new mechanism for solving certain matters of law stated by the new Criminal Procedure Code in Art 475-477[1] *de lege lata* states provisions from which we extract some general features, similar with the ones from the civil area[9]:

- The active procedural legitimation: the notification shall exclusively originate from the court invested with the awarding of a solution on the main issue of the matter on the criminal trial from the tribunal, court of appeal or High Court of Cassation and Justice;
- Special object: solving certain matters of law on which it depends the awarding of a solution on the main issue of the matter on the trial case pending before the court of law as final instance (tribunal, court of appeal, High Court of Cassation and Justice);
- The material competence of solving the matter of law: only the High Court of Cassation and Justice may solve the request for a preliminary ruling, within the special panel of judges stated by the law;
- Term of submission: the notification may be submitted during the trial of the case as final instance (tribunal, Court of Appeal, High Court of Cassation and Justice);
- The limits of judgment: the decisions shall be ruled only referring to the solving/clarification of a matter of law, not on the fact of the pending case;
- The effects of the decision ruled by the High Court of Cassation and Justice: the solution given the matters of law is mandatory for all the courts from its publication in the Official Gazette of Romania, Part I.

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[4] A.-M. Morgan de Rivery-Guillaud, *La saisine pour avis de la Cour de Cassation* (Loi n° 91-491 du 15 mai 1991, décret n° 92-228 du 12 mars 1992), Semaine juridique, 1992, I, Doctrine, n° 3576, pp. 173-179.

[5] Ş. Beligradeanu, *Reflecţii critice cu privire la caracterul vădit dăunător al bunului mers al justiţiei al reglementării în noul cod de procedură civlă a posibilităţii sesizării de către anumite instanţe judecătoreşti a Înaltei Curţi de Casaţie şi Justiţie în vederea pronunţării unei hotărâri prealabile pentru dezlegarea unor chestiuni de drept*, in Dreptul No 3/2013, p. 109.

[6] The court, according to Art 256 Para 3 TFEU, shall have jurisdiction to hear and determine questions referred for a preliminary ruling under Art 267 TFEU, "in specific areas laid down by the Statute". But, considering that the CJEU Statute has not been yet adapted to this matter, the Court of Justice is the only one competent to issue a preliminary ruling.

[7] Law No 135/2010 on the Code of Criminal Procedure, published in the Official Gazette of Romania, Part I, No 486/15 July 2010, with its subsequent modifications and amendments.

[8] See the Recitals regarding the new Code of Criminal Procedure, in its form sent to the Parliament. http://www.just.ro/Portals/0/Coduri/coduri_60309/Expunere%20de%20motive%20Proiectul%20Legii%20privind%20Codul%20de%20procedura%20penala-forma%20transmisaParlamentului.doc, accessed on 1 March 2015.

[9] These are similar with the ones from the civil area. See in this regard, V.C. Ciobanu, Tr.C. Briciu, Cl.C. Dinu, *Drept procesual civil. Drept execuţional civil. Arbitraj. Drept notarial. Curs de bază*, Naţional Publ.-house, Bucharest, 2013, pp. 415-416.

In our opinion, we add a seventh feature of this procedure, namely its *optional feature*, the panel of judges (the court) being the only one who *can appreciate* if it is necessary the initiation of the prior procedure, no other participant having such right, even if the interested party would prove the fulfilment of the conditions for admissibility stated by Art 475 of the Criminal Procedure Code. Thus, the text does not compel the aimed courts to notify the Supreme Court to issue a preliminary ruling.

2. Regarding the admissibility conditions, Art 475 of the Criminal Procedure Code states that "*If during trial, a penal of judges from the High Court of Cassation and Justice, from the court of appeal or tribunal, invested with the awarding of a solution awarding of a solution on the main issue of the matter on trial as final court, noting that there is a matter of law on whose ruling depends the settlement of the merits of the case, and on which the High Court of Cassation and Justice did not ruled in another preliminary ruling or in a referral in the interests of the law, nor is the object of a pending referral in the interests of the law, shall be able to notify the High Court of Cassation and Justice to rule a decision solving the matter of law for which it has been notified* ".

From the interpretation of this text we extract the conditions for admissibility of the notification of the High Court of Cassation and Justice, which must be met cumulatively, namely:

- The existence of a case subjected to trial;
- The existence of a matter of law;
- Over this matter the High Court of Cassation and Justice did not issued another preliminary ruling or decided in another referral in the interest of the law;
- This matter is not subject of a pending referral in the interest of the law;
- On the solution of this matter of law depends the awarding of a solution on the main issue of the matter on trial;
- The case is pending before the court of law, as final court the High Court of Cassation and Justice, the court of appeal or tribunal.

3. Though the Romanian legislator, in criminal matters, did not adopted the text identical regarding the conditions of admissibility stated by the new Code of Civil Procedure[10] (Art 519), which expressly states the condition of the matter of law's *novelty*[11], we consider that from the interpretation of the text of the Code of Criminal Procedure (Art 475) "*on which the High Court of Cassation and Justice did not stated in a preliminary ruling or in a referral in the interests of the law*" we extract the same conclusion, namely the idea that *the matter of law must be new*.

We argue with the interpretation given by the doctrinaires of the civil procedural area[12] to the condition of the novelty of the matter of law, in the meaning that "it has not yet been settled by a preliminary ruling or by a referral in the interests of the law"[13], has not been

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[10] Law No 134/2010 on the Code of Civil Procedure, republished in the Official Gazette of Romania, Part I, No 545/3 August 2012, with subsequent modifications and amendments.

[11] "*If, during the trial, a panel of judges from the High Court of Cassation and Justice, of the court of appeal or of the tribunal, invested with the awarding of a solution on the main issue of the matter on the trial case pending before the court of law as final instance, noting that a matter of law, on whose decision depends the settlement on the merits of the case, is new and on which the High Court of Cassation and Justice did not ruled, nor it is the object of a pending referral in the interests of the law, shall be able to request the High Court of Cassation and Justice a preliminary ruling solving the matter of law for which it has been notified*" (Art 519 of the Romanian Code of Civil Procedure).

[12] In literature, was criticized this legal condition of novelty as being "pleonastic" and "upsetting". I. Deleanu, *Tratat de procedură civilă, Noul cod de procedură civilă*, 2nd Volume, Universul Juridic Publ.-house, Bucharest, 2013, p. 387, note 1.

[13] I. Deleanu, *Tratat de procedura civilă.*, *op cit.*, p. 387.

"already settled by another preliminary ruling or referral in the interests of the law"[14] or the High Court of Cassation and Justice has not "ruled regarding the matter of law"[15], namely, in our opinion, on the text of the Criminal Procedure Code "*it has not stated by a preliminary ruling or by a referral in the interests of the law*"[16].

Another argument would be the French model of this institution, where there is a similar one, the Court of Cassation having the possibility to issue opinions interpreting new legal provisions presenting serious difficulties[17] for the judges of first instance, both in civil and criminal matters[18]. The legal framework of the procedure "*saisine pour avis*" of the Court of Cassation is Art 441-1 – 441-4 of the Code of Judicial Organization[19]. The criminal court may request the opinion of the Supreme Court, according to Title XXII (art 706-64 – next) of the Criminal Procedure Code, which adopted this procedure by the entrance into force of the Law No 1062/15 November 2001 on the communitarian security[20]. Thus, Art 441-1 of the Code of Judicial Organization[21] states that "before ruling regarding a new matter of law, which has a serious and recurrent difficulty in numerous litigations, the courts may, by a decision which cannot be appealed, to request the opinion of the Court of Cassation", complying with the condition stated by Art 706-64, final thesis, of the French Code of Criminal Procedure[22] – "*No request for an opinion shall be submitted if, during the trial, a person is in remand custody or placed under judicial control*".

The French legislator, in criminal area, has expressly stated the novelty as condition, but the Romanian legislator preferred to replace it, detailing and explaining this condition of admissibility by the High Court of Cassation and Justice, using the formula "*has not yet issued another preliminary ruling or ruled in a referral in the interests of the law*".

Certain French authors[23] consider that, there are really two aspects of the novelty: (1) the Court of Cassation may not have yet ruled regarding the matter of law, i.e. the matter has not been solved by it; (2) it allows the faster unification of interpretation of the new rules of law, this mechanism being applied in the area of legislative reforms.

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[14] G. Boroi, O. Spineanu-Matei, *Noul cod de procedură civilă. Comentarii pe articole*, 1st Volume, Hamangiu Publ.-house, Bucharest, 2013, p. 1008-1010

[15] M. Tăbârcă, *Câteva consideraţii privitoare la competenţa Înaltei Curţi de Casaţie şi Justiţie de a pronunţa o hotărâre prealabilă pentru dezlegarea unei chestiuni de drept*, in "In honorem Ion Deleanu" Volume, Universul Juridic Publ.-house, Bucharest, 2013, pp. 352-353.

[16] Which somehow details this attribute of the matter of law.

[17] I. Leş, *Organizarea sistemului judiciar în dreptul comparat*, All Beck Publ.-house, Bucharest, 2005, p. 57.

[18] In administrative matters, Art 12 of the Law of 31 December 1987, in front of the French State Council was created, within the administrative contentious reform, the procedure named *renvoi pour avis* (requests for a preliminary ruling), aiming to unify the interpretation of the law.

[19] By Ordinance No 673/8 June 2006 was republished the Code of Judicial Organization, Art 151-1 and next, becoming Art 144-1 and next, with the same content. In civil matters, this procedure of notification for an opinion was created in 1991 by decree.

[20] Official Journal of the French Republic (JORF), No 266/16 November 2001, p. 18215

[21] "*Avant de statuer sur une question de droit nouvelle, présentant une difficulté sérieuse et se posant dans de nombreux litiges, les juridictions de l'ordre judiciaire peuvent, par une décision non susceptible de recours, solliciter l'avis de la Cour de cassation*" (Art 441-1 of the French Code of Judicial Organization).

[22] "*Les juridictions pénales, à l'exception des juridictions d'instruction et des cours d'assises, peuvent solliciter l'avis de la Cour de cassation en application de l'article L. 151-1 du code de l'organisation judiciaire. Toutefois, aucune demande d'avis ne peut être présentée lorsque, dans l'affaire concernée, une personne est placée en détention provisoire ou sous contrôle judiciaire*" (Art 706-64 final thesis of the French Code of Judicial Organization).

[23] M. Jean Buffet, *La saisine pour avis de la Cour de Cassation*, www.courdecassation.fr, accessed on 1 March 2015.

Together with other authors[24] we consider that the legislator's purpose to state in the Code of Civil Procedure the condition of novelty insures the differentiation between the two procedures for unification of the judicial practice, as well as for the prevention of the preliminary procedure overlapping with the one of the referral in the interests of the law, the first one having the role to prevent such practice, and the second one having the role to remove such divergent practice between courts.

If the High Court of Cassation and Justice have been notified with the same matter of law and its solution is pending with a referral in the interests of the law, from the interpretation *per a contrario* of the civil and criminal procedure codes, the procedure in the interests of the law should be solved with priority. Until the solution of the referral in the interests of the law, the preliminary ruling procedure shall be "left aside" and shall be finalized by a decision rejecting the notification remained without object[25].

4. Regarding the suspension of the pending case by the hearing report of notification, in criminal matters, *it is optional* until the issuance of the preliminary ruling for solving the matter of law. But, if the suspension has not been ordered together with the notification, and the judicial investigation is finished before the High Court of Cassation and Justice ruled regarding the notification, the court shall have to suspend the hearings[26] until the decision of the High Court of Cassation and Justice (Art 476 Para 2 of the Criminal Procedure Code). We are talking about a *mandatory suspension*, because, if the court would issue a decision, it might result in an interpretation of the matter of law different than the one provided by the Supreme Court.

The text is different than the civil one, according to which the court has the obligation, by the hearing report of notification, to suspend the pending case until the preliminary ruling solving the matter of law.

5. Art 477 Para 1 of the Code of Criminal Procedure states that the High Court of Cassation and Justice, by its Panel for solving certain matters of law, shall rule regarding the notification by *a decision*.

According to Art 477 Para 3 of the Code of Criminal Procedure "*the solution given to matters of law is binding for all the courts from its publication in the Official Gazette of Romania, Part I*".

We consider this provision to be more inspired than the one from the Code of Civil Procedure, which states that "*the solution given to matters of law is binding for the court which requested it from its ruling, and for the other courts from its publication in the Official Gazette of Romania, Part I*" (Art 521 Para 3), because the panel of judges who notified the Court of Cassation and Justice is not present in the moment when the decision is ruled, without effective access to its content, until the moment of its communication[27].

The compulsoriness of the decisions issued during the preliminary ruling procedure, both for all pending cases, as well as for those who shall be registered in courts after the preliminary ruling, insure the efficiency of the regulation, the procedure being similar to the European one, according to Art 267 TFEU.

Conclusions

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[24] A. Cotuţiu, *Unele consideraţii asupra hotărârilor prealabile pronunţate în materiiile dreptului civil şi penal*, Curierul Judiciar No 10/2014, p. 559.

[25] M. Tăbârcă, *op.cit.*, p.354.

[26] If the defendant is placed in house arrest or is in remand custody, Art 208 of the Criminal Procedure Code shall be applied accordingly during the suspension.

[27] I. Deleanu, *Noul cod de procedură civilă, Comentarii pe articole*, 1st Volume, Universul Juridic Publ.-house, Bucharest, 2013, p. 711

As a conclusion, we consider the provisions of the Code of Criminal Procedure compared with the ones of the Code of Civil Procedure, regarding the preliminary ruling procedure, as being justified in this area because they need to be as accurate and clear as possible to leave no room for other versions, by interpretation.

This form of dialogue between a judge from the court and a judge from the Supreme Court by the so-called preliminary ruling has as purpose the promotion and protection of the same values and principles, namely the compliance with, consolidation and unity of a domestic legal order, as well as the legal protection of citizens' rights.

It remains for time to prove the real efficiency of this new mechanism for the unification of the judicial practice – fundamental premise of the credibility of justice.

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A COMPARATIVE INQUIRY ON THE MATRIMONIAL DONATIONS IN THE FRENCH AND ROMANIAN LAW
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Abstract

This article analyses in a comparative manner the legal regime of the donations related to the marriage in the French and in the Romanian legal systems. In the French Civil Code there are detailed provisions of the donations made in relation to the marriage, which cover a broader area of donations than the provisions in the Romanian Civil Code which refer only to the donations between spouses.

Keywords: *donation between spouses, donations matrimoniales, irrevocability of donations*

Introduction

In the French law, the donations between spouses are only one type of donations which are subjected to the legal regime of "donations matrimoniales", which include the donation between spouses also recognized by the Romanian law. Regarding the derogatory regime reserved for matrimonial donations in the French law and for the donations between spouses in the Romanian law, certain differences occurred in the particular legal evolution of each system – one of the differences is that, although the donation between spouses was considered revocable in both legal systems, the French Civil Code does not exclude it anymore from the application of the principle of irrevocability of the donations. This option of the French law can be contrasted to the one in the Romanian law which states, just as the Napoleonic Code did, that the donations between spouses are revocable.

1. The regime of the *donations matrimoniales*

In the French law, the donations between spouses which is explicitly reffered to in the Romanian law, is generally approached in the light of the special nature of the rules which apply to the matrimonial liberalities (*liberalités à caractére matrimoniales*)[1]. The donations included in this category, distinctly regulated in the French Civil Code (*Chapitre VIII: Des donations faites par contrat de mariage aux époux, et aux enfants à naître du mariage* și *Chapitre IX : Des dispositions entre époux, soit par contrat de mariage, soit pendant le marriage)*) are subjected to a derogatory regime from the general rules which govern the field of donations. [2]

Therefore, in the category of the donations between spouses, in the French law there are included two types of donations – on the one hand the ones made in the contract of marriage, and on the other, the ones made between spouses during the marriage. [3] Both types

[1] Michel Grimaldi, *Droit civil. Libéralités. Partages d'ascendants*, Litec, Paris, 2000, p. 415, Étienne Riondet, Hervé Sédillot, Transmission du patrimoine, Delmas, Paris, 2003, p. 159
[2] Louis Josserand, *Cours de droit civil positif français*, Vol. III, Recueil Sirey, Paris, 1930, p. 675
[3] Michel Grimaldi, *op. cit.,* p. 415

of donations must respect the form conditions of the regular donation, which imply that for their valid conclusion they must be made in an authentic form.

2. The *propter nuptias* donations, made in the marriage contract

The donations made in the marriage contract are considered in the legal French doctrine to be included in the general category of *propter nuptias* donations which is a notion originating in the Roman law. [4] In this category there are included those donations made by a third party in the favor of the future spouses, and the donations made between the future spouses. [5] According to article 1081 of the French Civil Code, these donations are subjected to a derogatory regime form the general rules regarding donations.

Both types of donations have to respect the formal conditions for the valid conclusion of the marriage contract, provided in article 1394 (1) of the French Civil Code. In the French legal doctrine it is considered that the authentic form required for any donation is substituted with the one required for the marriage contract.[6] A derogation from the general regime of donations, article 1087 of the French Civil Code states that the explicit acceptance of the donee is not necessary for the valid conclusion of *propter nuptias* donations. Also, according to article 1086 of the French Civil Code, the donations made in the marriage contract are not subjected to the irrevocability of donations, therefore a series of contractual provisions are acceptable, such as the ones which constitute conditions of whose realization depend solely on the will of the donor, or provisions according to which the donee accepts to pay all the debt of the donor, even the future debt, or the ones according to which the donor reserves the right to dispose of the donated goods.

Similarly to the article 1030 of the Romanian Civil Code, article 1088 of the French Civil Code states that those donations in favor of the future spouses or of only one of them, under the condition of the conclusion of the marriage, become obsolete in the event of the non-conclusion of the marriage.

2.1. Donations made in the marriage contract by a third party

The donations made in the marriage contract by a third party are known in the Legal french doctrine as *constitution of dowry* (*constitutions de dot)*. [7] The person who can constitute the dowry can be one of the parents, another ancestor, a collateral relative of one of the spouses or a third party.

In addition to the provisions of articles 1086 and 1088 of the French Civil Code appliable to all *propter nuptias donations*, the donations made in the marriage contract by a third party cannot be revoked for ingratitude, according to the article 959 of the French Civil Code. The justification for this exception was expressed in the judiciary practice – since such donations do not intend to gratify only the person of the donee, but also his family, it would be unjust for the descendents to suffer consequences of the ingratitude of their gratified parents. [8] Following the same line of reasoning, the other category of *propter nuptias donations,* the ones made in the marriage contract by the future spouses are to be excepted also from the scope of article 959 of the French Civil Code.

According to the article 1440 of the French Civil Code, as a derrogation from the general rules governing donations which state that the donor is responsible for eviction only when it is due to his personal act, the donor of the dowry has to guarantee for eviction in all cases. [9]

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[4] Vladimir Hanga, Mircea Dan Bob, *Iustiniani Institutiones*, Universul Juridic, Bucureşti, 2009, p. 132
[5] Michel Grimaldi, *op. cit.,* pp. 415-416
[6] *Ibidem,* p. 434
[7] *Ibidem,* p. 416
[8] Michel Grimaldi, *op. cit.,* n. (33), p. 420
[9] Mugurel Marius Oprescu, *Contractul de donație*, Hamangiu, Bucureşti, 2010, pp. 136-138

The invalidity of the donation made in the marriage contract by a third party can occur in three situations: according to the article 1088 of the French Civil Code, in the event of non-conclusion of the marriage contract, according to the article 1086 of the French Civil Code, in the event of the death of the donee and his descendents and the donation has a provision which allows the donor to dispose of the good, and in the event of the donee's renouncement of the donation with provisions incompatible to the irrevocability of the donations.

2.2. Donations made by the future spouses in the marriage contract

Unlike the donation made in the marriage contract by a third party, whose purpose is to provide a certain material security to the future family, the donation made by the future spouses in the matrimonial convention through which the matrimonial regime is also established, is not an external material support for the future family, but a patrimonial arrangement according to the will of the future spouses and an expression of their mutual affection. This type of donation, just like the one made in the marriage contract by a third party, according to the article 1081 of the French Civil Code, is excepted from the compliance to the irrevocability of donations. The practical use of this donation by the future spouses in the marriage contract is rather diminished in the French law, in spite its derrogatory regime from the strict compliance to the irrevocability of the donations.[10]

Regarding these *propter nuptias* donations, there is an exception from the capacity to make donations, provided in the article 1095 of the French Civil Code. Therefore, the minor, who generally is legally incapable to make donations, neither in his own name nor through a legal guardian, may, however, make donations in favor of his future spouse in the marriage contract, but only if such a donation has the consent and the assitance of those whose consent is also required for the validity of the marriage, according to the principle *habilis ad nuptias, habilis ad pacta nuptialis*.[11]

As a *propter nuptias* donation, the donation between the spouses in the marriage contract is governed by the provisions of the article 1088, according to which in the case of non-conclusion of the marriage, the donation is dissolved.[12]

3. Donations between spouses during the marriage

In the Romanian law, according to the article 1031 of the Romanian Civil Code which states that all donations between spouses are revocable only during the marriage, it is instituted an exception for the irrevocability of donations, since the donor has the right to revoke anytime during marriage the donation made in the favor of his spouse. This exception was adopted in the article 937 (1) of the Romanian Civil Code of 1865 from the French law, where this rule was in force from the *Ancient Droit* to the Napoleonic Code, which provided this rule in the article 1096 (1) of the Napolenic Code, until the *26 may 2004 Law*.

This exception was justified in the French law on the same grounds as it is in the contemporary Romanian law – on the absolute presumption of *captivation and suggestion* of the donee spouse, who, due to his influence on the other spouse determines him to donate in his favor.

The object of the contract of donation between spouses during marriage can consist only in the donor's own property. In the hypothesis of legal or conventional community of goods regime, as an effect of the donation between spouses, the personal goods of the donor become the personal goods of the donee.[13] If there were a provision in the contract which stated that the goods are to enter the common ownership of the spouses, the donor spouse

[10] Michel Grimaldi, *op. cit.,* pp. 446-447

[11] Francis Lefebvre, *Les succesions et les libéralités après la réforme. Loi du 23 juin 2006*, Dossier Pratiques, Editions Francis Lefebvre, Levallois, 2006, p. 238

[12] Louis Josserand, *op. cit.*, p. 204

[13] Ion P. Filipescu, *Tratat de dreptul familiei,* All, București, 1993, p. 73

would cumulate the quality of a donor and the one of a donee and, therefore, such a provision in the contract cannot be stipulated. [14]

The donor spouse has the right to unilaterally revoke the donation (*ad nutum*), regardless of the form of the donation – donation made in an authentic form, a simulated or indirect donation or a gift by hand.[15] This discretionary right can be exercised exclusively by the donor and not by his descendents or creditors, and there can be no provision in the contract which stipulates that the donor renounces his right to revoke the donation.[16] Thus, the right of the donor spouse is not only a derogation from the irrevocability of the donations, but also from the obligatory force of the contracts, since the donation contract between spouses can be unilaterally revoked by the donor spouse.

Since the donor spouse has an arbitrary right to revoke the donation without the need to justify any cause, the donation between spouses cannot be revoked for failure to execute the charges or for ingratitude.[17] Only for the revocation of a donation concluded in an authentic form there is required a notarial act, for the revocation of all other forms of donations between spouses an implicit revocation suffices.[18]

In the Romanian law, the simulated donations concluded in order to avoid the revocability of the donations between spouses are invalid. Both the disguised donation, where the true and secret contract is a donation, and the donation by interposition of persons, if they were concluded in order to escape the revocability of the donations between spouses are void, according to the article 1033 (1), (2) of the Romanian Civil Code. Similar provisions regarding the invalidity of the simulated donations concluded to avoid the revocability of the donations between spouses were to be found also in the French law, in the articles 1099 (2) and 1100 of the Napoleonic Code. Similarly to the provisions of the article 1100 of the Napoleonic Code, which, in order to facilitate proof of the donation by interposition of persons instituted an absolute presumption regarding the children from another marriage of the other spouse or regarding persons to whose inheritance the other spouse might acquire, the article 1033 (2) of the Romanian Civil Code presumes as an interposed person any relative of the spouse who didn't acquire such a quality from the marriage to the donor, and to whose inheritance the gratified spouse has vocation at the time of the conclusion of the donation contract.

4. The differences on the revocability of the donations between spouses in the French and Romanian legal systems

Regarding the revocability of the donations between spouses during marriage, the legal regime governing such donations was similar in the French and in the Romanian law, since in both legal systems it was considered an exception to the special irrevocability of the donation. [19] Later, in the French law, through a series of legislative changes which were adopted in order to meet the general opinions of the judiciary practice and the legal doctrine, there were adopted different solutions from the one provided in the Romanian Civil Code regarding the legal regime which governs the donations between spouses.

A first modification was adopted in order to clarify the ongoing debate in the judiciary practice and legal doctrine regarding the disguised character of a particular type of donation between spouses – the one of a sum of money for the gratified spouse, so that he can buy with that sum of money a certain good. A part of the judiciary practice considered that, since there

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[14] Gabriel Boroi, Liviu Stănciulescu, *Instituții de drept civil în reglementarea noului Cod civil*, Hamangiu, București, 2012, p. 416

[15] Francisc Deak, *Tratat de drept civil. Contracte speciale*, Ed. IV, (ed.) Mihai Lucian, Romeo Popescu, Universul Juridic, București, 2007, pp. 210-211

[16] Codrin Macovei, *Contracte civile*, Hamangiu, Bucureşti, 2006, p. 102

[17] Francisc Deak, *op. cit.,* p. 212

[18] Ioan Popa, *Drept civil: moșteniri și liberalități*, Universul Juridic, București, 2013, p. 207

[19] Jean Maury, *Succesions et libéralités,* Litec, Paris, 2001, p. 187

is a strong, indivisible connection between the donation of the sum of money and the acquisition of that good, the legal operation is to be qualified as a disguised donation which has as an object the good bought by the gratified spouse. [20] Such decisions established in the judiciary practice had as a consequence a great uncertainty on the rights acquired by a third party in relation to that good. Therefore, by the *Law of 28th of December 1967* the article 1099-1 was inserted in the French Civil Code, which stated in paragraph (1) that the object of the donation is the sum of money and not the purchased good[21] and according to the article 1099-1 (2) of the French Civil Code, if the donation is to be revoked, the sum of money which is to be returned to the donor has to amount to the actual value of the good.

Later, through the *Law no. 305 of 4th of March 2002* regarding parental authority, articles 1099 (2) and 1100 of the French Civil Code which sanctioned with nullity the simulated donations concluded in order to avoid the revocability of the donations between spouses, were repealed. It was appreciated that the absolute presumption which considered as interposed persons the children from outside the marriage of the gratified spouse or his relatives to whose inheritance he has a vocation, was too strict and that it was leading to unjust outcomes. The social reality was revealing the ever growing number of families with children from previous marriages, and in this new social environment the rules regarding the interposition of persons had broader consequences than the ones considered at the adoption of the Napoleonic Code. For example, the sanctioning of the donor spouse with the impossibility to prove that the real gratified is the son from a previous marriage of his spouse, had the consequence of depriving the donor of a way to express his affection and concern regarding the material well being of the child.[22]

The last legislative reform brought by the *Law no. 439 of 26th of May 2004* regarding the reform in the field of divorce repealed the article 1096 (1) of the French Civil Code which stated that the donations between spouses are always revocable. In the new text of the article 1096 the donation between spouses are governed by the same rules governing any donation and are subjected to the same causes for revocation as stated in the articles 953-958 of the French Civil Code – failure to execute the charges, ingratitude and birth of child. The justification for this legal option consisted in the fact that a donation whose validity was subjected to the unilateral will of the donor presupposed a high level of uncertainty regarding both the rights of the gratified spouse and the ones of the third parties who might have acquired the donated good from gratified spouse.

The ground for the revocability of donations between spouses was reconsidered – the absolute character of the presumption of *captivation and suggestion* of the gratified spouse was considered too rigid and thus, in order for a donation between spouses to be dissolved, the corruption of the donor's consent had to be proven.[23]

Since the repeal of the revocability of donations between spouses, the French legal doctrine wondered about the possibility of the spouses to stipulate in the donation contract a provision which allowed the donor to unilaterally revoke the donation, in spite the irrevocability rule which governed the donations between spouses. Such a matter was decided in the French judiciary practice, where the Courts decided that such a contractual provision was valid in some particular situations. The Courts admitted the validity of the *Alsatian clause* as it was called for its extensive use in the Alsace, in the donations between spouses. This provision stipulated that all donations are to be dissolved in the case of divorce. This jurisprudential solution was recognized by the law, through the reform brought by the *Law of 2006* which inserted in the French Civil Code the article 265 (2) which states that all donations between spouses are revoked by law in the case of divorce. [24] In the Romanian law,

[20] Étienne Riondet, Hervé Sédillot, *op.cit.,* p. 170

[21] Pierre Voirin, Gilles Goubeaux, *Droit civil. Droit privé notarial. Régimes matrimoniaux. Succesions. Libéralités,* Librairie Générale de Droit et de Jurisprudence, Paris, 2004, p. 325

[22] Mugurel Marius Oprescu, *op. cit.,* pp. 139-141

[23] Jean-Philippe Levy, Andre Castaldo, *Histoire du droit civil, 2eme ed.,* Dalloz, Paris, 2010, n. 1044, p. 1439

the right to revoke the donation can be exercised by the donor spouse only during marriage and in the case of divorce, only before the decision of the dissolution of the marriage becomes definitive and irrevocable.[25]

Conclusions

Several conclusions can be drawn after this comparative inquiry into the French *donations matrimoniales* and the correspondent institutions in the Romanian law. First of all, given the opportunity of the adoption of a new Civil Code after the 1865 one, which stated just like this new Civil Code the revocability of the donation between spouses, one possibility of addressing the issues of the uncertainty regarding those donations subjected to the unilateral will of the donor spouse was missed. For the same reasons analyzed above which justified the French legislative reform which repealed the revocability of the donation between spouses, there should have been a similar legal position in the Romanian Civil Code, since the new Romanian Civil Code also introduced different matrimonial regimes. However, not only legal aspects are to be taken into consideration when looking at the revocability of such donations, which affect the rights of donee spouse and the ones of the third parties. Also social and maybe anthropological ones are to be considered, since the donor spouse may gain through significant donations to the other spouse a great amount of control over the latter.

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[24] Ioan Popa, *op. cit.,* pp. 205-206
[25] Gabriel Boroi, Liviu Stănciulescu, *op. cit.,* pp. 415-416

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THE IMPORTANCE OF APPLYING THE GENDER EQUALITY PRINCIPLE AT INSTITUTIONAL LEVEL

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Abstract:

Gender equality, as a fundamental principle of the European Union, is included in a series of legislative and non-legislative documents[1] recommending a balanced participation of both genders in the drafting and adoption of major decisions in the political and social fields, as a vital component in the development of a real democracy and a decisive factor of economic growth.

In terms of the degree of labour employment, gender equality is reflected in the need to promote equally women and men in the labour market, particularly in leading positions.

According to the European Commission's report[2], women in European countries are still underrepresented in leadership positions, although there has been some general progress. Compared to the situation recorded ten years ago, at EU level, there was an increase by 16% of women involved in politics and appointed to ministerial posts.

The drafting of the first National Strategy on Equal Opportunities for Women and Men adopted by Government Decision no. 319/2006 approving the National Strategy on Equal Opportunities for Women and Men for the period 2006-2009 and of the General Action Plan for Implementing the National Strategy on Equal Opportunities for Women and Men for the period 2006-2009.

This shows that women in Romania still experience gender discrimination, and this is true for areas of economy where women are the majority, as well as for those where men are the majority. The result is the emergence of occupational gender segregation, feminized occupational fields are generally lower paid. Although progress has been made both in the field of education and that of labour employment, women still have many obstacles to pass before achieving real equality.

The efforts to be made in order to strengthen gender equality must address not only the improvement of legislation in the field of opportunity and gender equality, but also a change in attitudes and behaviours, in social structures, so as to allow women to develop their personality according to their own will and be actively involved in all areas of life.

Key words: *equal opportunities, gender equality, non-discrimination, workforce, institutions.*

[1] Decision of the European Council in Madrid of 1995 on the annual monitoring of the implementation of the Beijing Platform for Action adopted during the 4th UN Conference on Women held in Beijing in 1995, the European Pact for Gender Equality adopted by the European Council in 2006 and renewed in 2010, the Charter of Fundamental Rights of the European Union, the 2020 EU Strategy for Smart, Sustainable and Inclusive Growth, the European Strategy for Equality between Women and Men 2010-2015, the European Pact for Gender Equality 2011-2020, the EPSCO Council conclusions and the European Commission's communications inviting to promote and strengthen equality between women and men in various fields or the European Commission's annual Reports on the progress made in the field of equality between women and men, etc.

[2] European Commission's annual report on progress in gender equality – 2010

Introduction

Gender equality is a constant concern of modern society, as proved by numerous documents issued by international institutions seeking equal participation of women and men in the development of family and society.

The International Labour Organization was the promoter of recommendations aimed at the observance of equal treatment, and to this end, in year 1951, it adopted the Recommendation 90/1951 concerning Equal Remuneration for Men and Women Workers for Work of Equal Value.

The principle of equality between women and men has been recognized since its creation by the European Community through documents intended to impose on the Member States the guarantee of equal rights in terms of social protection, employment, remuneration and professional training of EC citizens.

The first steps towards the enforcement of equal treatment and the exclusion of discrimination between women and men were taken through the adoption of Council Directive 75/117/EEC of 10th February 1975 on the approximation of the laws of Member States relating to the implementation of the principle of equal pay for men and women workers, a document providing for equal pay for work of equal value.

The 1992 Maastricht Treaty extended the powers of the European Union, an important place being given to the field of equal opportunities. The principle of gender integration was considered, stating that "in all its activities, the Community shall aim to eliminate inequalities and promote equality between men and women"[3].

Also, measures aimed at combating "discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation"[4] were provided for.

In order to strengthen the determination in promoting equal opportunities, the Treaty also stipulates that each Member State must ensure "equal opportunities for men and women in terms of opportunities in the labour market and treatment in the workplace"[5], as well as the implementation of the principle of equal pay for equal work or work of equal value"[6] among male and female workers.

Subsequently, the Community acquis was enriched by a series of regulatory acts aimed at applying the principle of equal opportunities for women and men in important areas, such as protection against risks of sickness, disability, unemployment, etc. There was also interest in providing equal opportunities in terms of the occupational schemes for self-employed activities.

The first important directive dealing with equal opportunities was Council Directive 76/207/EEC on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions. This directive was amended by Council Directive 2007/73/EEC defining equal treatment as "no discrimination whatsoever on the grounds of sex, either directly or indirectly, by reference in particular to marital or family status"[7].

In the course of time, the European Community's concern with eliminating inequalities and promoting equality between women and men increased, which led to the adoption of several documents meant to ensure equal opportunities for women and men in the labour market and equal treatment in the workplace in the Member States.

To this end, the following acts were adopted: Council Directive 79/7/EEC of 19th December 1978 on the progressive implementation of the principle of equal treatment for men

[3] Article 3 of the Maastricht Treaty
[4] Article 13 of the Maastricht Treaty
[5] Article 137 of the Maastricht Treaty
[6] Article 141 of the Maastricht Treaty
[7] Art. 3, point (1) of Council Directive 2002/73/EEC amending Council Directive 76/2007/EEC

and women in matters of social security, Council Directive no. 92/85/EEC of 19th October 1992 on the introduction of measures to encourage improvements in the health and safety at work of pregnant workers and workers who have recently given birth or are breastfeeding, Council Directive 2004/113/EC of 13th December 2004 implementing the principle of equal treatment between men and women in terms of access to and supply of goods and services, the European Parliament and Council Directive 2006/54/EC of 5th July 2006 on the implementation of the principle of equal opportunities and equal treatment for men and women in matters of employment and occupation (recast), Council Directive 2010/18/EU of 8th March 2010 implementing the revised Framework Agreement on parental leave concluded by BUSINESSEUROPE, UEAPME, CEEP and ETUC and repealing Directive 96/34/EC, European Parliament and Council Directive 2010/41/EU of 7th July 2010 on the application of principle of equal treatment between men and women engaged in an activity in a self-employed capacity and repealing Council Directive 86/613/EEC.

Also, the European Court of Human Rights ruled in numerous cases that the "the right not to be discriminated against in the enjoyment of rights guaranteed under the Convention is violated not only when states treat differently persons in analogous situations, without providing an objective and reasonable justification, but also when States without an objective and reasonable justification fail to treat differently persons whose situations are significantly different"[8].

On the grounds of these documents the European Commission developed the Strategy for equality between women and men 2010-1015 which includes actions aimed mainly at women's economic independence, equal pay, equality in decision-making, dignity, integrity and an end to gender-based violence.

This strategy was the result of the 2006-2010 Roadmap for Equality between women and men, resuming priorities defined in Women's Charter, constituting the Commission's work program and describing the key actions set for the period between 2010 and 2015. The strategy represented at the same time "a basis for cooperation between the Commission, the other EU institutions, Member States and other stakeholders in the European Pact for Equality between Women and Men"[9].

Given the efforts made at European level in order to implement the principle of equal opportunities, Romania, too, joined these efforts, especially when starting its integration into the European Community.

The first step in this field was the adoption of the Government Ordinance no. 137/2000 on preventing and sanctioning all forms of discrimination by which the State guarantees, through the new institution established, namely the National Council for Combating Discrimination, equality among its citizens, the exclusion of privileges and discrimination in the exercise of their fundamental rights and freedoms.

At the end of year 2000, Government Decision no. 1273 regarding the approval of the National Plan of Action for Equal Opportunities for Women and Men was developed and approved, which is "the expression of the politic commitment to assure and guarantee that all citizens are equal and marks the Romanian Government's efforts to eliminate any discrimination based on race, nationality, ethnical origin, language, religion, gender, opinion, political affiliation, property or social origin, pursuant to Art. 4, para. (2) in the Constitution of Romania"[10].

[8] ECHR Decision in case Thlimmenos versus Greece of April 2000 in Hotărâri ale Curţii Europene a Drepturilor Omului, Culegere selectivă (Decisions of the European Court of Human Rights, Selective Collection), Vol. III, Publishing House Polirom, Iaşi, 2003, p. 219

[9] http://europa.eu/legislation_summaries/employment_and_social_policy/equality_between_men_and_women/em0037_ro.htm

[10] Government Decision no. 1273 regarding the approval of the National Plan of Action for Equal Opportunities for Women and Men

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The adoption of Law no. 202/2002 on equal opportunities and equal treatment between women and men followed, which partially transposed Directive 2006/54/EC of the European Parliament and of the Council of 5th July 2006 on the implementation of the principle of equal opportunities and equal treatment for men and women in matters of employment and occupation (recast), as well as Directive 2010/41/EU of the European Parliament and of the Council of 7th July 2010 on the application of principle of equal treatment between men and women engaged in an activity in a self-employed capacity and repealing Council Directive 86/613/EEC. Through this regulatory act, measures for promoting equal opportunity and treatment for women and men were regulated, in order to eliminate all forms of discrimination, the Ministry of Labour, Family, Social Protection and the Elderly, through the Department for Equal Opportunities between Women and Men, being the institution charged with the responsibility of ensuring compliance and the control of the implementation of the law in its field of activity, through the institutions subordinate to it, which are under its authority or coordination, institutions responsible for implementing these measures.

In the process of negotiating Romania's accession to the European Union, it was agreed upon a new institutional construction ensuring the development and promotion of public policies on equal opportunities, as well as compliance with relevant legal provisions.

Thus, through Government Ordinance no. 84 of 19th August 2004 amending and supplementing Law no. 202/2002 on equal opportunities between women and men, the National Agency for Equal Opportunities between Women and Men (ANES) was established, as a specialized body of the central public administration, with legal personality, subordinate to the Ministry of Labour, Social Solidarity and Family.

The Agency's objective was to promote the principle of equal opportunities and treatment between men and women and to ensure active integration from gender perspective into all national policies and programmes.

GENDER EQUALITY IN DECISION-MAKING POSITIONS

We can define the decision-making position as a "position in which it is possible to make a decision or influence a decision".

The legislation on gender equality provides for balanced access to decision-making positions, as follows:

"Art. 21. (1) Public authorities, both central and local, economic and social units, as well as political parties and other non-profit entities, which carry out their activity on the grounds of their own statutes, promote and support the balanced participation of women and men in leadership and decision-making.

(2) The provisions of Para. (1) also apply to the nomination of the members and/or participants in any council, group of experts and other lucrative managerial and/or consulting structures.

Art. 22. In order to accelerate the achievement of de facto equality between women and men central and local public authorities will adopt incentives for fair and balanced representation of women and men in decision-making authorities of the social partners, respecting the criteria of competence"[11].

Until the dissolution of the National Agency for Equal Opportunities between Women and Men (ANES) and the establishment of the Department for Equal Opportunities between Women and Men within the Ministry of Labour, Family and Social Protection in year 2009, it conducted various studies focused on equal opportunities in the Romanian institutional system.

[11] Law no. 202/2002 on equal opportunities and equal treatment between women and men

One such study, "Women's Participation in Political Life in Romania", analyzed data collected after the general elections in 2004, and the results obtained led to the formulation of several conclusions:

"(1) The feminization of "middle" decision-making levels of public administration (particularly at central level). The pyramid of political power is dominated both on top and at the bottom, by men.

(2) The feminization of areas such as justice, health, European integration and labour field.

(3) (The former) Ministry of European Integration is the only ministry in which over 75% of the management positions are held by women, followed by the Ministry of Culture (61.02%), the Ministry of Health (60.24%) and the Ministry of the Environment (58.72%).

(4) As regards local public administration, women are under-represented, given that, in general, over 80% of the decision-making positions are occupied by men"[12].

A second study on the same topic, entitled "An Analysis on the Participation of Women and Men in the Decision-Making Process at Central and Local Government Level", conducted in year 2009, had as initial data the situation of the participation of both genders in the general elections of year 2008, as well as the European Parliament elections of year 2009.

Upon completion of the study, the following conclusions were drawn:

"(1) As regards the situation of women's participation in the first and second decision-making levels within the ministries, it is observed that the percentage of positions occupied by women increases with the decrease of the decision-making level.

(2) Compared with the average of parliaments of EU countries (24%) and with the percentage in the European Parliament during the 2004-2009 term (31%), Romania has a parliamentary representation of women of only 9.76%, according to the 2008 parliamentary election results.

(3) Compared to the 2004-2008 period, we notice a decrease in the level of participation of women in the decision-making process within the local administration, both in terms of their presence in the local and county councils, and at the level of the Prefect's Institution"[13].

In its turn, the Department for Equal Opportunities between Women and Men conducted, in year 2011, a study on the distribution of women and men in leadership positions, analyzing data received from the Ministry of Labour, Family and Social Protection, the Ministry of Public Finance, the Ministry of Transport and Infrastructure, the Ministry of Regional Development and Tourism, the Ministry of Health, the Ministry of Agriculture and Rural Development, the Ministry of National Defence, the Ministry of Administration and Interior, the Ministry of Foreign Affairs, the Ministry of Communications and Information Society, the Ministry of Justice, the Ministry of Education, Research, Youth and Sports, the Ministry of Economy, Trade and Business Environment, the Ministry of Environment and Forests, the Ministry of Culture and National Heritage, the Department for European Affairs, the General Secretariat of the Government and the Department for Relations with Parliament.

"Institutions with female prevalence, grades 1 and 2, A and B levels

(1) By interpreting each institution as an independent entity, the ministries with female prevalence – the top 5, with over 50% women represented in decision-making positions – are as follows:

1. The Ministry of Health, where women hold 61.75% decision-making positions.

[12] "Women's Participation in Political Life in Romania" Study, National Agency for Equal Opportunities between Women and Men, 2005

[13] www.mmuncii.ro/Studiu "An Analysis on the Participation of Women and Men in the Decision-Making Process at Central and Local Government Level" Study, National Agency for Equal Opportunities between Women and Men, 2009

2. The General Secretariat of the Government, with 59.93% women in decision-making positions.

3. The Ministry of National Defence, with 59.77% women at decision-making level.

4. The Ministry of Labour, Family and Social Protection, with 58.80% women in decision-making positions.

5. The Ministry of Economy, Trade and Business Environment (without representation at B level) with 57.14% women in decision-making positions.

(2) The share of women in the ministries (level A), decision grades 1 and 2

1. The Ministry of Labour, Family and Social Protection: 73.91%
2. The Ministry of Public Finance: 71.14%
3. The Ministry of Justice: 70.97%

(3) The share of women in institutions (level B), decision grades 1 and 2

1. The General Secretariat of the Government: 62.06%
2. The Ministry of Health: 61.74%
3. The Ministry of Foreign Affairs: 60%

(4) Institutions with male prevalence, grades 1 and 2, levels A and B

1. The Ministry of Culture and National Heritage: 67.21%
2. The Ministry of Justice: 63.38%
3. The Ministry of Foreign Affairs: 57.14%
4. The Ministry of Environment and Forests: 56.73%
5. The Ministry of Agriculture and Rural Development: 56.36%.

(5) The share of men in the ministries (level A), decision grades 1 and 2

1. The Ministry of Education, Research, Youth and Sports: 64.71%
2. The General Secretariat of the Government: 62.50%
3. The Ministry of Foreign Affairs: 59.62%

(6) The share of men in institutions (level B), decision grades 1 and 2

1. The Ministry of Culture and National Heritage: 80.95%
2. The Ministry of Transport and Infrastructure: 70.27%
3. The Ministry of Justice: 64.66".[14]

Conclusions

Considering the fact that after the approval of the Government Decision no. 1273/2000 and the adoption of Law no.202/2002 no progress was felt in the implementation of the National Plan a decision was taken to approve Decision no. 285 of 4th March 2004 on the implementation of the National Action Plan for Equality between Women and Men, which established the minimum measures for achieving the objectives of the National Action Plan for Equality between Women and Men, and the implementation of these measures represented an obligation for all public authorities and institutions. Thus, the Inter-Ministerial Advisory Commission for Equal Opportunities between Women and Men (CODES) was established, which follows and monitors the progress made in implementing measures to achieve the objectives of the Plan.

The tasks of specific structures for equal opportunities for women and men included: the drafting of annual reports on the representation of women and men in decision-making positions at the level of the public authority or public institution and of the structures under its coordination and/or subordination.

Studies on gender discrimination in organizations have pointed out that, although women adopt different styles of leadership, they are equally effective in leadership positions. The tendency among women is to adopt a democratic management style, whereas men generally adopt a more autocratic style.

[14] www.mmuncii.ro/Studiu "The Situation of Women and Men in Decision-Making Positions in Central Public Administration" Study, The Department of Equal Opportunities for Women and Men, 2011

The results of studies on the involvement of women and men in decision-making positions in public administration reveal that negative gender discrimination is diminished from one stage of the study to another, already having positive values in certain institutions.

Thus, we can say that, in year 2012, at national level, more than half of the decision-making positions in central public administration were held by women. At ministerial level, most decision-making positions are held by women. Their share in decision-making positions both of grade 1 and grade 2 is greater than the one at national level, with a mention that the share of women in decision-making positions corresponding to decision-making grade 1 is smaller than that of women occupying decision-making positions corresponding to decision-making grade 2.

Also, studies have confirmed that the share of women in decision-making positions in the ministries is higher as compared to the share of women in the same positions in decentralized units of the ministries, cumulated with that of women in decision-making positions in institutions subordinate to/under the authority of ministries and with that calculated at the level of other specialized bodies organized as subordinate to the ministries.

Within territorial institutions, subordinate to the ministries, the gender gap in holding positions may be considered as non-existing, with women and men equally occupying decision-making positions. It is worth mentioning that the positions corresponding to decision-making grade 1 are predominantly occupied by men, and those corresponding to decision-making grade 2 are mostly occupied by women.

However, we must say that, for management positions associated with a lower decision-making grade, the probability that women occupy these positions is higher, a situation found both at ministerial level and in the territory. So, regardless of the decision-making grade, a higher decision-making position attracts an increased probability of being occupied by a man.

In year 2011, in central public administration, executive leadership positions of both decision-making grades are mainly occupied by women within the Ministry of Health, the General Secretariat of the Government, the Ministry of National Defence and the Ministry of Labour, Family and Social Protection.

If, within the Ministry of Labour, Family and Social Protection, the Ministry of Public Finance and the Ministry of Justice, the degree of women's participation in decision making is the highest, at local level and in institutions subordinate to/under the authority of the ministries, structures within the General Secretariat of the Government, the Ministry of Health and the Ministry of Foreign Affairs, the share of women who occupy decision-making positions is greater.

By comparison, year 2011 also reveals that the share of decision-making positions occupied by men is higher, in the Ministry of Culture and National Heritage, the Ministry of Justice, the Ministry of Foreign Affairs, the Ministry of Environment and the Ministry of Agriculture and Rural Development.

At local level and in institutions subordinate to/under the authority of the Ministry of Culture and National Heritage, the Ministry of Transport and Infrastructure and the Ministry of Justice, we find the largest share of men in decision-making positions.

Gender equality provides the same level of respect, same opportunities to make choices, as well as the same level of decision-making. These equal rights are reflected in all aspects of human development, including the economic, social, cultural, civil and political areas.

For this goal to become true it is necessary to put the idea into practice and, most importantly, to change collective consciousness.

However, the existence of opportunity discrimination is still a reality, despite the assertion of supporting the principle of equal opportunities. In this situation public institutions must take all necessary legal steps towards preventing the discriminations that

might occur, directly or indirectly, in the recruitment of staff, as well as the management of staff's careers.

Having emphasized this issue, it is essential for public institutions to promote equal treatment and equal opportunities, in accordance with the requirements of social promotion, of integration and cohesion through work, in order to become more effective for the society they serve.

The action to be taken in this direction consists in ensuring the promotion of equality in all public positions and preventing all forms of discrimination in ensuring free access to public services, to career development.

The necessary steps should focus on actions of public information carried out before the start of the recruitment process in order to ensure equal access for everyone to public positions. They should be supplemented by monitoring the recruitment conditions so that there are no premises for discrimination. Also, real opportunities for professional career development should be provided for the entire staff, guaranteeing equal treatment on all levels of management. The purpose of these measures is to provide an effective education and training of the civil servants in public institutions, as well as to promote good practice examples in order to prevent discrimination of any kind.

At national level, following the regional and European trend, we must seek and implement new solutions at legal and institutional level for the application of the principle of equality and non-discrimination as a guarantee of the promotion and protection of human rights. In this direction, a major part is played by public institutions, as well as national institutions and bodies involved in guaranteeing human rights, respect for equal opportunities and non-discrimination, and also Romanian Parliament.

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THE STATUS OF EMPLOYED OF AN OFFENDER – CONDITION TO ATTRACT PATRIMONIAL LIABILITY

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Abstract:

Financial liability of the employee is a variety of contractual liability arising from specific features of legal work. This study aims to analyze the concrete situations in which the patrimony can be held liable to the employee, given the diversity of employment situations in which an employee may be engaged.

Key-words: *patrimonial liability, employee, labor relations, civil servant, military, administrator-employee.*

Introduction

According to art. 254 paragraph 1 from Romanian Labor Code, employees have patrimonial liability, under the rules and principles of contractual liability for material damages caused to the employer by fault and in connection with their work.

By the definition of patrimonial liability from the content of art. 254 paragraph 1 of Labor Code, results that the essential precondition for economic liability is determined by the employee status of the offender that produces an injury to his employer.

Incidence of patrimonial liability does not raise special problems in the case of legal employment relationship, in its complete and typical form, generated by the individual labor contract.[1]

Particular cases in which the employee is responsible

Special situations arise in relation to liability of the guilty when the employer operates in the context of incomplete work relations (eg, personnel that, as provided by law, provide paid work time to other units, doctors from clinics, associated teachers, lecturers and consultants, external scientific staff, pupils and students during practice in production).

Generally accepted solution for these cases is the application of common law rules of liability for the damages caused by the persons mentioned.

From that rule exists, however, some exceptions; thus, there are certain categories of persons who, although not an employee, are under the patrimonial liability, however, under art. 254 paragraph 1 from Labor Code.

Such category of people is met if the damage was discovered after the termination of the individual employment contract, ie after termination of the status of employee within the injured unit. In such a case, the damage recovery is still in the patrimonial liability, regardless of whether the person has gone to another job or not.[2]

In the same category of exception from the status of employee of the individual responsible for patrimonial liability are also provisions of art. 3 Government Ordinance no.

[1] A. Țiclea – Tratat de dreptul muncii, 7thEdition, Universul Juridic., Publishing House, 2014, p. 895.
[2] Ibidem

121/1998 that stipulates the military employees (and civilian employees of the military units) are financially responsible, no matter if, after the damage, they have or not military status (or an employee in that unit).

To be noted that in these cases operates material liability as provided by art. 102-110 of the old code, with the possibility of a decision of imputation if the employee does not assume responsibility through a written commitment to pay. This material liability applies even to civilian employees of public institutions referred to in art. 2 of the normative act, namely the Ministry of National Defense, Ministry of Interior, the Romanian Intelligence Service, Protection and Security Service, Foreign Intelligence Service, the Special Telecommunications Service and the Ministry of Justice.

The doctrine rightly observed that O.G. No. 121/1998 in relation to the new code is a special law and therefore applies the principle of "specialia generalibus derogant".[3]

The same is valid for the Law no. 384/2006 regarding the status of soldiers and sergeants volunteers, who in art. 7 paragraph 1 states that when they cause damages to the military unit are materially liable and not patrimonial, according to the new labor code.

Another exception is the category of the apprentices, which operate based on the contract of apprenticeship at the workplace, according to art. 208-210 of the Labor Code, and, of course, employees who have completed with employer contracts of qualification.

To be noted that also the employees temporarily transferred, under art. 45-47 of the Labor Code have a patrimonial liability to the host employer with which they are in fixed-term employment relationships, but not to the transferor employer of the individual employment contract, towards whom they are reliable under the Civil Code, as his employment contract with transferor employer is suspended or patrimonial liability occurs for the act that causes injury by the employee's fault and in connection with his work. Thus, since work is provided solely for the transferee employer, any damage to the transferor employer will be recoverable only under common law as for the work of an employee he is patrimonial liable only to the current employer, for which the work is done.

So, for engaging the employee's patrimonial liability is not enough for it to be an employee of the person who claims to have been caused damage, but it is also necessary that the effects of the individual employment contract not to be suspended when the employee committed the act of injury.

In return, in the case of delegation, the delegated employees are not liable towards the unit to which they were sent by their employer, because in such case there is not a legal work relationship between the delegated employees and the unit where they operate.

Compared to the injured, the guilty employee is civil-tort liable under the Civil Code. But prejudiced unit has also the option to solicit to the employer who ordered the delegation, compensation to cover damages under the liability of the principal for the acts of the servant provided by art. 1373 of Civil Code. It can turn at the same time against both (and the principal and the servant), which will be liable jointly and severally, according to art. 1382 of Civil Code.[4]

To be noted that, according to the system of liability created by the New Civil Code, the doctrine gave up the institution of the obligations in solidum, a French-inspired institution, because only this institution could explain the solidarity of one who responds for another's deed together with the direct author of the illegal act, in context in which the former art. 1003 of the old Civil Code only refers to the solidarity of those who are responsible for the prejudicial act.[5]

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[3] I.T. Ştefănescu, Tratat teoretic şi practic de drept al muncii, 2nd Edition, "Universul Juridic" Publishing House, Bucharest, 2012, p. 778.

[4] L.Pop, I.F. Popa, S.I. Vidu, Tratat elementar de drept civil. Obligațiile, "Universul Juridic" Publishing House, Bucharest, 2012, p. 559.

[5] P. Tărchilă, Drept civil. Partea generală şi Persoanele, Gutenberg Publishing House, Arad, 2008, p.67.

Or, in the current system, art. 1382 of Civil Code refers to the solidarity of those responsible for a prejudicial act, a form far superior and different from the old regulations contained in art. 1003 of the old Civil Code.

Nor the employee of the temporary employment is not patrimonial liable to user during his work. He will be directly civil-tort responsible for his illegal and culpable acts. Of course nothing prevents the user to formulate action for damages against temporary employment agent (the employer of the guilty employee), based on contract of availability which is a commercial contract, this being the case of contractual liability of temporary employment agent. In the case that the temporary employment agent pays the user in accordance with contractual liability, he will be directed to an action for recovery against his own person, in accordance with art. 254 of the Labor Code[3].

The literature stated that the logical and unitary interpretation of the law no. 31/1990, the liability of directors, auditors and liquidators of companies, even if they are employees of these companies, as well as executives, is a *civil liability* - in the broad sense of the term. This would result unequivocal from provisions of art. 72 that states that "the obligations and responsibilities of directors are governed by the provisions referring to the mandate and those specially provided by this law"); of art. 166 paragraph 1 that states "the extent and effects of auditors' liability are determined by the rules of mandate"; of art. 253 paragraph 2 under which "liquidators have the same liability as directors", as well as art. 152 paragraph 3 that states that the executives are accountable to society, the same as administrators.[6]

I do not agree with such a view, because the rules of the mandate referred to in law no. 31/1990 do not automatically exclude patrimonial liability.

Thus, the assessment of guilt, determination of injury, of the illegality of the act of the administrator, auditor and liquidator who also fulfills the status of employee will be appreciated, indeed, by the rules of the mandate set out in the Civil Code, but the legal status of establishment of patrimonial liability as well prejudice recovery arrangements will be governed exclusively by the rules of labor law, the rules contained in art. 253-259 of Labor Code.

Only in this way can be appreciated the concern of the legislature to make express reference to rules regarding the mandate in assessing liability of the administrator, a natural concern as long as the duties of the administrator, auditor and liquidator are expressly stipulated by mandatory rules contained in special laws.

In the academic literature was stated that the civil liability of directors is a civil one[7], delictual against third parties (eg in case of insolvency proceedings, when the administrator may be required to pay the liabilities of the company, in the cases and according to art. 135 of Law no. 85 / 2006) and contractual towards the company grafted onto the existing mandate contract between the company and the administrator, based on art. 72 of law no. 31/1990.[8]

All of these assumptions do not cover the situation where the manager acts as administrator under an individual contract of employment with the company. Therefore, we consider that nothing precludes that, in the case of the assessment of conditions of liability of the administrator, to consider the rules of the mandate provided by art. 2025-2029 of Civil Code and Law no. 31/1990, and regarding the establishing the liability, injury recovery to be according to the provisions of art. 253-259 of Labor Code.

As regarding public servants, art. 84 of Law no. 188/1999, states that civil servants' liability is a *civil one and not patrimonial* (within the meaning of the Labor Code). It occurs to:

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[6] Ş. Beligrădeanu - Derogări de la dreptul comun al muncii cuprinse în Legea nr. 31/1990 privind societăţile comerciale" published in „Dreptul" revue no. 9-12/1990, pp. 32-37.

[7] St. Cărpenaru, Tratat de drept comercial român, 3rd, "Universul juridic", Publishing House, 2012, p. 223; St.D.Cărpenaru, S.David, C.Predoiu, Gh.Piperea, Legea soceităților, Comentariu pe articole, C.H. Beck Publishing House, 2014, p. 256..

[8] P. Tărchilă, I. Micle, Drept comercial, "Orizonturi Universitare" Publishing House, Timișoara, 2015, p. 320.

- prejudices produced with culpability to the patrimony of public authority or institution in which he works;

- failure to return within the legal term of the amounts they were given unduly;

- damages paid by the public authority or institution as principal, to third parties, on the basis of final and irrevocable court decisions.

There will not be patrimonial liability, in the accordance with the labor code, for the person providing work to another person or entity as a student in a school of arts and crafts or professional student during practice, or as a volunteer. In these cases, if an injury occurs by committing an act in relation to his work, the latter will respond only under the provisions of civil law (tort or contractual if there are civil contracts in this aspect) without the incident of patrimonial liability.[9]

The same situation is encountered in the case of forestry personnel employed within public institutions and authorities, with powers in the field of forestry, who will respond according to the rules of civil liability of public servants and not based on patrimonial liability as was natural. Thus, according to art. 58 paragraph 1 of GEO 59/2000 "to forestry personnel apply the provisions of Law no. 188/1999 regarding the status of civil servants, to the extent that this emergency ordinance otherwise provides", motive for which civil liability of forestry personnel, whether public servant or employee, shall be determined according to the procedure prescribed by law no. 188/1999.

Currently, the Supreme Court debated the problem of material competence of courts in the matter of patrimonial liability for forestry staff who has the status of an employee, establishing by decision no. 3/2014 that in the interpretation and application of art. 6 paragraph (1) of Government Emergency Ordinance no. 85/2006 regarding the procedures for assessment of damages produced to vegetation from forests and outside, approved with amendments and completions by Law no. 84/2007, in conjunction with art. 254 and art. 266 of Law no. 53/2003 – Romanian Labor Code, republished, with subsequent amendments, in relation to Art. 58 paragraph (1) of Government Emergency Ordinance no. 59/2000 regarding the status of forestry staff, approved with amendments and completions by Law no. 427/2001, amended, actions in patrimonial liability brought against the staff responsible for forest security for the damages produced on wood surfaces they are supposed to watch, in terms of art. 1 letter the Government Emergency Ordinance no. 85/2006, are of material jurisdiction of the courts of labor disputes.

Consequently, the liability for damage caused to forest staff who is an employee shall not be trained in accordance with the rules of contractual liability of public officials, the incident being the norms of patrimonial liability set out in art. 253-259 of Labor Code.

Conclusions

The employee responds in patrimonial principle, but there are special rules or doctrinal interpretations that establish another form of liability for the employee for the damages produced to his employer.

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DOCUMENTARY FRAUD AS SEEN BY THE DOCUMENTARY FRAUD BUREAU OF THE DIRECTION DE LA POLICE AUX FRONTIERES
Part II
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Abstract

Today, we are witnessing a globalisation and intensification which is unprecedented in the history of migratory flows in our country. These flows are now of a very complex nature as placed under criminal rule.

With this level of organisation, we are not just trying to counter illegal immigration, but fighting against criminality. In this respect, the use of forged documents or documentary fraud in general is a great boon to the activities of the clandestine networks and constitutes an excellent means of introducing illegal immigrants into Western countries.

Keywords : migratory flows, documentary fraud, illegal immigration pathways

The scale of documentary fraud

The use of statistics concerning documentary fraud has allowed us to discern certain trends for the first half of 2014, particular concerning:

- the types of documents which are most commonly falsified and forged;
- the type of fraud observed;
- the geographical areas in our territory which are most sensitive in this respect;
- the most common issuing countries and the nationalities of the holders.

Ranking by nationality of the holder.

The activism and efficacy of the Chinese networks should be underlined. Despite the fact that a great many of them are in transit towards English-speaking countries, there is substantial use of falsified French documents.

- Chinese from the PRC (512 documents, of which 190 French)
- Algerians (456 documents seized, of which 234 French),
- Sri Lankans (319 documents, of which 20 French),
- Moroccans (271 documents, of which 40 French),
- Nigerians (198 of which 7 French),
- Senegalese (187, of which 40 French),
- Ivory Coast nationals (174, of which 62 French)
- Somalians (141, of which 23 French).

Ranking by issuing country

On the basis of this data (2014) concerning the nationality of the bearer, a second quantitative ranking makes it possible to draw up a list of the issuing countries of documents use, including French documents in particular. Although the fact that the Algerians are at the top of this list by geographical origin of falsified documents is not really a surprise, it is worth noting the positions of the Nigerians, and the Sri Lankans in third position before the

Moroccans, as they are generally in transit and bear equal numbers of documents from countries where they do not master the language (German, French and Italian).

- The Algerians mainly use French (234) and Italian (149) documents.
- The Chinese nationals stopped in France essentially carry French documents (190) or Chinese (89), North Korean (33), or South Korean (28) ones.
- The Sri Lankans generally use German (26), Italian (23), French (20), or British (13) documents.
- The Moroccans carry Italian (159), French (40), and Spanish (10) documents.
- The Nigerians carry Italian (38), British (36) and French (7) documents.
- The Senegalese use Italian (80) and French (40) documents.
- Nationals of the Ivory Coast (French documents 62).
- Somalians (Netherlands 142), (French 4) .

Ranking according to the type of document.

One may note the predominant position of passports as being the most commonly counterfeit or falsified documents. This is reasonable considering their natural use, for travelling.

1. In this category, passports are the most commonly falsified documents (3424)n all countries taken together.

2. Identity cards (1239) come in second place.

3. Stay or residence permits (648, permanent or temporary).

4. Short stay visas (316).

5. Driving licences (135).

6. Residence cards (125).

7. Refugee cards (74, Convention of 51).

8. Various stamps (58).

9. Temporary residence permits (49).

10. Birth certificates (52).

11. Long-stay consular visas (30).

Types of fraud per type of document.

The following analysis concerns the type of fraud which is used for each type of document. At this stage, this research is liable to interest all agents on the ground by providing them, at a given time, with a general view of the situation with respect to forgeries and other falsifications.

The French passport appears to be the most forged or falsified document, along with the short-stay consular visa and the residence cards. In this field, France is in second position for NICs (behind Italy), and driving licences (also behind Italy). It is in third position for the stay or residence permit (behind Italy and Spain) and the refugee residence permit (behind Belgium and Germany).

Passports: Out of a total of 3,424 passports seized, the following figures have been obtained for the main source countries:

- France: 612 (23 forgeries, 445 falsifications, 97 fraudulent use, 45 fraudulently obtained, 2 documents stolen blank). Moreover, in July 2001 1,300 blank passports were stolen; they have not been counted in the statistics.
- The Netherlands: 224 (141 falsifications, 59 fraudulent use, 14 forgeries, 7 documents stolen blank, 3 obtained fraudulently).
- Spain: 209 (166 falsifications, 38 forgeries, 3 fraudulent use, 1 obtained fraudulently, 1 document stolen blank)./
- Mali: 166 (of which 87 falsifications, 78 fraudulent use, 1 obtained fraudulently).
- United Kingdom: 155 (of which 108 falsifications, 38 fraudulent use, 9 forgeries).

- Greece: 146 (of which 97 falsifications, 44 forgeries, 4 obtained fraudulently, 1 fraudulent use)
- Italy: 124 (of which 51 falsifications, 36 forgeries, 29 documents stolen blank, 4 obtained fraudulently, 4 fraudulent use).
- Guinea: 113 (of which 89 falsifications, 14 fraudulent use, 7 documents stolen blank, 3 forgeries).
- Malaysia: 99 (of which 54 forgeries, 43 falsifications, 2 fraudulent use).
- China: 90 (of which 63 falsifications, 16 fraudulent use, 10 forgeries, 1 obtained fraudulently).

National identity cards (NIC): Out of a total of 1239 NICs, all countries taken together, the following is obtained:

- Italy: 518 (of which 240 documents stolen blank, 160 falsifications, 81 forgeries, 32 obtained fraudulently, 5 fraudulent use).
- France: 298 (of which 97 falsifications, 90 forgeries, 87 obtained fraudulently, 24 obtained fraudulently).
- The Netherlands: 215 (of which 159 fraudulent use, 34 falsifications, 17 forgeries, 3 obtained fraudulently, 2 documents stolen blank).
- Portugal: 79 (of which 54 forgeries, 20 falsifications, 5 fraudulent use).
- Belgium: 40 (of which 16 fraudulent use, 15 forgeries, 8 falsifications, 1 obtained fraudulently).

Stay or residence permits (permanent or definitive): concern a total of 648 documents, of which in particular:

- Italy: 412 (of which 320 forgeries, 68 falsifications, 16 documents stolen blank, 1 obtained fraudulently, 7 fraudulent use).
- Spain: 75 (of which 50 forgeries, 17 falsifications, 8 fraudulent use).
- France: 46 (of which 19 fraudulent use, 17 forgeries, 8 falsifications, 2 obtained fraudulently).
- Belgium: 33 (of which 22 forgeries, 10 falsifications, 1 documents stolen blank).
- Germany: 29 (of which 18 documents stolen blank, 5 forgeries, 3 falsifications, 3 fraudulent use).
- Morocco: 16 (of which 15 forgeries, 1 fraudulent use).

Short stay consular visas: concern 316 visas, of which in particular:

- France: 93 (of which 81 falsifications, 8 forgeries, 2 obtained fraudulently, 1 document stolen blank, 1 fraudulent use).
- Germany: 66 (of which 33 documents stolen blank, 19 falsifications, 12 forgeries, 2 obtained fraudulently).
- Italy: 40 (of which 21 documents stolen blank, 16 falsifications, 3 forgeries).
- Belgium: 25 (of which 23 falsifications, 2 forgeries).

Driving licences: 135 documents concerned, of which in particular.

- Italy: 45 (of which 32 falsifications, stolen blank 9, forgeries 4).
- France: 32 (of which 12 falsifications, 9 forgeries 8 obtained fraudulently, 2 documents stolen blank, 1 fraudulent use).
- Romania: 6 (of which 5 forgeries and 1 falsification).

Resident's cards: 125 documents concerned, of which in particular.

- France: 71 (of which 41 forgeries, 12 obtained fraudulently, 10 fraudulent use, 8 falsifications).
- Italy: 14 (of which 6 forgeries, 4 falsifications, 3 documents stolen blank, 1 fraudulent use).
- Spain: 12 (of which 5 forgeries, 4 fraudulent use, 3 falsifications).
- Belgium: 10 (of which 4 fraudulent use, 3 forgeries, 3 falsifications).

Refugee residence permits: concern 74 documents:

- Belgium: 25 (of which 10 falsifications, 8 fraudulent use, 7 forgeries).
- Germany: 17 (of which 8 falsifications, 8 fraudulent use, 1 document stolen blank)
- France: 14 (of which 7 falsifications, 7 fraudulent use)

Finally, this study could not be dissociated from knowledge as to the condition of documentary fraud by geographic sector, and by border in France.

Ranking of documentary fraud by sector.

In this field, the Paris airports are the most sensitive areas, due to the amount of international air traffic. The figures obtained correspond to migratory statistics obtained at the border crossing points which are acknowledged to be sensitive.

Representation by nationality of bearers and by border.

1/ Chinese: 512 bearers for the entire country.
2/ Algerians: 456.
3/ Sri Lankans: 319.
4/ Moroccans: 271.
5/ Malians: 266.
6/ Congolese: 205.
7/ Nigerians: 198.
8/ Senegalese: 187.
9/ Ivory Coast: 174.
10/ Somalians: 173.
11/ Romanians: 167.
12/ Albanians: 161.
13/ Sierra Leon: 141.
14/ Cameroon: 135.
15/ Indians: 133.

Current developments and trends in documentary fraud.

A clear development of offences connected to documentary fraud, both in terms of quantity and quality, is perceptible today, particularly in France but also in most of the Schengen countries. What is more, the characteristics of this development are identical as they are determined by two intrinsic factors:

- the criminalisation of the networks;
- the increase in purchasing power of potential illegal immigrants.

The criminalisation of the networks as main cause for improving quality of forgeries and falsifications.

The criminal organisations which are connected to networks of prostitution, drugs and various forms of trafficking, have adapted themselves, at a lesser risk in criminal law terms, to the possibilities offered by the illegal immigration market.

Characterised by strong economic power and a very flexible structure, they have invested in new imaging technologies.

Thus, in Thailand and Hong Kong, printing works are established which have equipment with a level of performance which is not far from that of the State printers, and allow excellent forgeries.

Therefore, top of the range imaging equipment is available to the networks and allow very high quality forgeries and falsifications to be made.

Finally, the release of programs on the Internet about 6 months ago, allowing the reading, modification and even the production of microchips and holograms, means that new possibilities for fraud may be glimpsed.

Increase in the purchasing power of new illegal immigrants.

Indeed, it seems that although the nationals of the poorest countries, the traditional source of illegal immigration, are ever more numerous in wanting to leave their respective

country, their financial means are generally sufficient only to purchase, at the very most, a fairly poor quality falsification, generally by substitution of the identity photograph or partial forgery by photocopying an existing document. It is rare to find a complete forged passport coming from African countries.

However, the situation is very different for immigrants from Asian countries, China in particular. They have a much higher level of purchasing power, especially since they live in a system allowing a sort of medium-term credit. They can therefore be bearers of very good forgeries.

Nonetheless, as the production of forgeries is currently going beyond the cottage-industry stage, costs should fall..

Forgeries and obtaining documents improperly: an adaptation of the networks to improvements in the fight against other types of falsifications?

In general, France as well as most of the countries of the European Union have aggressive policies in the development of systems for the fight against documentary fraud.

In this field, the DCPAF is making substantial efforts. As will be seen, a large network of resource persons has been put into place, duly trained and informed. In the context of the upstream fight, training has been extended to consulates, foreign police forces and airlines. In this way, results have been obtained. However, a reservation has to be made concerning forgeries.

Improperly obtained documents

Obtaining documents fraudulently is, in quantitative terms, the fifth most common offence connected to documentary fraud (545 in 2014), after falsification (6725 in 2014, compared to 6236 in 2013), forgery (2368 in 2014, compared to 1831 in 2013), fraudulent use (1792 in 2014, compared to 1119 in 2013) and documents stolen blank (831 in 2014, compared to 951 in 2013).

The ever greater security of new identity or travel documents, and a greater effectiveness in the fight against documentary fraud, have led the networks to seek new solutions to overcome these difficulties: upstream, the means to obtain authentic documents without being legally entitled to them, and downstream, by producing quality forgeries.

Forgeries

In France in 2014, the upward trend in total or partial forgeries can be confirmed. In this field, the complete forgery of the South Korean passport, or of the particulars page, heads the list. This document is in the possession of illegals from the People's Republic of China.

Just after that, there are the French documents, with numerous forgeries of the NIC and of the normal passport, as well as substitutions of photographs and of falsifications of the variable statements.

Next, we find excellent forgeries of the ordinary Greek passport, of the particulars page of the Hong Kong passport, and of the Israeli, Japanese, Malay and Dutch passport.

There are also forgeries of the Portuguese passport in circulation, as well as Singapore and Taiwanese passports.

It is highly likely that, beyond endogenous factors, the development of the networks, the higher purchasing power of illegal immigrants from Asia, the improvements in methods of detection of falsifications, forgers will be led to produce forgeries which are of better quality and harder to detect.

Fighting documentary fraud

The fight against documentary fraud is a key element in an effective response against the illegal immigration networks.

Cooperation is therefore essential, both on the national level between the various ministries concerned in order to coordinate their action, and on the international level where the exchange of information is essential.

The seminar on illegal immigration networks organised in Paris in July 2014, allowed foreign delegations to agree on a certain number of principles of action. These principles of

action are in perfect harmony with all of the avenues of work which are currently underway within those groups at the national or international level which are dealing with this problem.

The generalisation of the creation of central units specialising in the detection of forged documents

There are three main thrusts to work in this area:

- distribute specialised documentation on documentary fraud, intended to alert the competent departments and to orientate methods for the detection of forged documents. In this respect, we find ourselves faced with the question of alert files and the pressing requirement to inform checkpoints in real time;
- develop both initial and further training for personnel in this field;
- intervene as technical adviser, expert and instructor for the benefit of various national authorities and for international institutions. As any technical knowledge is a source of power, there is a clear interest in clearly laying down principles of professional ethics and, as a consequence, limits to the action of specialists in forged documents.

Only a central unit can draw in all of the information obtained on fraud and falsification, analyse them and facilitate the identification of networks doing the falsification.

The interest in having such a structure is also to serve as a point of contact in bilateral or multilateral international cooperation.

Training

Everybody agrees on emphasising the primordial nature of initial training and further training of personnel in this field. In this respect, the question of training applicant countries in the fight against documentary fraud was considered and judged to be essential.

It is absolutely essential to know how best to manage skills and qualifications, in short to professionalise all agents working together in the tasks of inspection, in order to make them into specialists.

Providing equipment for the detection of falsifications

Document checks require the verification of a certain number of standards in order to ensure that a travel document is authentic. Thus, a minimum basic equipment is necessary in order to reveal the incorporated security elements. This means light equipment, such as magnifying glass or an ultraviolet detector.

The border crossing services must also be provided with equipment for the detection or assistance in detecting, linked to a central unit of experts who will allow them to dispel any doubts in real time.

In addition, the inspecting services must be equipped with computer equipment in order to have access to a database processing information on documents reported as stolen or used fraudulently.

The DCPAF has given itself a prime objective of investing in new technologies such as:

- optical reading of travel documents.

The verification of the validity of documents and the interrogation of the national databases under the “CHEOPS” system, using an optical reading system, shall be generalised by the equipment of 700 border crossing computer posts. Its efficiency could be optimised by making automatic entries into the national cross-border database after definition of access rights and authorisation by the CNIL, and by an authorised access to databases concerning the detection of forged documents (SINDBAD application).

This latter application is a decision-making assistant provided to agents and European partners in charge of cross-border controls in the verification of the authenticity of travel documents which are presented, through the interrogation of an image database. This image database includes all passports, national identity cards and travel and residence permits. It shall be put into service at the end of 2014 after completing trials.

- The provision of digital personal assistants (pocket microcomputers) integrated in a communicating network architecture.

This new technology which will be useable in particular on large port and airport platforms, will make it possible to increase the efficiency of the border police by providing adapted mobile immigration controls (with downloading selected from SINDBAD application database, depending on the nationality of the passengers of the flight being controlled) which may be made without notice.

Security standards for travel documents

In this respect, it is necessary to cite the resolution of representatives of the Member States meeting in the Council of 17 October 2014.

Considering that the fight against the falsification of documents plays an important role in the fight against organised crime and illegal immigration in the European Union, it was considered by the Member States to be a question of common interest which was of particular importance.

It therefore appeared desirable that travel documents issued by the Member States should satisfy criteria as strict as possible concerning the prevention of falsification, and that the creation of such documents and their security characteristics should make it possible to effectively identify attempts at falsification on inspection.

The Member States therefore agreed to introduce, as quickly as possible and at the latest on 1 January 2014 for passports, minimum security standards for the production and issuance of new travel documents, while retaining the possibility of introducing stricter criteria for security elements.

Security in the procedure for issuance of documents

France has adopted the principle of decentralisation and requires the physical presence of the applicant, both at the time of requesting the document and at the time of its delivery.

The question of security elements of the substantiating documents necessary in order to obtain a passport, i.e. birth certificate, proof of residence (etc.) is of great importance.

Indeed, fraudsters adapt themselves in order to exploit all the weaknesses in the mechanism for obtaining travel documents. The numerous security elements introduced in the travel documents themselves, dissuasive due to their high technology, encourage fraudsters to launch themselves in another type of fraud, meaning those substantiating documents which allow the issuance of these documents.

In order to avoid such a system, it appears necessary to introduce security elements in the civil registry extract against forgery and to resort to personalisation. In order to prevent a forger from falsifying the variable statements, a certain number of security principles are necessary: making the paper sensitive so as to prevent chemical washing agents from being effective, coding of the civil registry information, ensuring the document can be traced in order to return to its origin at any time, and even the integration of the photograph of the applicant.

France has launched itself actively in this fight by making the upstream security of documents one of the actions presented to the European Union during its presidency.

Secure storing of blank documents

The storage of blank documents was also the subject of a French proposal in Brussels. This concern forms a natural part of the requirement for securing documents all the way along the line: conformity of documents with the ICAO standards, machine legibility at checkpoints, tracability of documents, and security of the substantiating documents.

The theft of blank documents is currently one of the means for fraudsters, as we have said, to avoid the ever greater sophistication of security elements in the documents themselves. These thefts are undertaken by robbery of the post office's lorries. The *imprimerie nationale* has observed an alarming development in this type of offence: 1400 blank passports were stolen in Marseilles in July.

A rapid count allows us to highlight the following figures concerning documents which have been stolen blank:

- 23700 vehicle registration cards from 15 February 2011 to 16 July 2014;
- 2946 passports from 18 February to 16 July 2014;
- 11997 driving licenses from 23 October 2011 to 9 February 2014 and 48701 registration certificates from 15 February 2011 to 17 July 2014.

In the move to ensure security of the document chain, thought is underway as to the creation of a "founding document". This project apparently seeks first of all to determine to what extent a citizen can, on the basis of a founding document containing information which has already been the subject of extensive controls, such as is currently the case for the NIC as regards civil registry information and nationality, obtain other official documents such as a passport or driving licence, the function and nature of which would be preserved.

Starting off on the basis of the requirement for administrative modernisation, seeking a better consideration of user demands and the inevitability of development of documents, under the twin constraints of the obsolescence foretold of production methods and the development of European regulations, the founding document seeks to facilitate, on the basis of a elementary document, the issuance of any document of a similar nature without having to prove elements for the second which were used for the creation of the first.

Although one of the objectives of this project is to facilitate the steps which users have to take and to lighten the load on departments for the issuance of these documents, it is clear that it will have to revolve around another fundamental objective, which is to ensure the security of the issued documents.

The introduction of a founding document therefore means that all the questions concerning its security have to be resolved first, due to all domino effect which could arise as a result. In this respect, considering that such a document is simultaneously a right, an administrative procedure and a physical document, thought in this respect must take these three aspects into account:

- security of the issuing procedure (substantiating documents);
- security of manufacture;
- security of the document against any risk of falsification.

As the document which is the most secure at the moment is the NIC, it is this document which forms the basis of consideration and the level of security of the document shall be measured, a contrario, by the level of fraud and errors.

Thus, a first meeting has taken place specifically on the exhaustive determination of the information required for the issuance of the first document, and the security of procedures for the issuance of identity documents.

The mutualisation of the network of Member States' immigration liaison officers, established in the source or transit country

Western States, the targets of illegal immigration, have attempted for some years now to organise their upstream intervention in the immigration source or transit countries.

It has appeared that the English-speaking countries were the furthest ahead in this procedure, with the establishment of a very extensive network of liaison officers with the airlines, called "Airlines Liaison Officers": Canada, United States, Australia and the United Kingdom.

Other countries of the European Union have also explored other paths around the employment or assignment of liaison officers with other services, training missions, assignment to departments dealing with the delivery of visas by consular services, establishment in the source countries, etc.

Impetus was given under the French presidency to start thought and act on the principle of a better coordination within the Union of a network of liaison officers in the source countries of illegal immigration.

The aim has above all been to find new synergies on the basis of existing structures, through the broader development of the pooling of this network, and the elimination of current redundant presences in certain countries or, on the contrary, penalising gaps.

- The first avenue of work therefore aims for a reinforcement of cooperation between officers in the same source country or in the same region of the world, which may lead on to mutual and reciprocal assistance, even work of a complementary nature, in the accomplishment of their missions.
- The second is in the line of promotion of new procedures allowing certain officers to represent other States in the source countries in their mutual interest. The purpose is the mutualisation of this network by rationalising its management, in order to avoid duplication in certain States and pure and simple absences in others.

Launch of a European border police

Faced with Europe's common problem of controlling migratory flows, particularly in the perspective of enlargement of the European Union, the concept of a European border police was put forward by the Prime Minister in May of this year, as well as by several European countries such as Germany and Italy.

In this context, such a creation would allow a consistent control of the external borders and in particular would intervene, as support, in the event of any temporary difficulties.

Its creation will follow the following process:

- improvement of the existing cooperation mechanisms (mutualisation of a network of liaison officers in source and transit countries, mixed patrols, police and customs cooperation centre, creation of mixed investigation teams);
- the creation of a multinational support force.

Commitment to bilateral police cooperation

Intensification of common action

The internationalisation of migratory flows will further cause the border police to reinforce, in partnership with their European counterparts, not only their action at the border (liaison officers, mixed patrols) but also their upstream action (training in the source or transit countries) and downstream action (fighting organised illegal immigration networks).

On the operational level, inter-ministerial mechanisms should be modernised, such as:

- joint operations, following in the footsteps of the mixed Franco-Italian patrols controlling trains on the Menton-Vintimille and Modane-Bardonnèche routes;
- the offices in charge of controlling passengers on the rail link between France and the United Kingdom pursuant to the Sangatte additional protocol.

Favouring the creation of police and customs cooperation centres

Bilateral cooperation must continue with our European partners, whether or not they are party to the Schengen agreements implementing convention, for the development of police and customs cooperation centres (in French *CCPD*). These structures which group together police officers, gendarmes and customs officers of two neighbouring States, allow day-to-day cooperation and collaboration between the authorities as a complement to direct cooperation between corresponding units on either side of the border. The PAF (Border Police) will be very much involved in the creation and management of the new Franco-Italian CCPD for Modane and Vintimille, the Franco-Belgian CCPD for Tournai and the Franco-Swiss CCPD for Geneva, and in the transformation of the four common Franco-Spanish police stations into CCPDs. The coming years should be used to fix policy as to the coordination of these centres.

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RESEARCH IN THE FIELD OF MEDICINE THAT ELICIT LEGISLATIVE CHANGES IN THE HEALTH BUDGET

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Abstract

Regarding the psychological factors as etiologic agents that trigger the somatic diseases has gained more and more ground in the past few years, successfully repeating that the human being is a bio-psycho-social entity. In order to render the psychological interventions more efficient for the management of the diabetes mellitus diseases, we must detect and modify those configurations of the early maladaptive schemes and coping styles that stick together in the so-called acquired vulnerability which makes the person liable to an inappropriate reaction against stress.

Keywords: *acquired vulnerability, coping style, adaptive weakness, management of the disease, psychological intervention.*

Introduction

The ground-breaking progress achieved within the sciences whose object is the health condition, is the consequence of a revolution in theory and practice and forms the basis of a radical change of the traditional notions about the human nature of the health condition and disease. In the centre of this revolution rests the human behavior and its determinations in the social framework and the existence of different criteria for understanding the etiology, treatment and prevention of many medical disorders assigned to biological causes only.

This revolution encourages the development and growth of the multidisciplinary approaches, including the psychology of health condition, medical psychology, medical behavior.

Background and Aims: A great number of paper was dedicated to the mood-based psychosomatic diseases and the role of negative affectivity[1]. Many researches in `80 years were focused on a mood the authors called "negative affectivity" (NA). The subjects with NA show a high level of discomfort and dissatisfaction, are introspective, linger upon their failures and mistakes, tend to be negative, focusing on the negative aspects of themselves and of the others. Negative affectivity has similar features with other dispositional typologies, such as neuroticism, anxiety, pessimism, maladaptation.[1-4]

[1] Flaxman F.E., Blackledge J.T., Bond F. *Acceptance and commitment therapy*, "Routledge" Press, New York, 2011;

Positive affectivity would be the contrary of the negative one, associated with extraversion, higher energetic level, superior activity level. Very recent researches show that individuals with intense negative affectivity seem to be hypervigilant with their own bodies and have a low threshold when it comes to notice and report discrete somatic sensations. Their pessimistic worldview makes them more concerned about the implications of the situations perceived and they seem to have a higher risk for somatization and hypochondria. These individuals are more likely to report symptoms in all the situations and across long periods of time, the temporary situational stressors having but a small influence upon this stable personality trait. Negative affectivity is one of the problems that influences negatively both the assessment of symptomps description and the clinical and research studies.

In the past years the psychosomatic approaches have gained ground. Among others, they highlight the role of the immunogenic personality traits – locus of control, self-efficacy, hardiness, self-esteem – in triggering certain diseases. The term "locus of control" was introduced in 1966 and named "the way in which a person explains their success or failure, through controllable or uncontrollable internal or external causes."[2] Internal locus of control means that both responsibility for the errors and merit for success are due more to the flaws, errors and respectively to the abilities, knowledge and skills of the person and less to the external factors; external locus of control overestimates the importance of the person's external factors (chance, destiny, divinity etc) in defining success or failure. Starting from these two categories of locus of control, there are attempts to make inferences to the efficacy of the coping. Thus, ILC would function as a protection in case of acute and chronic stress through the increased level of responsiveness to the environmental information that has great adaptive value, through resistance to external pressure and the high level of adapting to the situation. Other authors think that personal responsibility configured in ILC is an important factor in social medicine. Correlatively, ELC is a vulnerability factor to dissatisfaction and failure, leading frequently to anxiety and depression. [5-14]

Self-efficacy consists of a person's belief that they have certain motivational and cognitive skills they can activate to accomplish the planned goals. High self-efficacy is associated with high motivation and increase of the individual's real possibilities to find best solutions, while low self-efficacy is associated with failure, self-blame, depression and anxiety. Moreover, there are researches showing direct proportion between self-efficacy and the performance of the immune system, and especially of T cells, NK subpopulation.

Hardiness directly refers to the efficacy of coping mechanisms through ILC, commitment and persistence to task and perception of life changes as challenges, not fatality.

Self-esteem has been defined as a person's positive or negative self-assessment, expressed through different degrees of approval/disapproval, showing the measure to which the person sees themselves as being able, worthy, important. Starting from the hierarchical model of self-esteem, it is postulate that besides the global self-esteem we can identify the assessment of one's own value in different fields of activities. Depeding on the hierarchy and respectively the importance of those fields for defining the self, they contribute with different weight values to structuring and expressing the overall self-esteem. Success raises the levels of self-valuation and personal value, therefore of the self-esteem, while the failure lowers these levels. Low self-esteem is part of a negative affectivity, where negative expectations lead to low performances and failures. These in their turn have negative effect upon the level of self-esteem. In stressful situations, persons with anxiety and low self-esteem may have less success and can therefore experience feelings of failure. [15-20]

For this purpose **we also speak about psychological vulnerability to stress and identify individuals with cognitive patterns that make them more sensitive to stress**; the cognitive pattern reflects dependence on achievements or **external** sources of expressing the

[2] Wehrenberg, M. – *The 10 Best ever Depression Management Techniques*, "W.W. Norton& Company" Press, 2010;

way in which the individual makes a self-assessment. Such dependence upon concrete achievements or other individuals for self-assessment is opposed to the idea that states the role of the character and inborn qualities and makes the sense of self-worth vulnerable to the others' whimsical mood or life's hardships. Psychological vulnerability emphasizes the cognitive vulnerability correlated with the perceptions of dependence, perfectionism, negative attributions and the need for external sources of approval.

Psychosocial researchers looked for different connections between the cognitive vulnerability and the psychological crisis, namely the depression. A group of variable personality traits that were investigated as specific vulnerability factors to depression includes dependence, self-blame, perfectionism and dysfunctional attributions. The self-oriented perfectionism and the concerns about the individual achievements were the focus of many studies regarding vulnerability to depression.

For individuals with excessive concern for achievement, the failure recorded in comparison with important accomplishments may be an overwhelming blow leading to depression. Dependence and interpersonal sensitivity were also the focus of some researchers who found out that individuals with high score in sociotropy (or social dependence) recorded a high score in measuring the self-defence personality traits and had a more important negative perception of themselves, the world and the future. It is speculated that threats to relations may be an important source for depression in this category of subjects. Other examiners focused on the role of dysfunctional attitudes (negative, rigid thinking and mostly negative perception of self, the world and the future) in the development of depression.

In psychology stress aims at dysfunctional psychological moods caused by the difficulties the individual has to face, while the coping aims at the mechanisms and means they have at hand in order to manage these problems. **Coping** or **stress management** consists in the cognitive and behavioural effort the person makes to decrease, control or tolerate the internal or external demands which exceed the personal resources; it takes place in three stages: anticipation (warning), confrontation (impact) and postconfrontation. Coping is a response to **a threat appraisal**, being defined as a set of cognitive and behavioural efforts to manage the specific internal and/or external demands that were assessed as exhausting or exceeding the individual's resources.[3]

The research **aims** to highlight the role that psychological intervention has in diabetes mellitus management, especially in the first year of disease onset. Changes targeted by cognitive and behavioral psychological interventions relates mainly to change coping mechanisms, to change early maladaptive schemas and modify personality traits vulnerable to disease.

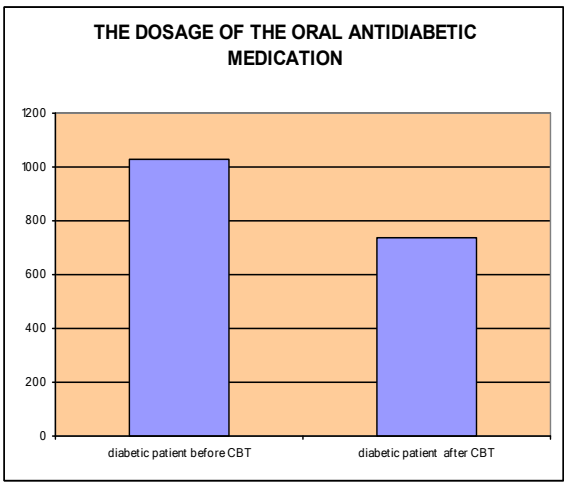
Taking into account all these aspects, physical amelioration of a disease is not enough, if it doesn't lead to the improvement of the subjects quality of life too. It is essential to approach the emotional, cultural and social aspects of each disease. The patients spiritual life must not be excluded, since its impact upon the health of the human body is a major one.

Even if the patients are still sceptical and reserved when they are being explained the psychological causes of their diseases, the medical progress that aim at the capacity of localizing in the brain the excitation or inhibition focal points correlated with certain emotions, will give more credit to the psychosomatic approach. Thus one could interfere and control diseases that seem to turn into epidemic, like it is the case of type 2 diabetes mellitus mentioned in the present paper. Within the theme of the discourse, the prevention, as well as the therapeutic intervention, should mandatory aim at the development of some abilities of coping with stress in a problem-oriented manner, that would keep patients away from the urge of eating compulsively or hyperphagic eating behaviour of buying, with the price of the extra weight and the alarming values of the blood sugar, the ephemeral illusion of balance and harmony. [28-38]

[3] Davey, GCL, Wells, A – Worry and its Psychological Disorders: Theory, Assesment and Treatment, "J.Wiley & Sons" Press, 2006;

Methods. Work hypothesis: there are statistically significant differences between the two groups regarding the evolution of the quality of life of the diabetes mellitus patients after taking a CBT psychotherapeutic treatment and, in the same time, decrease the costs of medical and social treatment. The patients in the experimental group (114 subjects) benefited from 10-12 CBT and schema therapy sessions, unlike the 120 ones in the control group who followed only a drug-based treatment. The sessions took place in individual setting, one session per week. Checking the stability in time of the effects of the psychotherapy was done on a period of 6 months through follow-up session, one per month. We accurately observed the variables that could contribute to the change of the final answers (events with major impact upon life, such as the change of job, partner, house, special loss/gain, etc). Psychological instruments was NEO-PI R (personality inventory), COPE (Lazarus Folkman coping mechanism inventory), Young Questionnaires for early maladaptatives schemes.

Results and interpretation.



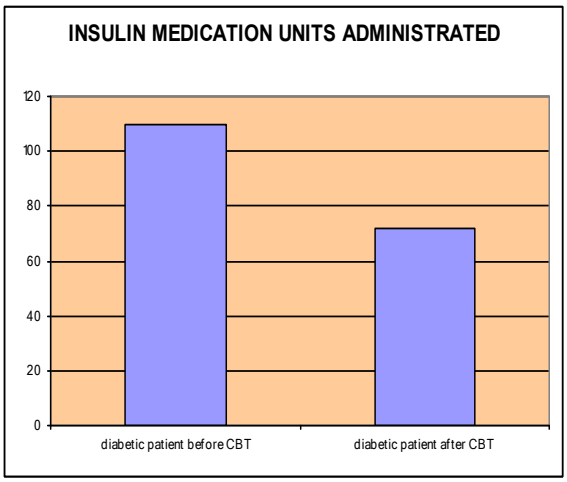


Fig. no 1 The dosage of the oral antidiabetic medication

Fig. no. 2 Insulin medication units administrated

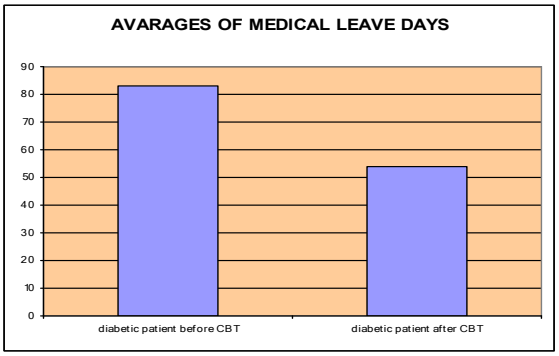


Fig. no. 3 Averages of medical leave days or comorbidities

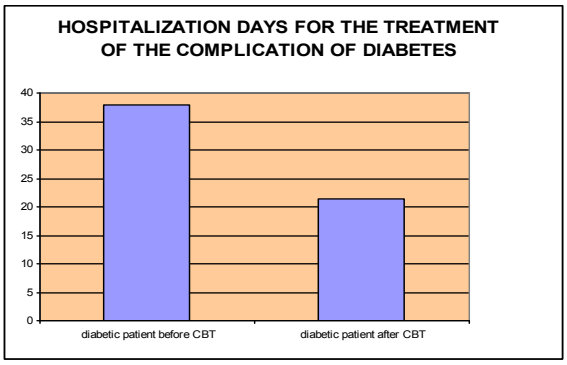


Fig. no. 4 Hospitalization for complications

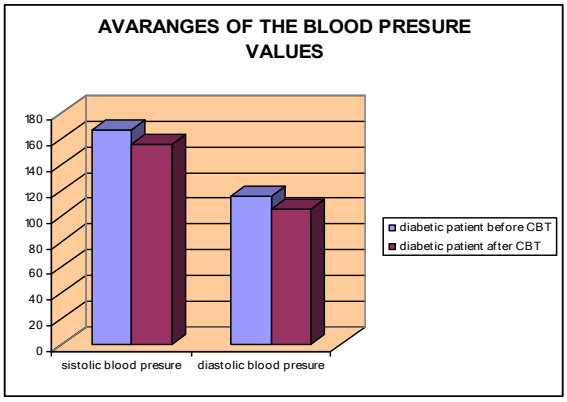


Fig. no. 5. Averages of the blood pressure values

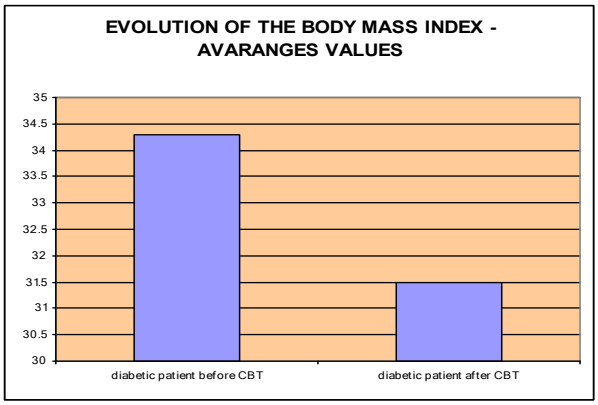


Fig. no. 6 Evolution of the body mass index avarages

The T-test for paired and variance analysis (ANOVA) points out that the evolution of the quality of life of the diabetes mellitus patients that benefited from psychological interventions is a very good one, the changes being spectacular here and there. Significant changes were recorded as regards the answers at the personality inventory, the most obviously modified were the neuroticism factor (the anxiety, fury/hostility, depression, vulnerability to stress aspects have significantly smaller scores after CBT), the extroversion factor (the

assertiveness and positive emotions aspects recorded significant growth) and the likeability factor (by increasing the scores in the trust in the others and frankness aspects). The most spectacular changes occurred in the early maladaptive schemes that significantly remitted after the psychotherapy session, as well as in the evolution of the coping mechanisms, meaning the patients acquired more efficient methods of coping with stress. The quality of life of the patients in the experimental group recorded remarkable positive changes, both by increasing the compliance with treatment, changing the perspective upon life, keeping the pace for adopting a healthy lifestyle, and by decreasing the dosage of the oral antidiabetic medication by approximately 25% (fig. no. 1), up to 30% of the insulin units administered in some cases (fig. no 2), decrease by 35% of the medical leave days (fig. no. 3) and by 44% of the hospitalization days for the treatment of the complications of diabetes (fig. no. 4), the control of the comorbidity by decreasing the symptoms of depression (insomnia, eating behavior, depressive mood, anhedonia, ruminations), decrease of HBP by 10.4 units on average for the systolic blood pressure and 10.1 for the diastolic blood pressure (fig. no 5), decrease of the BMI from 34.3 to 31.5 on average (fig. no 6).

Conclusions. These results draw the attention once again upon the multiple directions of intervention and especially of prevention in case of the psychosomatic disease, especially of the diabetes mellitus, the CBT interventions, the schema therapy or the rational emotive behaviour therapy, foretelling the numerous ways of annulment, control or decrease of the psychical vulnerability to stress, that have major impact upon life. Thus, the costs with medical and social treatment (hospitalization for comorbidities or complication of diabetes mellitus, medical leave days, insulin or oral antidiabetic medication, medical retirement and so on) may decrease by aprox. 40%. The budget for health gain is beneficial for both diabetic patients and equally for all of us, as taxpayers.

But psychology services are not reimbursed by health budget, making on the one hand that the addressing of these services to be restricted one, to be a luxury not access most of the patients and on the other hand the health budget has loss "hemorrhagic" funds of approx. 40%, as shown above**.** It is necessary therefore necessarily, legislative changes allowing settlement of health insurance budget psychological intervention services, knowing that there is a practice of modern European of this type (in most European countries the cost of the first psychological intervention sessions 10-20 are borne by the health insurance budget).

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CONSIDERATIONS ON THE INTERNATIONAL REGULATIONS RELATING TO THE SANCTIONING OF ACTS HARMING THE ENVIRONMENT

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Abstract

Even if international law manifested initially as quite reluctant in the acceptance and, especially, the massive international liability for environmental damage, since the second half of the twentieth century were adopted several international legal instruments of general and special nature which include regulations on environmental protection measures, but also on the liability of those guilty of altering it.

Key words: *environmental protection, international conventions, illegal acts, liability, sanctions*

Introduction

One of the basic principles of international law is the idea that any breach of an engagement involves an obligation to repair[1].

International Responsibility represents an essential institution of public international law that establishes what consequences arise for an entity as a result of the breach of an international obligation[2], representing also the mechanism through which is obtained the restoration of legality - if the legal order is disregarded by a state or another subject of public international law[3].

Permanent degradation of the natural environment causes particularly complex environmental problems, manifested by lack of harmony between the man-made and natural environment[4], leading not only to the destruction of the ecological balance, but also the reverse reaction[5], environment becoming less favorable for the realization of socio-economic activities, human life[6], which can no longer be considered the center of the biosphere[7].

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[1] D. Ruzie, *Droit international public*, 15ème édition, Édition Dalloz, Paris, 2000, p. 264. With regard to international jurisprudence, the Permanent Court of International Justice stressed that "it is a principle of international law and even a broader conception of law, that any breach of an engagement involves an obligation to fix", namely *Factory at Chorzów* (Germany v Poland), Judgment of July 26, 1927, PCIJ, Series A, no. 9 (http://www.icj-cij.org/pcij/serie_A/A_09/28_Usine_de_Chorzow_Competence_Arret.pdf), p 29; in the same sense, see the case *Corfu Channel* (United Kingdom of Great Britain and Northern Ireland against Albania), Judgment of December 15, 1949, ICJ Reports 1949 (http://www.icj-cij.org/docket/files/1/1663.pdf), p 263

[2] D. Popescu, Felicia MAXIM, *Drept internațional public*, Renaissance Publishing House, Bucharest, 2010, p. 322.

[3] P.-M. Dupuy, *Droit international public*, 7ème édition, Dalloz, Paris, 2004, pp. 457.

[4] I. Mihuț, *Autoconducere și creativitate*, Dacia Publishing House, Cluj-Napoca, 1989, p. 259.

[5] M.-L. Larsson, *The Law of Environmental Damage: Liability and Reparation*, Martinus Nijhoff Publishers, The Hague, 1999, p. 39.

[6] I. Avram, D. Şerbănescu, *Mediul înconjurător al Terrei încotro?,* in RRSI, No.1, January-February 1989, page 32, which shows that the planet's fertile land turns into desert, and the disappearance of many species of plants and animals can lead to the inability to find cures for some serious diseases that kill tens of people daily.

Faced with these realities people should be aware of future dangers, and states must work together to establish internationally the best measures to protect and improve the environment, which includes not only the material and organizational efforts, but also the development of scientific concepts to this new attitude towards the environment, based on the reconciliation of man with nature[8].

International law remains quite reluctant to the acceptance and especially materialization of the idea of international responsibility of States for environmental damage.

Moreover, legal regulations do not impose an absolute prohibition in certain areas to pollute, authorizing actually a reasonable pollution[9].

There have been and are done substantial efforts to adapt to the peculiarities of environmental protection action and the gradual building of a form of liability for harm to the environment[10].

International regulations on environmental protection and liability for acts affecting it

Legal liability for acts affecting environment is normative, as in other areas, which cannot exist without a legal requirement, be it legal rules of compliance or legal rules to sanction a conduct considered illegal, the purpose of this liability is the preservation of the social values in the field[11].

As required by law as a punitive measure against those who committed the unlawful act, liability is triggered in order to sanction and reeducate and restoring the rule of law infringed[12] .

Legal liability in environmental law has little impact and has many features[13], the main objective being to prevent degradation as environmental damage is usually permanent, irreversible or difficult to control and to assess and the cost of restoring the affected environment (where possible) becomes exorbitant and does not give a full and effective reparation[14].

Public international law does not contain sufficient provisions for the punishment of acts that harm the environment, but were adopted, however, several international instruments aimed at environmental protection, such as the Declaration of Principles of the United Nations Conference on the Human Environment (1972), Rio de Janeiro Declaration (1992), Johannesburg Declaration (2002), Convention on long-range Trans boundary air Pollution (1979), Convention on the Protection of the Ozone Layer (1985), Convention on Biological Diversity (1992), the Framework Convention on Climate Change (1992), Convention on the law of the Sea (1982), Convention on the relative right to use international watercourses for purposes other than navigation (1997), Convention on the Control of trans boundary Movements of Hazardous Wastes and their elimination (1989).

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[7] L. K. Caldwell, *International environmental policy: Emergens and dimensions*, Second Edition, Duke University Press, Durham, 1990, p. 3.

[8] N. N. Constantinescu, *Protecţia mediului natural – cerinţă intrinsecă a unei dezvoltări economice moderne*, in„Economistul”, no. 180 of 3-6 April 1992, p. 5.

[9] P. Lascoumes, *La justice de l´environnement industriel: une place à predre et à inventer*, in „Justice”, no. 122, novembre 1988, p. 33, which states that “The problem was originally thought (political) and built (legal) as an administrative management of a number of risks and injuries. The police established an administrative device, which is more incentive than repressive more teleological than on sanctions”.

[10] M. Duţu, *Dreptul mediului*, 3 edition, C.H. Beck Publishing House, Bucharest, 2010, pp. 221-222.

[11] N. Popa, *Teoria generală a dreptului,* C.H. Beck Publishing House, Bucharest, 2002, p. 281.

[12] S. Popescu, *Fundamentul răspunderii juridice. Câteva remarci*, in „Studii de drept”, II volume, Universitas Timisienses Publishing House, Printinf ot University of West, Timişoara, 1998, p. 74.

[13] M. Duţu, *Dreptul mediului*, C.H. Beck Publishing House,Bucharest, 2007, p. 238.

[14] S. Giova, *Responsabilità da danno ambientale. Profili di diritto civile, amministrativo e penale*, Edizioni Scientifiche Italiane, Napoli, 2005, p. 138.

The contents of some of these instruments provides that liability in environmental law is based on the *polluter pays* principle, which was held for the first time by the Organization for Economic Cooperation and Development (OECD) in a series of recommendations[15], since the 1970s. This principle means that the polluter should bear the expenses needed for the prevention and control of pollution to ensure that the environment is in an acceptable condition; according to OECD Recommendation C (74) 223, the cost of these measures should be reflected in the cost of goods and services which cause pollution in production and/or consumption. Subsequently, it was considered that the polluter should also bear the cost of *ex post facto*, that of the one for remedies; for example, Recommendation C (81) 32 OECD states that the polluter is responsible for "reasonable actions of Repair" if oil spills into the sea.

Institution of liability in international environmental law is based on the principle of *State liability* for environmental damage, which was enshrined in the Rio Declaration of Principles, 1992 (principle 21)[16]. States have the obligation, according to the written law and custom, to act so as not to affect the rights of other states in this area, principle emphasized in international jurisprudence on environmental law. Thus, for example, the arbitral sentence of 11 March 1941 on the foundry business Trail (U.S. versus Canada), the International Court of Justice held that, under principles of international law and U.S. law, no state has the right to use its territory or permit its use so that the smoke would cause injury to the territory of another state or the properties of individuals within it, if it comes to serious consequences and if the damage is proven by clear and convincing evidence[17]. Arbitral jurisprudence of the International Court of Justice in Environmental Matters, however, is limited by the *quasi-absence* of coercive means, being also subject to the sovereign will of states.

Each state is required to observe the environment of other states or other areas not related to any national jurisdiction, regardless of activity, according to international environmental law requirements. The new achievements of science and technology development in the context of economic development should be considered for the formulation of new environmental rules, based on existing regulations. Thus, even if there is still no regulation specifically prohibiting the use of nuclear weapons, existing international law regarding the protection and surveillance of the environment still contains important ecological considerations in the regulatory principles and rules of law applicable to conflicts to be taken into account properly in this area also (ICJ, December 20, 1974, nuclear test business New Zealand v France).

According to international regulations on environmental protection, liability for harm caused by an illegal activity *per se* is often channeled to the *person* who has decisive economic power over the work that brought environmental damage, a situation which was established at the beginning in the nuclear conventions, such as the 1960 Paris Convention on third party liability in the field of nuclear energy, which entered into force on 04.01.1968, supplemented by the Brussels Convention of 1962, which came into force in 1974; 1963 Vienna Convention on Civil Liability for Nuclear Damage, which entered into force on 12 November 1977, as amended by the Protocol of Vienna in 1977; Joint Protocol on the application of the Vienna Convention and the Paris Convention, adopted in 1988; Protocol on Additional Compensation for Nuclear Damage, adopted in 1977 in Vienna, Brussels Convention of 1962 on the liability of operators of nuclear ships.

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[15] See Recommendation C (72) 128 of 1972 on the guiding principles of international economic issues of environmental policies, Recommendation C (74) 223 of 1974 on implementing the principle of polluter pays, Recommendation C (89) 88 of 1988 on the application of polluter pays principle to accidental pollution.

[16] Along with states, liability may rest with other subjects of international law.

[17] In this regard, see the case *Territorial Jurisdiction of the International Commission of the River Oder* (United Kingdom of Great Britain and Northern Ireland, Czechoslovakia, Denmark, the French Republic, the German Empire and Sweden against Poland), judgment of 10 September 1929, PCIJ, Series A, No. 23 (http://www.icj-cij.org/pcij/serie_A/A_23/74_Commission_internationale_de_l_Oder_Arret.pdf).

Moreover, given the uncertainty about the international responsibility of states, advanced solution in practice, including international conventions for damages, is to transfer the matter to the *individual* level, as a matter of private international law resolved in domestic courts. In this case fixing the damage goes primarily to the *person guilty* of violating environmental norms, the state has a residual responsibility[18].

A particular problem which arises in international environmental law is international liability for damage to *common property,* "areas beyond national jurisdiction". The need for accountability for environmental assets in certain common areas (seabed beyond national jurisdiction, outer space, Antarctica) results from the provisions of international treaties such as the Treaty banning nuclear weapons experience in the atmosphere, outer space and under water, adopted in 1963; Treaty on Principles Governing the Activities of States in the exploration and use of outer space, including the moon and the celestial bodies, adopted in 1967; Antarctic Treaty of Washington, signed in 1959, entered into force in 1961.

Some international conventions dealing with the Environmental Protection recommend states to adopt national rules to protect the environment in the areas covered by the Convention and sanction acts that affect them. Of these we exemplify: United Nations Convention on the Law of the Sea, signed at Montego Bay (Jamaica) on 10 December 1982; Vienna Convention on the Protection of the Ozone Layer, signed on 22 March 1985; International Convention on preparedness, response and cooperation in case of oil pollution, adopted in London on November 30, 1990; Convention on the Trans boundary Effects of Industrial Accidents, signed in Helsinki, 17 March 1992; United Nations Framework Convention on Climate Change, signed in Rio de Janeiro on May 9, 1992; United Nations Convention to Combat Desertification in those countries experiencing serious drought and/or desertification, particularly in Africa, adopted in Paris on 17 June 1994; Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters, signed in Aarhus in 1998; European Convention on landscapes, adopted on 20 October 2000 in Florence; Convention on Persistent Organic Pollutants, signed in Stockholm on 23 May 2001.

Conclusions

Classic tool for achieving the requirements of legal rules, the liability has a lower impact on the environment protection and has multiple features.

Internationally, the general trend is that the environment be protected mainly by regulating activities that may affect it in order to prevent injury and less in the way of accountability, due to the particularities of the field. The ecological damage is often permanent, damage is irreversible, and the cost of repair in some cases is exorbitant so that post intervention after the administration of evil, does not give full and effective reparation.

Control and targeted sanctions remain ineffective, as attempts to adopt, based on common law liability, environmental foundations and specific rules have not led to significant achievements in the positive law in this matter. Although attempts to create a specific offense of injury to the environment to suppress in a global manner the eco illicit act, so far have not reached a concrete result, the prospects of a fundamental reform on the main forms of liability for environmental crimes have already emerged[19].

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[18] M. Duţu, op. cit. p. 241.
[19] M. Duțu, op. cit. p. 222.

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THE MAIN RIGHTS GUARANTEED BOTH INTERNATIONALLY AND IN ROMANIA

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Abstract

There are many human rights enshrined on an international and national level, yet some of them – especially the ones regarding economy, social and cultural – there are no sufficient guarantees in regard to their possible practice.

Guaranteeing by the positive right of the human right involves the concrete control over their practice, consisting in non-legal or legal procedures made to ensure practice or settlement of different occurrences concerning the respective rights.

Keywords: *rights, freedom, effective guarantee, international regulations, national regulations*

Introduction

Consecration of human rights and of their protective means through international universal conventions or regional ones or through internal normative documents is essential for the control procedure functioning and jurisdiction, achieved by responsible bodies, to ensure the necessary conditions for their practice.

There are a lot of freedoms and rights, yet not all of them are effectively guaranteed, in what regards to their practice, more or less, as economic rights, social and cultural ones.

From the effective guaranteed rights and freedoms, in the doctrine[1] are mainly analysed: *the right to indiscrimination, persons integrity, legal person freedoms, rights of procedure, right to respect the private and family life, freedom of thought, freedom of social and political action, right to own*.

The effectively guaranteed rights and regulations regarding their insurance

a) The restriction of discrimination. Proclaimed in art. 1 of the Universal statement of human rights, *the principle of indiscrimination* where it has it origin in the general postulate of the *equal dignity* of all human beings.

According to the European Convention of the human rights, party states have the task to adopt legal and administrative measures to overcome and sentence the discrimination occurred from persons under their jurisdiction[2], otherwise the discriminated being able to address themselves to the European Court of Human Rights.

Art. 16 from the Romanian Constitution proclaims the principle of equality among the citizens in front of the law and public authorities, without privileges and discriminations, no one being above the law. Likewise, in art. 4 p. 2 shows that „Romania is the indivisible and common homeland of all its citizens, without racial, nationality, ethnic origin, language, religion, opinion, political affiliation, wealth or social origin distinctions".

[1] F. Sudre, *Drept european şi internaţional al drepturilor omului* (traducere), Polirom Publishing house, Iaşi, 2006, pp. 201-411.
[2] R. Chiriţă, *Convenţia europeană a drepturilor omului. Comentarii şi aplicaţii*, vol. I, second edition, CH Beck Publishing house, Bucharest, 2007, p. 609.

As a guarantee of this right, in the New Penal Code, the labour abuse is incriminated (art. 297 p. 2, combined with art. 308), which fines/sentence the enclosure, by a public functionary or any other employee of using or practicing the right of any citizen, or creating some inferiority situations for the respective based upon themes regarding racial, nationality, origin, language, religion, sex, sexual orientation, political affiliation, wealth, age, disability, noncontagious chronic disease or HIV infections.

b) Personal integrity/Persons integrity. The right to life, physical and moral integrity of the person makes part of the fundamental rights which are owned by any individual, being recognised and consecrated through numerous international legal instruments, as the Universal Statement for Human Rights stipulating that „Any human being has the right to life, freedom and his/her security" (art. 3). The international treaty regarding the civil and political rights shows that „the right to life is inherent to the human being" (art. 6) – the same treaty foresees that this right needs to be protected by law, nobody unable to be deprived of his/her life arbitrarily. The European Convention for Human Rights defence protects, the right to life of each person (art. 2).

In the art. 22 from the Romanian Constitution, the right to life shows, to the physical and psychical integrity of the person is guaranteed. No one being subjected to torture and in no circumstance of punishment or inhuman or degrading treatment, punishment with death, being, in this way, forbidden.

Conversion into practice of these guarantees are done by incriminating in the Penal Code of acts *against life and physical or health integrity* (art. 188 – art. 204), as well as other acts, as: *subjection to harsh treatments* of persons in detention, retention or executing a safety measure or educative (art. 281 P. Code) or *torture* carried out by a public functionary which practices the state authority (or by other person which acts to its instigation), causing a person, powerful psychical and physical sufferings (art. 282 P. Code).

c) Natural person's liberties/freedoms. Insuring the freedom and safety are inalienable rights[3], having, as a principle, the purpose to protect the person against state arbitrary[4].

According to art. 3 from the Universal statement of human rights, art. 9 from the international treaty regarding the civil and political rights, art. 5 from the European Convention of human rights a.s.o. any person has in a guaranteed way the right to *freedom and safety*, as well as the right to *freedom of movement*, this being affected only in derogatory situations foreseen in a limited way by current legislations.

The right to *freedom of movement* has certain limits, imposed by objective situations foreseen by the International Treaty in regard to the civil and political rights (art. 12) and in the European Convention of human rights. Thus, the right to move and to reside freely on a state territory, recognized by nationals, is guaranteed to foreigners only if those have a „legal" situation, according to the internal right of the state, which can institute some restrictions of public order reasons. The right to leave any country – including own country – is yet recognised identically to any nationals of any state and to foreigners.

In art. 23 from the Romanian Constitution the freedom and safety of the individual is foreseen and covenant, and the search, detention or arrest of a person are allowed only in cases and procedures foreseen by law. These constitutional principles, which show the freedom of a person, are concreted in the Penal Procedure Code, in which the cases are stipulated and the procedural measures to dispose of freedom restrictions, and their guarantee is done through the unfair incriminating repressions.

In what regards to *the right of free movement*, in art. 25 from the Romanian Constitution it states that „the right to move freely in the country and abroad is guaranteed";

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[3] C. Bîrsan, *Convenţia Europeană a Drepturilor Omului. Comentariu pe articole*, vol. I, *Drepturi şi libertăţi*, All Beck Publishing house, Bucharest, 2005, p. 277.

[4] Case Lawless against Ireland (no. 3), application no. 332/57, The Decision of 10 July 1961 of the European Court of Human Rights; James Edmund Sandford FAWCETT, *The Application of the European Convention on Human Rights,* 2-nd edition, Pearson Education Publishing house, Oxford, 2008, p. 222.

likewise, each citizen is ensured with the right to establish the residence or stay in any locality from the country, to immigrate, as well as to return in the country.

As a guarantee in the defence of these rights is the incrimination of the act of lack of freedom of any person illegally (art. 189 Penal Code).

d) The procedural rights. The sole category of rights whose content does not make regard to a material freedom, but to *guarantees* from which a person dispose of in a rightful state to value the rights and freedoms consist in *procedural rights,* stipulated in numerous international conventions, which consist mainly: *to right to an equitable trial, right to an effective appeal, the principle of legal incriminations and punishments*.

The right to an equitable trial is proclaimed through art. 21 of the Romanian Constitution, where it shows that any person may initiate a trial in front of justice to defend legitimate rights, freedoms and interests, no law being able to restrict the practice of this right. Likewise, in art. 124 from the Constitution it shows that the justice is according to *law,* this being unique, impartial and equal for all, in art 126 shows that justice is done through court trials, competences and procedures foreseen by law, and in art. 127 shows that court hearings are public, beside the cases foreseen by law.

All procedural rights are guaranteed and through regulations attached to ordinary laws, as Penal Code and Procedural Penal Code – our country being permanently preoccupied to correlation of the provisions from the internal right with international regulations, in a distinctive way by the European Union.

e) The right to respect private and family life. Inspiring from the universal statement of human rights art. 17 from the International Treaty regarding to civil and political rights and art.8 from the European Convention of human rights[5] consecrate the protection of right to the respect of *private life* and *family life* against arbitrary interventions or illegal of public authorities.

The right to respect private life englobes *the personal private and social life.*

The respect for private life presumes the *right to a healthy environment* and ecologically equilibrated, which constitutes a natural right, as important as the right to property/to own and in tight connection with it[6].

In Romania, the protection of private and family life has an important role, art. 26 from the Constitution guaranteeing the freedom of intimate life[7] and the right of persons to conclude a marriage. Likewise the Romanian state respects and protects the private life of anyone, with the condition not to harm the rights of other persons, public order or common sense.

The same rights are guaranteed through provisions consisted in ordinary laws, as the Civil Code, in which the marriage conclusion conditions are ruled, the spouses, parents and children links, rights and obligations of the family a.s.o. Likewise, in the Penal Code there are incriminations through which are sentenced the analysed right violations, as in illegal interception of an informational data transmission (art. 361) or the felony of family abandon (art. 378), according to which is punishable the violation of obligations of maintenance or relief provided by law for family members who are in need, etc.

The right of the person to a healthy environment is guaranteed through art. 35 from the Romanian Constitution and numerous ordinary laws.

f) Freedom of thought. Refer to: freedom of thinking, consciousness and religion; freedom to train and the right of parents to be respected in their beliefs regarding education of children; liberty to information and expression. These liberties/freedoms have an individual

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[5] R. Chiriță, *Convenţia Europeană a Drepturilor Omului*, 2-nd edition, C.H. Beck Publishing house, Bucharest, 2008, pp. 416-417.

[6] M. Duțu, *Dreptul mediului*, 3-rd edition, C.H. Beck Publishing, Bucharest, 2010, 123; Dumitra POPESCU, *Probleme juridice privind protecţia mediului uman şi combaterea poluării lui,* Revista Română de Drept, nr. 7 / 1972, pp. 36-47; Daniela MARINESCU, *Tratat de dreptul mediului,* III-rd edition, revised and enlarged, Universul Juridic Publishing house, Bucharest, 2008, pp. 9 and fol.

[7] I. Ifrim, *Importanţa distincţiei dintre viaţa socială şi viaţa intimă a persoanei,* in „Dreptul românesc în contextul exigenţelor Uniunii Europene", Hamangiu Publishing house, Bucharest, 2009, p. 618.

dimension (to have opinions and beliefs), as well as the social and political one (their manifestation).

In our country legislation the freedom of *thinking, consciousness and religion,* are foreseen insuring the manifesting means and the guarantees of their respect. Thus, in art. 29 from the Constitution *freedom of thought and opinions, as well as religious beliefs* cannot be fenced in no circumstance. The parents or tutors have the right to insure, according to own beliefs, the *education* of minors of which responsibility is returned.

According to art. 30 p. 1-3 from the Constitution, the Romanian citizens are guaranteed with the freedom of expression of thoughts, opinions, beliefs or creations of any kind, the censorship being forbidden. Likewise, the freedom of press is guaranteed, implicitly the freedom to form new publications, by respecting current legislations.

These freedoms[8], are guaranteed by ordinary laws, existing regulations to which one may be sanctioned if violates them, as incrimination of forbiddance for the religious practice freedom.

g) Freedoms of social and political action. To participate to a political and social life, each human needs to benefit from freedoms of meetings and associations, as well as freedom of choice.

According to art. 20 from the universal statement of human rights „Anyone has the right to meet and associate peacefully", this double freedom being stated in art. 21 and 22 from the international treaty in regard to civil and political rights as well as in art. 11 of the European convention of human rights with the statement of some restrictions.

In our country the freedom of meeting is consecrated and guaranteed by provisions of art. 39 from the Constitution whereas shown that „Meetings and demonstrations, processions or any kind of meetings are free and can be organized and carried out peacefully, with no sort of weapons" and the right to association is proclaimed by art. 40 p. 1 and 2 from the constitution, in which the citizens can freely associate in politically parties, syndicates and other associative forms, also the organizations which militate against the political pluralism, of rightful state principle, of sovereignty, integrity or independence of Romania are forbidden.

h) Right of ownership/of property. Guaranteeing the property is done by a favourable framework of the free social relations organization, with the respect of equality, dignity and justice[9].

The universal statement of human rights states in art. 17 that: „Any person has the right to own/property, both solely, as well as through associating with others" and „No one being alienated arbitrary by his/her property", the European convention of human rights did not stipulated this right in the moment of adoption, yet after 2 years, through art. 1 from the additional protocol no. 1 the right to property is guaranteed, each individual being able to dispose of goods, stating that the state can adopt, in general interest and keeping a legal equilibrium, laws which have certain limitations justified to this right.

In Romania, art. 44 from constitution guarantees the right to private property showing, in cases that this right can be limited. Also stated that the property right and claims over the state are guaranteed, contents and limitation of these rights being established by law, and the private property legally protected by law, no matter the owner, this no one can be expropriated but only by a cause of public utility, established according to law, with rightful and previous compensation. As a guarantee in the respect of property right, the constitution also states that the income wealth licit cannot be confiscated, the licit character of the ownership presuming itself. The designated goods used or resulted from felonies or infractions can be confiscated only in conditions provided by law.

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[8] M. Udroiu, O. Predescu, *Libertatea de exprimare, mass-media şi prezumţia de nevinovăţie*, in Dreptul nr. 9/2008, pp. 238 and fol.

[9] Ch. Mouly, *La propriété*, in Cabrillac, M – A Frison – Roche, Th. Revet (Coord.), *Droits et libertés fundamentaux,* twelve edition, Dalloz Publishing house, Paris, 2006, p. 737.

The guarantee of the respect for the right of property is achieved and by incrimination in the Penal Code of more acts through which this right is violated, as in: theft (art. 228-230), damaging (art. 253-255), and illegal management (art. 242) a.s.o.

Conclusions

The elaborated study over the universal international conventions and European-regional, but also in regard to internal regulations which regards to the consecration and guarantee of studied rights leads to the conclusion that in our country there is a special preoccupation to correlate internal normative with international ones as well as with ECHR practice, thus registering fewer violations of these rights in damaging of persons under the Romanian jurisdiction, inclusively regarding to the refugees.

Therewith, in Romania numerous situations are registered with regard to right violation of human rights concerning property respect, racial indiscrimination or other criteria, respect of private and family life, freedom of natural person, procedural rights, etc., part from which these acts being sanctioned by decisions of the European Court of Human Rights, or found by other international or national bodies, be it governmental or nongovernmental.

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CYBERCRIMINOLOGY
TRANSITION FROM TRADITIONAL CRIMINAL TECHNIQUES TO CYBERCRIME

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Abstract

In the last decade innumerable profound analyses of the cybercrime phenomenon were carried out that have led to predicting a future cyber-attack called the cyber war. Until now there hasn't been a real threat of this kind. From a criminology point of view, these two worlds, the real one and the virtual one, are totally different, so it's up to us, the observers, theoreticians and practitioners to elucidate the connection between these two worlds.

The transition to cybercrime by law breakers, made with a minimum effort, minimum investment and resources offered by the wide world users, sees that they could launch themselves into a no limits race.

Investigating methods and techniques for traditional crime improved because of the technological evolution within the last years. Unfortunately the phenomenon of transition from traditional crime techniques to cybercrime has not been studied enough. Measures were taken regarding the law breaker and the crime but the research area of studying the cause of crime, remained untouched, which is a great disadvantage for the justice system, both for authority structures and civil ones, leaving behind an opened door for a new superior level of crime.

Key words: cybercrime, transition, crime, threat, cybersecurity, internet

Introduction

Social reaction towards cybercrime is not nonexistent, on the contrary, along with technological evolution, access to information and to the user himself, is present but in a more attenuate way.

Once we access this big information cloud, called the Internet, we assume certain risks by utilizing this virtual environment, threats that stalk our every access.
Cybersecurity can be assured as long as each person develops a security culture; the reason behind it is simple, they must understand their role as a potential victim and the imminent threats that they are exposed to by modern communication methods.

The incidents regarding cybersecurity and the major cyber-attacks that some states and international organizations have fought with have determined the international awareness of the need to adopt strategies and politics in this area of cybersecurity. So in the present there are national cyber security strategies like the ones from Estonia (after the cyber-attack from 2007, NATO opens the first Cybercrime Center Tallinn[1]), United States of America, Great Britain, Germany, France, which state the necessity of developing their own capabilities to fight cyber-attacks and set the action and cooperation frame between different governmental

[1]http://www.nato.int/docu/update/2008/05-may/e0514a.html

and non-governmental entities in order to limit the consequences. According to these strategies, a nation's efforts target the implementation of security measures which will lead to increasing the level of protection for cyber infrastructures, especially those who back up critic national infrastructures[2].

I. Similarities between traditional crime techniques and cybercrime techniques

In order to be more eloquent regarding the transition phenomenon from traditional crime techniques to cybercrime, I will show you a small crime comparative case between those two areas, the real one and the virtual one.

Of course the comparison between those two techniques is limited by many aspects such as concrete ways to make a crime, as well as ideological aspects or criminological regarding the subjects of cybercrime (regarding both a passive and an active subject).

Traditional Techniques		Cybercrime
Theft: *Breaking and entering with the intention of stealing*		**Hacking:** *Infiltration into a device or a communication network by means of unauthorized access.*
Fraud: *Obtaining by all means of communication financial data and information from a person with the intention of committing a crime*		**Phishing:** *A computer trick that sends spam messages to the victim in order to obtain data and financial information of a person for criminal purposes.*
Blackmail and Abuse: *Illegal or abusive use of position in order to obtain undue benefits, bribery, power or influence*		**Internet Blackmail and Abuse:** *Illegal access via data networks to control various personal, industrial and/or governmental databases, or blocking and altering them. The aim is to blackmail the victim in order to obtain money or satisfy other requirements.*
Fraud: *Deception, fraud, bad faith act in order to make a profit by harming another person's rights.*	**INTERNET**	**Internet fraud:** *Creating a profile similar to the victim by illegally obtaining information about him/her and using that information to commit crimes of fraud and deceit, usually to get material benefits*
Identity Theft: *The personification or representation of another person using personal data and its history to gain access, information or favors / benefits*		**Identity Theft:** *Creating a profile similar to the victim by illegally obtaining information about her and using those information to commit crimes of fraud and deceit. Usually to get material benefits*
Children abuse and exploitation: *Child abuse and exploitation with indecent purposes, the most common cases are child pornography and sexual abuse*		**Children abuse and exploitation:** *Facilitate abuse (usually sexual) and their exploitation through modern communication devices.*

Table no. 1

*The *Italics* in this table are just an exemplification for a better comparison

Of course there are more crimes than shown in table number 1, but these are the most common ones on an international level. For a more plastic representation of this case I would like to bring into discussion a study belonging to Google Inc. security team that was published in 2010, which stated that they analyzed 240.000.000 web pages collected by Google's

[2]Strategia de Securitate Cibernetică a României, http://www.cert-ro.eu/files/doc/StrategiaDeSecuritateCiberneticaARomaniei.pdf, accesat astăzi 17.10/2014.

malware detection infrastructure for a period of 13 months and found that 11,000 domains were involved in malicious contamination (Fake AV)[3].

From a minimal perspective regarding the number of people in the world (~7.269.164.300 inhabitants[4]) compared with users of social networks (~1.82 milliard[5]) it seems that the fourth part of the world population socializes online. A report by the Electronic Privacy Information Center (EPIC) says that users spend 700 billion minutes per month on Facebook only. Looking at these numbers I realize that the chances are that only a small percentage of them (ex.0.001% = 7,000,000) may be infected with a computer virus at any second by accessing link traps.

As a logical deduction I can say that the offender's temptations and diversity of possible crimes are directly proportional to the number of users (potential victims) connected in the virtual world.

Paying more attention to the availability of information via computer systems penetration without authorization, a recent study done on 4,000 young people aged between 15 and 18 shows that 17% of them know how to find information via unauthorized commercial penetration, and one third of this group admits using such tools.

The study shows that 67% of young people surveyed have tried at least once to access a friend's email or a social network account without authorization[6].

Besides these factors, security risks regarding a computer system have been increased due to other factors strictly related to security culture. The most important are:

a. Increasing globalization;
b. Free flow of information;
c. Difficulty of securing contemporary computer systems;
d. Lack of user awareness and education in safety culture;
e. Unclear legislative regulations and certain jurisdictional issues.

II. Coverage area of cybercrime

Looking at the past year in terms of DDoS[7] type attacks, which essentially means overloading servers with signals from hacker-pirated PCs, I've asked myself a question as a starting point of this phenomenon which aims its attacks from and in all the countries. Which countries are targeted the most by this cyber-attacks? As a response, Google along Arbor Networks offered me the possibility to see, in real time, all the denial of service attacks (*DDoS – distributed denial of service/The flooding of a computer server with requests causing blocking or severe disruption of its operation*) across the world through *Digital Attack Map*[8]. Continuing my studies I realized that, in reality, this is a pattern, a criminogenic map that with very small changes / additions can be a milestone in the study of crime in the virtual environment. Arrangements for direct attack on Internet-connected devices are growing but among the most dangerous and widely used I may list the following:

Drive-by exploits, Worms / Trojans, Code Injection, Operating Kits, Botnet, Phishing, Compromise of confidential information, Rogue-ware / scare-ware, Spam, Targeted attacks, Theft / Loss / Physical damage, Identity Theft, Information Leakage, Search Engine

[3]Conference - The Nocebo Effect on the Web: An Analysis of Fake Anti-Virus Distribution, Google Inc., San Jose, CA, 27.04.2010, https://www.usenix.org/legacy/event/leet10/tech/full_papers/Rajab.pdf, accesat astăzi 20.10.2014.

[4]Populația lumii, http://www.worldometers.info/world-population/, accesat astăzi 22.10.2014.

[5]Statistică cu numărul de utilizatori în rețelele de socializare, http://www.statista.com/statistics/278414/number-of-worldwide-social-network-users/, accesat astăzi 22.10.2014.

[6] SANS, NewsBites, Vol. 11, Studiul Nr.39, 19 mai 2009, http://www.sans.org/newsletters/newsbites/newsbites.php?vol=11&issue=39, accesat astăzi 21.10.2014.

[7]**D***istributed* **D***enial* **o***f* **S***ervice = Negare de Serviciu*

[8]DDoS Digital Attack Map, http://www.digitalattackmap.com/#anim=1&color=0&country=ALL&time=16092&view=map, accesat astăzi 22.10.2014.

Manipulation (SEP), False Digital certificates.

If these crimes have as an object the access and illegally manipulate the devices used by us and the information about us, then to be able to understand this aspect we need to deepen our understanding regarding the cross-border nature of everything that we may see as a risk, threat, or even cyber-attack, because technology is with us 24/7 (*gadgets, smartphones, computers and tablets, etc.*). It's a necessity and an obligation to ensure that we are living in a decent environment, if not, a safe one. Therefore the range of cybercrime is directly proportional to the range of connectivity of any device to any communication network.

III. Transboundary nature of cybercrime

Computer language is common for those who use computers, no matter the country they are in or the language they speak. This common language, and easy means of communication between users via a specialized network (the most eloquent example being the Internet or by a simple telephone line) leads to virtually limitless possibilities of connecting computers in the most remote corners of the world, and access the latest important information, with almost no effort. For geniuses in science, aces in this kind of activity, there are no obstacles and even if there were, with tenacity, everything can be overcome. Therefore, it is very difficult to prove an offense in computer science using classical methods of crime investigation, and the possibility that the offender is living in another area of the world, where the arm of the law cannot reach, is high[9].

Recalling the case of direct attacks on the websites of Bank of America, Wells Fargo, PNC and many other banking institutions by Cyber fighters of Izz ad-din al Qassam, who after physical attack on the WTC towers began a direct DDoS attack which led to the failure of these institutions, the result was the setting up of services in different states and departments to track and determine cybercrime and cyber criminals. The first police service like this was founded in France, under the name of Information Security Club. They began with minimum provisions set by each country member of the European Community, and recommending provisions to be included in the laws of country members.

As a result, the Romanian Government issued Decision No. 271/ 2013 for the approval of the *Romanian cyber security strategy and national action plan on the implementation of national cyber security.*[10]

Amid the profound transformations that are found in cyber revolution regarding communication and access to information, many others have emerged, where new phenomena have diversified into areas such as organized crime, terrorism, cybercrime, etc.

Among all these criminal activities, Cybercrime has the most obvious international implications. The ease with which the Internet allows overcoming conventional boundaries may surprise even users. The question is, do we know which criteria should be applied to deter a competent country to follow and train for this type of crime? As a generic response, we have a system provided by Interpol (from the international research of fraud) to help investigators. It is based on national, permanent, contact points (Reference Points for computer-related crimes - NCRP's) from other connections, to profiles of international bodies and contacts from national institutions involved in fighting this phenomenon. It also provides an international legal framework established by mutual legal assistance treaties[11]. It recalls the golden rule of European criminal law regarding jurisdiction establishment from case to case differently depending on national legislation.

IV. Cyber revolution – offender in transition

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[9] I. Vasiu, L.Vasiu, "*Informatică Juridică și Drept informatic*", Ed. Editura Albastră, Cluj-Napoca, 2009, pp.119-120.

[10] Publicat în Monitorul Oficial, Partea I nr. 296 din 23.05.2013.

[11] Gh. Alecu, A. Barbăneagră, R*eglementarea penală și investigarea criminalistică a infracțiunilor din domeniul informatic*, Ed. Pinguin Book, București, 2006, pp.252,253.

With the emergence of cybernetics and subsequently virtualization, new opportunities in classic crime arise. At first it was a colossal effort to transpose the offense from one plan to another but with the passing years the transition is almost complete.

Offenses are almost perfectly adjusted to computerized environment and the offender has developed a new sense, which allows (even intuitively) to commit acts with much lower effort than "classics".

Recently offender classifications and typologies have been studied. We already understand that from the results of an offender's personality investigations and the shape of certain typology, we can assume a good knowledge of all the general and special aspects (psychological, sociological, cultural, anatomy, physiology, etc.) that influence or become a trigger for committing crime. The offender is reduced and tagged to a particular social category that have a behavioral diversity.

Each of them are unique, characterized by a multitude of physiological features, psychological and social attitudes which are not exactly found in all criminals.

This is why finding a typology of offenders is difficult, if not, almost impossible.

Legal aspects of crime are extended beyond defining, identifying, explaining their concept and structure. They are also extended to finding specific classification criteria in detecting and cataloging their general and specific characteristics.

Let us never forget that we can't see the face and body of a hijacker or other particularities so that you, the common user, or possible victim, could identify him and categorize him as a threat and could stay away from him.

On the contrary, taking advantage of these strengths, which he acquired through years of evolution of cybercrime, he will impersonate someone providing trust. This is especially true in cases of child pornography or sexual harassment, where "feelings" develop over time. These are false feelings created in order to blackmail, harass or exploit you. This may take the form of apps or reliable web interfaces, known to be safe and helpful, just to have your personal data sold and used by many marketing and advertising firms databases (false antivirus case[12]).

When we focus on the offender in the IT environment we must not let ourselves be influenced by the fact that he operates in a virtual environment and not physical. This is precisely why a cybercriminal can choose and work in any area of interest, such as identity theft or exploitation and harassment through social networks or fraudulently obtaining access through phishing method.

The Criminal matrix (Black Box) exhibits very well the theory regarding the committing of the offense in relation to its author. Committing any offense involves the whole being of the author, his cognitive-affective and volitional potential.

In psychological terms, the implementation of the criminal project is preceded by the specific process of the criminal offense conception.[13]

M. Rogers proposes a further reclassification of cybercriminals putting them in separate groups depending on the objectives and technological level "used", as follows:

Novices / Toolkit, technological beginners with very little technical skills and know-how principles; they use already designed software through the How-To User Guides downloaded from the Internet.

Cyber-Punk, able to write small programs themselves, which they use mainly for "misappropriation / impersonation" of web pages, spam applications or credit cards theft.

Interns, employees or former employees of an organization or company. They damage the company's system because of a personal vendetta. Their attacks are not based on technical skills, but rather on their exact knowledge about the level and type of existing security within the organization.

Coder / programmer, writing code exclusively to damage / destroy other systems.

[12] Site folosit ca şi sursă de obiecte înjectate cu malware: http://malwarealarm.com/, accesat astăzi 20.10.2014.

[13] N. Mitrofan, V. Zdrenghea, T. Butoi, *Psihologie Judiciară*, Ed. C.E.P. „Şansa", Bucureşti, 2000, p.275.

Old-Guard Hackers, usually simply called hackers, highly skilled in the field, without criminal intent, which embrace the original first generation ideology of hackers; their interest lies in the intellectual-cognitive hacking.
Professionals and cyber-terrorists, they are the most dangerous, specialized professionals in industrial espionage and government, national security and intelligence agencies, etc.[14].
Of course this list is not at all conclusive, but these are the main categories.
From a criminological point of view, the offender / murderer profile from the virtual environment is not well distinguished from traditional criminals. Possibly some features are screened and may not be valid or found in a new world of crime, where the evolution and development of the new methods require at least a general average IQ. I say this because fundamentally, their classification by temperament, psychological, social, physical or environmental factors that influence "career" offenders are identical. What distinguishes them, putting them in two different spheres, is the environment in which they operate. Criminal activity and social reactions are triggered as a response to their activity. An embodiment of this aspect, criminal personality was implemented in theory, validated by the research of the three giants - Kimberg, De Greef, Di Tullio - which revealed the basic features of the offender, such as:

- Self-centeredness: the offender would be highly individualistic and selfish;
- Lability: a poor mental and moral constitution of the offender;
- Lack of affection: cold, devoid of compassion for others;
- Aggressive: violence, hardness;
- Lack of self-control, psychological inhibition, etc.

J. Pinatel argues that the presence of these personality traits makes a person a criminal, only if they present a state of social danger too.[15]
This theory is not necessarily accepted when it comes to the characterization of cybercriminals. A good example would be that lability may not be found in this type of offender. The reason is that, in order to create a conjuncture in which you produce an offense in a virtual environment you need a certain intellect and a strong mental constitution which is not found in the feebleminded or the insane's criminal typology.
Among the most important types found in the virtual crime that have migrated from traditional crime, we have the following:

- Aggressive offender: he is considered the author of facts of violence, destruction of property, assaults to human dignity. He may cause remote damage through remote access applications, through breach of trust or by obtaining unauthorized access.
- Acquisition offender: a person who commits crimes against property, goods, cash values, etc. This type of offender is the most common, motivated by poor material circumstances or belonging to organized crime groups with oriented to such crimes.
- Professional offender: a person who commits criminal acts systematically, in order to gain livelihoods. Here we can find computer professionals who try to overcome their limits and complete their financial situation.
- The offender who is devoid of sexual brakes: This type of criminal commits sexual acts and is characterized by lack of moral sense and concern for the victim, he is characterized by brutality and has unrestrained sexual impulses. A dangerous type of offender, usually using social networks and blogs to find victims and later on, through this communication channel, to take advantage of them by various means of coercion. There is another typology, the one that after recording an act of perversion or other explicit sexual acts, they offer the recording via the internet to the general public for various purposes.
- Occasional offender: He is characterized by the fact that he doesn't have an innate

[14] R. Chiesa, S. Ducci, S. Ciappi, Pr*offiling Hackers: The science of Criminal Profiling as Applied to the World of Hacking*, Ed. CRC Press, New York, 2009, p. 42; Rogers, M., *The Psychology of Hackers: The Need for a New Taxonomy*, 1999, http://www.infowar.com.
[15] Valentin Mirişan, *Criminologie*, Ed. Editura Imprimeriei de Vest, Oradea, 2000, p.72,73.

tendency toward crime, he commits the crime under the influence of temptations caused by professional factors or external environment factors. Even the employees of a company can involuntarily produce such acts and sometimes they are not aware of that until after the occurrence. Note: this typology is not strictly dedicated to them.

- Ideological offender: The ideological (political) offender is the person who commits criminal acts based on political, scientific, religious ideas and beliefs etc. Attacks on government, civil or religious institutions, that promote an ideology contrary to any hijacker's ideologies is one of their preferred methods[16].

V. Cyber security and international (eu) legislation

Cybercrime can have many consequences, and in some extreme cases it may affect the economy or even national security. Security management systems become extremely important to ensure the absolute confidence necessary to carry out activities involving information systems and to comply with existing legal requirements.

The security requirements of a systems are very complex and are based on various aspects: operational, economic, technical, political, legal, societal and human resources aspects; having these in mind, the fight against cybercrime is fundamental.[17]

Rapid development of information and communication technologies has brought to the surface many negative aspects. On one hand, it allows a type of crime which would not be possible without information systems, and on the other hand, offers increased opportunity to commit traditional crimes.

Before the era of distributed intelligence issues, the main concern for security was to keep compeer data confidential, which could be achieved by simple physical protection (for example, by locking with a key or locking the room where the information was being kept). Nowadays, with privacy, there are other important issues[18], security systems have become very complex and a concern for all organizations, whilst at the same time being utilized as a legal requirement.

At EU level, measures have been taken on this new challenge; among the many decisions there is the Directive 2009/136 / EC which requires an adequate level of privacy protection and security of personal data transmitted or being processed in connection with the use of electronic communications networks internal market.

Directive 2009/140 / EC of the European Parliament and of the Council from November 25th, 2009 requires taking appropriate technical and organizational measures to manage the risks concerning the security of networks and services.

Directive 2006/24 / EC of the European Parliament and of the Council states that computer data are subject to appropriate technical and organizational measures to protect against accidental or legal destruction, accidental loss or alteration, storage, processing, unauthorized or unlawful access; data are subject to appropriate technical and organizational measures to ensure that their access can only be obtained by specially authorized personnel and data are destroyed at the end of the retention period, except those that have been accessed and retained.

European Convention of 2001 and the Framework Decision 2005/222 / JHA of February 24th, 2005 on attacks against information systems and the Proposal for a Directive of the European Parliament and of the Council on attacks against information systems and repealing

[16]Ibidem, p.85-88,91.

[17] Comunicarea Comisiei Europene, Către o politică generală de luptă împotriva criminalităţii cibernetice, COM(2007) 267 final; D. B. Hollis, An e-SOS for Cyberspace, Ed. Harvard International Law Journal, Vol. 52, Nr. 2, 2011.

[18] L. Vasiu şi colab., The tri-dimensional role of information security in e-business: A managerial perspective, Honolulu, Hawaii, USA, 2003; L. Vasiu şi colab., Three Strategic Dimensions of information Security in e-Commerce: A literature review based conceptual model, Surfing the Waves, Management Challenges, Management Solutions, Australia-New Zealand, 2003, p.1-10.

Council Framework Decision 2005/222 / JHA [SEC (2010) 1122 final, SEC (2010) 1123 final] provides for liability of legal persons: a legal person can be held liable when the lack of supervision or control made an information crime possible.

In addition, Regulation (EC) No. 45/2001 provides that the entire processing of personal data by EU institutions and bodies which may present specific risks in relation to the rights and freedoms of data subjects are subject to prior checking the EDPS (European Data Protection Authority).The proposal of a Global Treaty in Cybersecurity and Cybercrime Field and building an International Criminal Court to prosecute cybercrime has been made[19].

Such a treaty, or a set of UN treaties, including treaties in the field of cyber security, cybercrime and other cyber treaties, would be a legal framework for peace, justice and security in cyberspace and would represent a turning point in regulating this field. Many large states, reluctant to sign and ratify the European Convention on Cybercrime, strongly support the adoption of the United Nations Treaty[20].

Recent efforts seem to indicate support for such an approach. Thus, international organizations and institutions such as the UN, Council of Europe, the Group of 8 (G8), ITU, (United Nations Office on Drugs and Crime (UNODC the only global intergovernmental body on crime prevention issues), Organization of American States (OAS), Economic Community Of West African States (ECOWAS) and the OECD have made and are making efforts to harmonize legislation[21].

Conclusions

Starting from the premise that there is no possibility of 100% security, technology surprises us with new innovations that we do not think of until we find ourselves involved as an active or passive part thereof. I, personally, glimpse great opportunities for all humanity: guaranteed development opportunities for the better, along with progress, criminal opportunists appear who, for various reasons, will make their presence felt. In conclusion, first for myself and then for the rest, I would say that the offense is with us always. There is no cure for this phenomenon but what we can do is to create our own security culture, to know not only our rights but the risks as well as vulnerabilities. Whether we are talking about traditional crime or about the one taking place in the virtual environment, our needs and obligations are, and remain the same. There is a statement that says *that we are the product of our society*. I do not deny this but I would add something, *society can produce the elite providing that you are the first who wants it and does something about that.*

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