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"SAFETY OF THE PERSON AND THE NEED FOR HIGH SOCIAL CAPITAL"

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CONCENT

SECTION: LAW

Constitutional relevance of the presumption of innocence
Constantin-Marius ARĂDAN 1

The principle of publicity of the national normative acts. Legal effects
Iulia BOGHIRNEA ……..…… 13

Consideration upon the protection of the human rights
Gheorghe BORȘA 20

Prevention of bullying in educational institutions
Mihaela-Corina BUCUR 24

The relationship between the european public prosecutor's office and the other jurisdictional bodies at the eu level
Miron-Paul CHICHIȘAN 46

Appeal procedure of fiscal administrative acts.
The mandatory preliminary appeal procedure
Diana CÎRMACIU 55

Comparative treatment regarding the legal classification of acts that affect the sexual life of minors
Tudor-Cristian CIOBANU 62

Legal relation. Special point of view on the citizen’s subordination relation with public authorities
Marta-Claudia CLIZA 72

Considerations regarding the scope of notions of "exceptional situations"
Dumitru-Ștefan COMAN 79

Excessive deficit procedure: past, present, perfect?
Gabriella CSŰRÖS…… 87

Legal protection of victims of crime in the European Union
Nicoleta DIACONU …….. 106

Euro-Atlantic security and the economic-financial implications of the conflict in Ukraine
Marian DINCĂ, Alexandru-Marian DINCĂ 118

GEORGE ANTONIU, Outstanding personality of the romanian criminal sciences
Constantin DUVAC 127

Socialization – way of preventing or generating deviant behavior
Aurora-Elena GAVRIȘ 140

The necessity of a hierarchy of the system of normative acts and principle of the supremacy of the constitution
Maria-Irina GRIGORE-RĂDULESCU 146

The non-retroactivity of new legal norms - fundamental principle of law. Exceptions
Nicoleta-Elena HEGHEȘ 153

The right to repair of damages in the event of affection of the individual freedom of the person during the criminal proceedings
Anca-Lelia LORINCZ 161

Government reshuffle by changing the political composition of the government and the governing program
Florin Călin MATEI 176

Victims and perpetrators in cyberbullying
Adrian Cristian MOISE 182

The legal force of the principles applied by Court of Justice of the European Union
Ioana-Nely MILITARU 190

Legal limits on the right of private property concerning jus abutendi
Cristinel Ioan MURZEA, Roxana MATEFI 201

Combating corruption offences
Iulia Elena NISTOR, Alexandru POROF..... 208

Formal sources of international trade law. Special view on custom
Manuela NIȚĂ..... 215

Considerations regarding the limits and effects of the recognition of a foreign judgment
Mihaela PĂTRĂUȘ..... 224

Prevention of computer crime through knowledge of the concept of cyber security

Ionuț-Andrei POP..... 235

Protection of social values and relations. Protected by criminal law
Laura-Roxana POPOVICIU..... 244

Diplomatic customs in the perspective of formal sources of law
Corina Florence POPESCU..... 253

Prevention of recidivism - theoretical references
Aura Marcela PREDA..... 259

Risks in the matter of public procurement from the perspective of legal treatment
Anca Mădălina Bogdan, Adrian BOGDAN, Ionuț Riza..... 268

Digital criminalisation and migrant smuggling
Ioana Raluca RUSU..... 283

Criminalistics - source of crime prevention
Zafer SADÎC..... 292

Prevention of trafficking in human beings at the national and international level
Ionel Sandu..... 300

Global crime prevention
Adriana-Iuliana STANCU, Mihaela AGHENIȚEI..... 305

The constitution – the supreme source of Romanian law?
Georgiana – Magdalena STROE..... 311

Crime – between concept and definition in the European Union
Marcel ȘIMONCA..... 319

The structure and the purpose of creating European Police Office (EUROPOL)
Petru TĂRCHILĂ..... 337

Fight against sexual abuse and online exploitation of children – key priority at the european union level
Carmina-Elena TOLBARU..... 347

Procedural aspects regarding smuggling's crime

Corina-Maria TUDOR (BARBU)..... 357

Brief considerations regarding the supremacy of the union regulation in relation to national acts
Elise-Nicoleta VÂLCU..... 368

Admissibility of intrusion into the person's private life through the use of undercover investigators and collaborators in criminal proceedings
Nadia ZLATE..... 375

SECTION: SOCIAL ORDER

Information safety: top five fake news in the romanian media (2022)
Carmen UNGUR-BREHOI..... 388

Effects of burnout on the socio-professional activity of teachers
Mariana Floricica CĂLIN, Antonia SEUCEA..... 397

Professional training and education as the foundations of social capital building
Enache TUȘA[1] , Mirela Mihaela DOGA..... 418

The influence of population surveys on the development of social capital
Laura VASILACHE..... 428

Self-aggression in delinquent teenagers
Gabriela Sorina VANCU, Mioara Maria LAZĂR..... 433

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CONSTITUTIONAL RELEVANCE OF THE PRESUMPTION OF INNOCENCE

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Abstract

In this paper we propose to present the place of the presumption of innocence in the Romanian constitutional landscape and to show that it can be delimited by the notoriety of criminal law.

In order to achieve our objective, we briefly presented the situations that can contribute to the definition of the presumption of innocence. Even if the presumption of innocence coexists only in the relationship of "collaboration" with the accused or the defendant, it bears nuances specific to human rights, equity, the rule of law and even the legislative policy of the state.

In this sense, the specific discussions will start from the provisions of art. 16 para. (1) and (2) of the Constitution in conjunction with those of art. 23 para. (8) and (11) and from the provisions of art. 4 para. (1) of the Code of Criminal Procedure in order to establish the normative content of the "presumption of innocence".

From a simple benefit to the complexity of legal protection is only one step because the presumption of innocence constitutes a fundamental human right through its implications on individual freedom, a fact recognized at the level of the Fundamental Law.

Finally, deepening the principle of "presumption of innocence" throughout this article, we believe that it will be natural to conclude that this is a principle of constitutional rank.

Key words: *Presumtion of innocence; Constitution; fundamental rights, constitutional guarantees, Criminal Law.*

INTRODUCTION

1. THE PRESUMPTION OF INNOCENCE – PRINCIPLE OF CONSTITUTIONAL RANK

Often known as a corollary of rights in criminal law, the presumption of innocence is linked to the idea of individual freedom, which can be restricted at any time under the coercive power of the state. Only the suspect or defendant benefits from the presumption of innocence, but only until overturned by the burden of proof. Not by chance, over time, the presumption of innocence has been characterized as "another human right" *(Roberts and Hunter, 2012, p. 259)* "an indisputable, axiomatic and elementary law" *(Sorrentino, 1996, p. 453)*, or a fundamental principle of procedural fairness in criminal law *(Ashworth and Horde, 2013, p. 71)*.

Deepening the principle of the "presumption of innocence", we note that it has the rank of a constitutional principle, because it includes all the guarantees aimed at protecting human dignity. Through this objective, the presumption of innocence imposes itself in the hierarchy of legal categories as a constitutional instrument that keeps distance from repressive regimes.

In the doctrine, it was appreciated that the presumption of innocence should have a much clearer and neutral individual status defined at the constitutional level, in order not to limit its exercise only, to the action of the principle of individual freedom, but to give it the effectiveness of the effects that arise in the case of consecration as independent principle, effects that guarantee the person that he will not be subjected to abuse in a judicial procedure" *(Tulbure, 1993, p. 47)*.

In our opinion, the presumption of innocence has a double dimension – one of that establishes the guarantee of the person's freedom and another one enshrines the existence of specific guarantees in the cases provided by law *(Tulbure, 1993, p. 49)*. We refer to the character of substantive law that the constitutional nature of the presumption of innocence has. We believe that the Romanian constituent legislator was of the same opinion when, during the revision of the Constitution of 2003, he enshrined the presumption of innocence at the constitutional level, turning it into an "obvious barometer of the quality of the judicial act" *(Budișan, 2017, p. 36)*. More than that, we can extrapolate an idea related to the usefulness of the presumption in law to the opportunities that the presumption of innocence creates in the subsidiary – fundamental legislative policy decisions *(Fabien, 2021, p. 192)*.

In this sense, we argue that the presumption of innocence is an essential part of the set of universal principles, especially alongside the principles of legality and equal rights before the law. In this sense, we note that "the principle of legality was intended to serve as a guarantee of the person's freedom against arbitrariness in the activity of the judiciary, as well as against a law that would criminalize *ex novo* an act that, at the time it was committed, was not provided by

law as a crime" *(Costică and Bogdan Bulai, 2007, p. 57)*. On the other hand, the legality of the incrimination correlated with the presumption of innocence, excludes the use of analogies, assumptions and rumors, being necessary the detailed description of the facts. The main objective is, in our opinion, to protect the individual against any abuse of power by conferring some guarantees of individual freedom, finding the truth in the judicial investigation and denying the stereotypes that lead to the idea that a person targeted by a criminal investigation is guilty.

Finally, we conclude that the assessment is founded according to which presumption, in all its facets, represents authority *(Dănișor, 2015, p. 211)*. Beyond the intuitive meaning of the explanation, the presumption is felt in law by a verb "with impersonal pronominal value (...) in the affirmative or negative form, to denote the authenticity of a legal fact until the contrary is proved" *(Dănișor, 2015, p. 211)*.

Discussions regarding the normative content of the expression "presumption of innocence" in Romanian law start from art. 16 paragr. (1) and (2) of the Romanian Constitution read together with art. 23 paragr. (8) and (11).

Art. 23 paragr. (11) of our Romanian Constitutional Law establishes that "Until the court decision of conviction remains final, the person is considered innocent". Thus, we deduce the fact that the presumption of innocence is perceived as a "benefit, a legal protection that accompanies the accused person, in order to balance the balance of forces within the criminal process" *(Muraru and Tănăsescu, 2019, p. 194)*.

Looking strictly at the interpretation of art. 23 paragr. (11), it was held that the presumption of innocence represents a basic rule of the modern criminal process, which manages to overcome the strict limits of its judicial incidence, because it constitutes a fundamental human right through its implications on individual freedom *(Theodoru , 1959, p. 124)*.

The doctrine also highlighted the procedural guarantee that the presumption of innocence has, because it is granted to persons prosecuted or tried. Thus, it was judged that the establishment of the presumption is justified for all persons to be investigated, even if only one person under investigation was found innocent *(Volonciu, 2016, p. 13)*.

Moreover, the constitutional character of the procedural guarantee *(Pavel, 1978, p. 10)* of the presumption of innocence is also supported, whether we are talking about the start of the criminal prosecution *in rem*, the continuation of the criminal prosecution in personam at the time of hearing the suspect or the accused, whether it is about starting the criminal action, taking preventive measures, sending to court, extending the criminal action and the criminal process, pronouncing the decision, exercising the appeals *(Gorgăneanu, 1996, p. 33)*.

As a procedural guarantee, the presumption of innocence acts being correlated with the burden of proof.

Instrumentation of the evidence contributes to a just resolution of the case and to the correct administration of evidence, to prove guilt with certainty. Nicolae Volonciu appreciated that "the presumption of innocence must not oppose a fair and rigorous repression" *(Volonciu, 1996, p. 120-122)*.

If, through an exercise of imagination, we could see on a board the entire set of provisions of the Criminal Procedure Code, we would notice that they make up a chain of syllogisms that attest to the validity of the principle of the presumption of innocence. And, in the opposite sense, it is assumed that this principle is respected, precisely to ensure the right to a fair trial and the law, in its entirety. In other words, it is about the functioning of the apparatus of rights and guarantees of the person that has an impact on the coherence of the law and legal certainty.

Article 4 paragr. (1) of the Criminal Procedure Code together with other corroborated articles complete the constitutional picture that evokes individual freedom in general "Every person is considered innocent until his guilt is established by a final criminal decision". In addition, at paragr. (2) of the same article it is established that "After the administration of all the evidence, any doubt in the formation of the conviction of the judicial bodies is interpreted in favor of the suspect or the accused."

In other words, the presumption of innocence represents the idea that derives from legal liability, *lato sensu*, and from criminal liability, *stricto sensu*, because it offers procedural guarantees against arbitrariness *(Volonciu, 1996, p. 120-122)*. In these cases, the normative provisions certify that "innocence is presumed, the right must be formulated as a categorical logical-legal presumption" *(Tulbure, 1993, p. 50)*.

2. BRIEF EXAMPLES

Reading by comparison art. 23 paragr. (11) of the Romanian Constitution and art. 4 paragr. (1) from Criminal Procedure Code, we note that the ordinary legislator did not faithfully reproduce the fundamental provision in the law. On the contrary, we find the wording from the original Criminal Procedure Code, according to which when the criminal trial continued and if no case of acquittal was found, the court ordered the termination of the criminal trial. In doctrine, it was appreciated that the legislator's option was correct, because the presumption of innocence can be overturned in several situations, not only through a final criminal judgment of conviction. Thus, under the conditions of art. 18, the defendant can request the continuation of the criminal process and the court can order the termination of the criminal process if it does not find any of the cases provided for in art. 16 paragr. (1) lit. a)-d). In situations where the decision remains final, the court, although it finds the defendant guilty, does not pronounce

his conviction. Also, in relation to the new ways of solving the criminal action provided by art. 396 paragr. (3) and (4), the defendant's guilt is not established only by a final judgment of conviction, but also in cases where the sentence was waived or the sentence was postponed *(Tulbure, 1993, p. 13-16).*

We note that the key points of the secondary legal regulation are highlighted in the phrase "final criminal decision", from which it unequivocally follows that "the functionality and procedural significance of the presumption of innocence is put into question throughout the criminal process" *(Muraru and Tănăsescu, 2019) , p. 194)*.

The criminal process has three stages, namely the prosecution, the trial and the execution of the decision, but the Criminal Procedure Code omits the normative discussion on the application of the presumption of innocence in the last phase. In other words, the presumption applies from the first procedural acts in a criminal case until the final conviction, excluding the execution phase of the criminal sanction. In the same sense, the presumption is also applicable in cases in which an acquittal was pronounced or in those in which the criminal proceedings were interrupted in any form, and the person in question is the subject of other proceedings – bearing legal costs, compensation to the victims, subsequent disciplinary proceedings. *(Anghel-Tudor, Barbu and Şinc, 2021, p. 15)*.

In our opinion, it is natural to be so, because the purpose of the criminal process is to find out the truth, or from the moment of the existence of a final and irrevocable decision, its enforcement naturally follows, a situation that no longer entails the presumption of innocence, because it has been overturned and legal liability has been incurred.

Also, the content of paragr. (2) represents an element of novelty in the Romanian Criminal Procedural Law, by which the *in dubio pro reo* principle is given legal value, applied, with weighting, in the previous judicial practice of the Criminal Procedure Code.

From the point of view of Professor Anastasiu Crișu, there is a doubt only when, from the corroboration of the evidence, the guilt or innocence of the person in question cannot be determined with certainty *(Theodoru and Moldovan, 1969, p. 123)*. From the perspective of George Antoniu, this principle should not be interpreted as a privilege or an allowance of the law to exempt the judicial body from evidentiary efforts, but is a procedural remedy when all means for establishing the truth have been exhausted *(Antoniu, 2008, p. 16).*

An interesting opinion shows that "the presumption of innocence represents a solution for the provisional situation in which the person accused of committing a crime finds himself" *(Tomuleț, 2015, p. 46)*.

In the doctrine it is appreciated that art. 103 paragr. (2) from Criminal Procedure Code (appreciation of the evidence) must be read in conjunction with art. 4 of Criminal Procedure Code *(Buneci, 2014, p. 5-6).* Considering that the

mentioned article emphasizes that the conviction is decided only when the court is convinced that the charge has been proven beyond any reasonable doubt, we also appreciate that these provisions are intended to complete the action table of the principles related to the action value of the presumption of innocence. From the perspective of art. 103 Criminal Procedure Code, the evidence does not have a value established in advance by law and is subject to the free assessment of the judicial bodies following the evaluation of all the evidence administered in the case. In the light of this provision, there is no longer an *a priori* difference established by the legislator between the statements of the witness and the statements of the parties or the main procedural subjects *(High Court of Cassation and Justice, 2017, no. 169).*

In another case, it was held that the administration of two means of evidence, following which contradictory conclusions were formulated, does not determine, *ex ante*, the removal of the second act from the evidential body, but both must be examined and interpreted through corroboration with the other evidence in the case file *(High Court of Cassation and Justice, 2014, no. 2891).*

We note that the Romanian legislator's option for the *in dubio pro reo* principle in the Criminal Code, raises the presumption of innocence to the rank of norm with the value of a fundamental principle, since any doubt the judicial body has in forming its own conviction, after the administration of all the evidence in a criminal case, it will be interpreted in favor of the suspect or defendant.

The judicial interpretation of the provisions of the law shows that "The *in dubio pro reo* rule is a complement to the presumption of innocence, an institutional principle that reflects the way in that the principle of finding the truth is found in the matter of probation. It is explained by the fact that, to the extent that the evidence administered to support the guilt of the accused contains doubtful information precisely regarding the guilt of the perpetrator in relation to the imputed act, the criminal judicial authorities cannot form a conviction that constitutes a certainty and, therefore, they must conclude in the sense of the accused's innocence and acquit him" *(Criminal decision of the Alba-Iulia Court of Appeal, 2018, no. 319).* In the same sense, it was noted that the provisions of the Criminal Procedure Code made the transition from "the principle of free assessment of the evidence and the principle of the judge's free or intimate conviction to the standard of proof beyond any reasonable doubt. *(Idem).* In the same interpretation, it is noted that the *in dubio pro reo* rule is a matter of fact, which is based on the high professional standards of judges, which aims to obtain certainty through decisive, complete, reliable evidence, able to reflect the objective reality and reconstructed with the help of evidence" *(Idem).*

Last but not least, in the saraband of legal correlations, we also stop at art. 83 Criminal Procedure Code, which establishes the rights of the accused or the suspect. Nicolae Volonciu concludes that, only the law can grant the legal guarantee by which it ensures that no one will be held criminally liable and

subject to discretionary sanctions". Complementarily, it is emphasized that the role of the presumption of innocence is to be "the basis of all procedural guarantees related to the protection of the person in the criminal process".

The provisions of art. 83, lit. a) from Criminal Procedure Code, mentions "the right not to make any statement during the criminal trial, drawing his attention to the fact that if he refuses to make a statement he will not suffer any adverse consequences, and if he makes a statement these can be used as evidence against him" .

The article refers to the defendant, who undergoes a transformation, in the sense that he loses the exhaustive palette of rights provided as a free person to be guaranteed only procedural rights during the criminal action *(Tudor, Barbu and Şinc, 2021, p. 263).*

As it is about the criminal action and the rights of the defendant, the normative prescriptions have the generic name of "right to defense - art. 10, which leads to the organization and conduct of a hearing - art. 109 para. (3); the preventive measure of detention - art. 209 para. (6); resolution of the proposal for preventive arrest during the criminal investigation - art. 225 para. (8); preventive arrest of the defendant in the preliminary chamber procedure and during the trial - art. 238; informing about the accusation, clarification and request - art. 374 para. (2).

Lit. a), was introduced when the Criminal Procedure Code was amended by Law no. 255/2013 and enshrines the right to be informed about the act for which he is being investigated and its legal framework. In the doctrine, it has been appreciated that this provision is interpreted in relation to the regulations of the right to freedom and security - art. 9, the right to defense - art. 10 related to the organization and conduct of the hearing - art. 108, order to maintain the detention measure - art. 209 paragr. (17) and house arrest - art. 218 para. (4), of preventive arrest - art. 228 paragr. (2), of bringing to the notice of the quality of the suspect - art. 307, when initiating the criminal action - art. 309 paragr. (2). Correlatively, the provisions of art. 83 lit. b) and c) which are incidents in the stages already mentioned, including those aimed at carrying out specific procedures such as listening - art. 109, recording of statements - art. 110, the hearing of the protected witness - art. 129, protection of attorney-client confidentiality - art. 139 etc. The right of the suspected or accused person not to make any statement is provided for in the provisions of art. 10 from the Criminal Procedure Code with the marginal name "Right to defense", where in paragr. (4) states that "Before being heard, the suspect and the accused must be advised that they have the right not to make any statement".

If the criminal investigation bodies heard persons suspected of having committed acts provided for by the criminal law, without ordering the continuation of the criminal investigation, according to art. 305 paragr. (3) from

the Criminal Procedure Code, and informing them that they have acquired the quality of suspect, the rights they have, the facts for which they are being investigated and their legal status according to art. 83 from the Criminal Procedure Code, and not recording statements on standard forms for the suspect, but in minutes, then the latter have no probative value, because they violate the provisions of art. 198 from the Criminal Procedure Code, to be respected art. 83 from the Criminal Procedure Code, the recording of the statements of the perpetrators in minutes by the criminal investigation bodies could have constituted evidence if they had been informed that they were suspects before being heard. On the contrary, the recorded statements were rejected, finding relative nullity according to art. 282 paragr. (1) from the Criminal Procedure Code, abolishing the minutes and removing the damage caused to the defendants *(Galați Court of Appeal, December 22, 2015, minute of conclusion)*.

Then, the rejection by the prosecutor of the defendant's request to rehear the witnesses heard before being notified about the suspect status assigned to the case was assessed as a violation of the right to defense and the right to a fair trial *(Tudor, Barbu and Şinc, 2021, p. 338).*

In the context in which the criminal facts that were the subject of the criminal complaint were not analyzed, the judge of the Preliminary Chamber noting the existence of elements that are of a general nature, which are not based on an effective, necessary and absolutely mandatory investigation to identify and verify the elements in fact and the conditions of the commission of an act provided by the criminal law, we are in a situation that violates the presumption of innocence. In such a case, the judge of the preliminary chamber must take note of the omissions of the investigation and request the reopening of the criminal investigation. Thus, the criminal investigation bodies are obliged to comply with the provisions of the law during the criminal prosecution phase and the administration of any evidence to clarify the factual situation and find out the truth *(High Court of Cassation and Justice, 11 June 2020, Conclusion no. 211).*

In the doctrine, it was held that the preventive arrest procedure does not fully meet the standards imposed by the presumption of innocence in Criminal Law. The author has in mind the omission of the Romanian legislator to make an obvious differentiation between the measure of preventive arrest and house arrest and the presumption of innocence *(Rusu, 1997, p. 119)*. Thus, it is noted that "a person arrested preventively or at home, or against whom judicial control has been ordered, should not be regarded as a guilty person, against him there is only a reasonable suspicion, based on evidence, that he has committed a crime *(Drîmbu, 2019, p. 197)*. The court ruled in the opposite direction, which held that "the measure of deprivation of liberty of a person can be ordered when there are plausible reasons that a crime has been committed or there are solid reasons to believe in the possibility of committing new crimes, being thus necessary to protect public order, the rights and freedoms of citizens, as well as the conduct of

the criminal process in good conditions" *(Bistrița-Năsăud Court, October 16, 2007, criminal decision no. 86R).*

Lit. c) of art. 83 of Criminal Procedure Code enshrines the defendant's right *"to have a lawyer chosen, and if he does not appoint one, in cases of mandatory assistance, the right to have a lawyer appointed ex officio"*.

This normative provision must be viewed in the light of art. 8 paragr. (2) lit. b) from Directive (EU) 2016/343, according to which if a person is absent from his own trial then a series of minimum conditions must be met in order to ensure the right to a fair trial. It is about informing the suspect or accused person about the process, to be represented by a lawyer chosen or appointed by the state. The Romanian Criminal Procedure Code establishes that the defendant must appoint a chosen defender or an attorney, who can appear at any time during the trial. In the doctrine, it was found that "the Romanian legislator excludes the possibility of appointing a defense attorney *ex officio* by the court", appreciating that "such a provision is normal, the Romanian law being more complete and ensuring in a more efficient way the observance of the right to a new process" *(Rusu, 1997, p. 119).*

Regarding the Criminal Procedure Code, art. 99 paragr. (2) unequivocally establishes that the accused is not required to prove his innocence.

Also, art. 103 paragr. (2) from the Criminal Procedure Code, orders conviction only when the court is satisfied that the charge has been proven beyond reasonable doubt.

As far as we are concerned, we appreciate that there is another article from Criminal Code which completes the legal picture of the collateral consequences of the presumption of innocence on Romanian law. It is about compromising the interests of justice, art. 277 Criminal Code, Special part. This legal institution is relatively young in Romanian law, having been introduced with the Criminal Procedure Code of 2009. However, in comparative law we find similar criminalizations (for example, art. 379 bis of the Italian Penal Code, art. 466 of the Spanish Penal Code or article 371 of the Portuguese Penal Code).

The Romanian legislator decreed in art. 277 paragr. (1) the standard offence, and in para. (2) and (3) two mitigating options. Thus, paragraph (1) establishes the prevention of the leakage of confidential information regarding the criminal investigation. In our view, the purpose of criminalizing this offense is closely related to the presumption of innocence. Such a situation, in which information can be disclosed, can lead to the difficulty or even the impossibility of administering some evidence (We are considering the situation in which the address of a home for which it was authorized is disclosed and a home search is to be carried out or where they will informative-operative investigations took place), under the consequence of affecting the act of justice.

Related to the mitigated versions of the crime, we believe that they have the role of ensuring the fairness of the criminal process, protecting the presumption of innocence by prohibiting the disclosure of evidence from an ongoing criminal case, preventing the formation of erroneous or subjective opinions about to the guilt of the suspect. Thus, removing a piece of evidence from the entire evidentiary file and bringing it to the public's attention can lead to a wrong conclusion on the guilt or innocence of the accused, a conclusion that sometimes can hardly be changed *(Toader, Michinici and Crișu-Ciocîntă, 2014 , pp. 446-447).*

CONCLUSION

In our opinion we agreed that the presumption of innocence mainly refers to situations where the deed attributed to a person has criminal connotations (Muraru and Tănăsescu, 2019, p. 195).

However, the dynamics of law brought to the fore other situations in which the presumption of innocence expanded its scope.

As we have shown, the extended concept of the rule of law sums up the rule of law, the principle of legal stability and security, respect for human rights. Elements subordinated to them are the rights-guarantees, among which the presumption of innocence represents the binder of procedural rights (Toader, 2013, p. 165-166).

In short, it is about a series of key elements, which have been retained in the jurisprudence of the courts regarding the resonance of the presumption of innocence with a series of elements of the criminal procedure, such as the right to a fair trial, the principle of incriminating yourself alone, speeding up deadlines, overturning evidence, etc.

These, viewed from the perspective of human rights, are positioned in a set of principles, procedures, mechanisms, being specific to national, regional, international, universal law.

Under these conditions, the presumption of innocence - an universal human right, a guarantee of constitutional rank - has become a national norm, with direct and immediate legal effects on the population and state bodies.

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THE PRINCIPLE OF PUBLICITY OF THE NATIONAL NORMATIVE ACTS. LEGAL EFFECTS

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Abstract

In this paper, we want to identify the general rule regarding the moment when the legal norm enters into force: the moment of publication of the normative act in the official gazette or three days after bringing the normative act to public knowledge through publication?

In the following we will investigate what emerges from the spirit of the legal norms in the matter.

Key words: *entrance into force; normative acts; principle of publicity; legal effects; Official Gazette of Romania;*

INTRODUCTION

First, we would like to clarify the terminology in the matter.

Thus, the renowned professor G. Cornu in his extensive work "Vocabulaire juridique" shows that the term "vigor" comes from Lat. "vigor" which meant "in full force". Also, in a first sense, the same author shows that the expression "in force" means "binding force" and in a more precise sense, particularly, with reference to a (written) normative act, it denotes the period of time in which the text it has "the vocation to be effectively applied" *(G. Cornu, 2014, p.1074).*

In the same sense, the doctrine *(I. Santai, 2009, p.115)* defines this phrase as the obligation of the legal norm for all legal subjects that fall under the scope of the legal provision.

1. THE BASIC PRINCIPLE. EXCEPTIONS

In the spirit of Law no. 24/2000 emerges the general principle that the rule of law begins to produce binding legal effects from the moment it is brought to the attention of all individuals through publication, regardless of the method: printing or posting on the website, except for situations in which the final provisions of the normative act, another later date regarding its entry into force is

provided.

If the normative act has not been brought to public knowledge, according to the method imposed by law, it is considered as non-existent.

The Official Gazette of Romania (Law no. 202/1998) represents the official "newspaper" of our state in which, in Part I, the normative acts of the central public authorities[1] are published**.**

The Official Gazette is under the authority of the Chamber of Deputies, which is also its publisher (art. 1 para. 2 in conjunction with art. 2 par. 1) and carries out public activity of national interest (art. 1 par. 3).

The Autonomous Directorate "Monitorul Oficial" has the obligation to edit the Official Gazette both in printed format (for a fee) and in electronic format (online), which can be accessed from the official website "free and at any time, permanently".

Each publication is identified by number and date of publication (day, month, year).

An element of novelty in the current legislation is the regulation, by the Administrative Code (G.E.O. no. 57/2019), of the legal institution of the Local Official Gazette in which the acts of decentralized and autonomous local public authorities are published.

We will explain further, complying with the hierarchy of normative acts, for each individual legal norm, the moment of entry into force, according to the framework regulation in the matter, namely Law no. 24/2004.

As for the Constitution of Romania, the Constituent Assembly adopted it on November 21, 1991, to be published in the Official Gazette of Romania on the same day and to produce legal effects (becoming binding) on the date of its approval by referendum (art. 153 of the Constitution of Romania revised and republished), respectively on December 8, 1991.

After the revision of the Romanian Constitution for the purpose of Romania's accession to the European Union, in 2003, a term of 3 days was introduced for laws (*stricto sensu* – as normative legal acts of the Parliament), between the moment of their publication in the Official Gazette of Romania and the moment when they begin to produce legal effects, or, if it was mentioned in its text[2], another subsequent moment of entry into force (art. 78 of the Constitution of Romania, revised and republished – and the normative acts of the European Union have a reasonable term of entry into force of 20 days from the date of publication of the EU normative acts in the Official Journal of the EU, see in detail I.-N.

[1] The expression "public authority" is defined by the legislator as "the state body or of the territorial-administrative unit that acts as a public authority to satisfy the general interest" (art. 5 para. 1 let k) of the G.E.O. no. 57/2019 on the Administrative Code, published in the Official Gazette of Romania, Part 1, no. 555/5 July 2019).

[2] Before the revision, the Romanian Constitution adopted in 1991 provided in art. 78 that the law begins to have legal force from the moment of publication or at a later time provided in its text.

Militaru, 2017, pp. 129-146; E.-N. Vâlcu, 2012, pp. 42- 43).

Concrete example: Law no. 265/July 22, 2022, regarding the trade registry and amending and supplementing other legal instruments applicable to the registration with the trade registry. The legislator provides that this law produces legal effects 4 months from the date of publication in the Official Gazette of Romania, except for certain articles that enter into force 3 days after publication, a term provided for by the Constitution of Romania, revised and republished (art. 78).

The Romanian Constitution also provides that the Parliament can, through an enabling law, empower the Government to issue simple ordinances (art. 115 para. 1-2). These normative acts, being legislative acts, by virtue of legislative delegation (art. 115 of the revised and republished Romanian Constitution), have, by way of symmetry, the same regulation as that of the law as regards the moment when they begin to produce legal effects (art. 12 para. 1 of Law no. 24/2000), respectively 3 days from the date of their publication in the Official Gazette of Romania if no other term is provided in its text.

We believe that the legislator introduced the term of three days so that the subjects of law, participating in the legal relations, have enough time to know its text. This term is carried out at 24^{00} hours and is calculated on calendar days and not working days.

In exceptional situations, the Government by virtue of art. 115 para. 4 may adopt emergency ordinances, which, given the celerity of the regulation, will start to have legal force as soon as they have been published in the Official Gazette of Romania and only after they have been submitted for debate "in emergency procedure" to one of the Parliament's Chambers, which has the authority to be notified in such situations (according to art. 115 para. 5 of the revised and republished Romanian Constitution), except for the situation when another moment is mentioned in their text (art. 12 para. 2 of Law no. 24/2000).

A wide variety of normative acts apply the principle of publicity, in the meaning that they begin to produce legal effects as soon as they are published in the Official Gazette of Romania, only if no other term of entry into force is mentioned in their text, namely: all other normative acts of the Parliament, of the central autonomous public authorities (the Supreme Council of National Defense, the Court of Accounts, the People's Advocate, the National Bank of Romania, the Legislative Council, etc.), those issued by the specialized central public administration bodies, the Prime Minister's decisions (unclassified), the orders and instructions of the ministers, etc. (art. 12 para. 3 of Law no. 24/2000).

The same law provides, in art. 11 para. 2 lit. a-b, that there are certain normative acts exempted from publication in the Official Gazette of Romania, such as those issued by the Prime Minister (classified decisions, according to the law) and by the autonomous administrative authorities and specialized central public administration bodies (normative acts and individual classified acts,

according to the law), the legislator not specifying when they produce legal effects.

We mention, as far as the orders of the prefect with a normative character are concerned, that for their entry into force the new legislator omits to mention where exactly are they published, specifying only that "they are published according to the law", that "they become mandatory from the date of bringing to public knowledge" and immediately bring it to the attention of the relevant ministry (art. 275 para. 3-6 of the Administrative Code). In this situation, however, we understand, to cover this legislative void by interpretation, applying the analogy of the law, in the sense that they begin to produce legal effects after they are made public in electronic format and on the official website of the institution of the prefect of each county, as we will see further on that happens with the normative acts of the local public authorities.

Thus, the decisions of the County Council, the provisions of the President of the County Council, the decisions of the Local Council, the provisions of the Mayor, as acts of local public authorities, are published, according to art. 197 of the Administrative Code, for public information, online in the Local Official Gazette and in electronic format.

Art. 1 para. 1 of the Annex 1 of the Administrative Code, which regulates this new legal institution, provides that on the webpage of each administrative-territorial unit, in the right part of the opening page of the website, it is mandatory to mention a label with the name Local Official Gazette.

Being a novelty, this newly regulated legal institution in the sphere of citizens' accessibility to the normative acts of the local public administration authorities, we continue to expose what the legislator provides regarding the Local Official Gazette. According to art. 1 para. 2 of the Annex 1 of the Administrative Code, by entering the main label, with the mentioned name, six other sub-labels are opened, of which we specify only those that are of interest for our study, namely: the label where the normative acts of the deliberative public authority are posted, namely the decisions of the Local Council and those of the County Council, as well as the label where the normative acts of the executive authorities are posted, namely the provisions of the Mayor and those of the President of the County Council.

Each issuer of normative acts has the obligation to number its normative acts in the order of the date of their adoption, for each calendar year.

2. LEGAL EFFECTS

It should be noted that from the moment of making it known, through the publication of the legal norms, "*no one can be considered ignorant of the law*" ("nemo censetur ignorare legem"), that is, no one can invoke ignorance (thec-absence of knowledge) in his defense or his error in law (inaccurate knowledge) *(I. Deleanu, 2005, p. 138; I. Deleanu, 2001, pp. 72-73; I. Rădulescu, 2013, p.*

105)[3], being binding on all equally.

This principle, although not regulated by the legislator (written), is respected and applied as a custom, since laws are created to be appropriated and respected, meaning only that "the law has binding force towards all, even towards those who have ignored it", *(I. Deleanu, 2005, pp. 139-140)* who could avoid legal liability by citing ignorance or the error committed.

Since there is no actual possibility to know the entire legislation, this Latin adage is complete fiction *(I. Deleanu, 2005, pp. 139; I. Deleanu and V. Mărgineanu, 1981, p. 166)*. But this is the role of legal fictions to be bridges to the progress of law, an indexical reality being put in place of an existing reality *(N. Popa, M-C. Eremia, S. Cristea, 2005, p. 194)*, in order to achieve the goal of law and namely the social order *(N.-E. Buzatu, A. Păiușescu, 2011, pp. 286-291; T. Avrigeanu, 2017, pp. 7-32).*

It is considered that, from the moment of publication in the Official Gazette of Romania, respectively the Official Local Gazette, the normative acts are considered opposable to all, thus operating an absolute, irrefutable presumption of knowledge of the law *(I. Deleanu and V. Mărgineanu, 1981, p. 167)*, deduced from the constitutional texts themselves *(art. 78 corroborated with art. 1 para. 5 of the Romanian Constitution).*

Moreover, Law no. 57/March 31, 2021, which regulates differently in terms of online access to the official state publication by all interested persons, until then the normative act being available online for only 10 days for reading only. Thus, the electronic format is available free of charge, freely and permanently, for all users who are interested in saving, distributing and printing normative acts from this program *(art. 18 para. 2 of Law no. 202/1998).*

All these legal norms once entered into force produce legal effects until they are modified, supplemented or repealed by a new legal norm, thus written legal norms have a great advantage of fixity and legal security *(M. Djuvara, 1999, p. 316) (i.e., it is predictable in its application).*

M. Djuvara opines that "No matter how bad the law is, if it is precise and known, it can be an advantage" *(M. Djuvara, 1999, p. 316).*

CONCLUSIONS

The published legal norms have binding legal force towards everyone, even towards those who invoke their ignorance or committed error (I. Deleanu, Ghe. Buta, 2012, pp. 146-150), *but in doctrine it is considered that a system of "truly scientific" law cannot completely remove all the circumstances that made it possible to not know the law for reasons not attributable to the subjects of law* (I. Deleanu, V. Mărgineanu, 1981, p. 171).

[3] This absolute presumption is in fact a legal fiction, since it is outside the system of legal presumptions and no norm of objective law enshrines it as such.

However, two exceptions to this rule are allowed (N. Popa, M-C. Eremia, S. Cristea, 2015, p. 150).

First of all, the Theory of Law accepts the invocation of ignorance of the law, when a part of the territory remains separated/ "isolated" from the contents/whole of the country, due to a major force[4] (A-V. Petrea, 2020, online). *The legal norm, in such situations, cannot be known for objective reasons, and not because of negligence or personal ignorance.*

Secondly, the legislator admits that, in matters of contracts, civil and commercial, it is possible to invoke the error of law, by the person who did not know the consequences that the effects of the legal norm result in concluding a contract, being able to demand its cancellation. In the case of contractual relations, it is necessary to know whether, in relation to that contract, the will of the contracting parties was valid or was flawed (I. Deleanu, 2004, pp.38-61; N. Popa, M-C. Eremia, S Cristea, 2015, p. 150). *Art. 1207 para. 3 of the Civil Code states for the first time the error of law, defining it as essential for the conclusion of the contract on a determined rule of law, relative to the will of the parties.*

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[4] Civil Code in art. 1351 para. 2 defines the „major force" as „any external, unpredictable, absolutely invincible and unavoidable event". For example, in the legislation, situations of major force were given – natural calamities, but also social actions – revolutions, wars. Thus, Chapter VI, art. 14 of the Methodological Norms for the application of Government Decision no. 707/1996 on financing telephone works in rural areas provides that "The major force invoked under the law protects the party who invokes it from liability. Major force means situations such as: natural calamities, revolutions, wars".

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CONSIDERATION UPON THE PROTECTION OF THE HUMAN RIGHTS

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Abstract

The purpose of the present article is to bring general information connected to the human rights. We all know the fact that in the traditional international law, the protection of the human rights through international actions was not to be found. The concept of the international law of the human rights appears only in the second half of the 20th century, and thus matters connected to acknowledging and respecting them become problems of international interest and they do not depend exclusively only on the internal jurisdiction of the states.

Romania admitted, appreciated and regulated the citizen's rights as well as the theories that argumented their existence and also it has ratified the majority of the universal and European treaties concerning the human rights.

Key words: *individuals, states, fundamental rights, conventions.*

INTRODUCTION

After the Second World War two processes that had a significant role in the appearance of some fundamental rights recognised as belonging to people, evolved in a parallel way. We take into account the Charters and the international conventions regarding the human rights, recognised in some continental constitutions. In both cases the question that arose was if the norms concerning the human rights were also applied to the relation between people.

In 1984 the General Union of the United Nations adopted and proclaimed the Universal Statement of the Human Rights.

Elenore Roosevelt, the chairman of the commission that elaborated the Universal Statement of the Human Rights, shows that the human rights must be understood through the person's world, through the immediate frame of his life (the place where he lives, the place where he works or studies, etc.) If the human rights do not take into account the above mentioned, they are meaningless. Without the citizens' concentrated action to ensure these rights in their lives, the

signs of progress in the universe in which they live will be searched in vain. *(K. Vasak,1978, p.375).*

However, the direct applicability of the legal relation between persons through the provisions comprises in the Universal Statement of the Human Rights, remains doubtful. The Universal Statement of the Human Rights is not a treaty, it was adopted by UN General Assembly as resolution thus it does not have compulsory power.

So, we may state, that the Universal Statement of the Human Rights, has more likely represented a reference model for what came next, regarding the protection of the human rights on European level in the international context.

In what the Constitutions that appeared after the Second World War are concerned, it may be said that they brought up the transition from the concept of the individual, perceived as an abstract subject, to a person whose rights are recognised, the person being understood not abstractly speaking, but as a real individual with social and biological needs.

The Charter of Fundamental Rights of the European Union is considered to be the document with the greatest impact on the European Community. Thus, this has defined, in the best way possible, the concept of human's fundamental rights protection and has traced the best direction for the states belonging to the European Union, when it comes to the process of national law making of this aspect.

Romania is a party to numerous international treaties specialised in human rights, among which we mention:

a) Universal International Treaties having a general value

Romania is a party to all the treaties comprised in this category, as it follows: International Covenant on Civil and political Rights, here also being included the two Optional protocols to the Pact as well as the International Covenant on Economic, Social and Cultural Rights.

b) Specialized international treaties

The main international treaties of a specialized nature are: The Convention for the Prevention and punishment of the crime of Genocide ratified in 1950; The Convention for the Suppression of Trafficking in Human beings and the exploitation of prostitution of others, ratified in 1954; The Convention on the fight against discrimination in Education, ratified in 1964; The Convention on the Rights of the child, ratified in 1990; The Convention on the status of Refugees, ratified in 1991.

c) Regional international treaties of general value: The Convention for the Protection of Human Rights and Fundamental freedoms (European Convention on Human Rights) including its amending and additional Protocols; The revised European Social Charter, ratified in 1999

d) Specialized international regional treaties: The European Convention for the Prevention of Torture and inhuman or degrading punishment or treatment, ratified in 1994; The Framework Convention for the Protection of National Minorities ratified in 1995 (Romania was the first one that ratified it).

Of all the above-mentioned treaties, the one that had and still has a significant impact in the national juridic order is The European Convention of the human rights. (*Corneliu-Liviu POPESCU, 2000, p.251-256*).

The compliance of the human rights represents for Romania and for the European Union, a priority of external politics. Romania ratified the European Convention on Human Rights on 20th June 1994. This has paved the way of the individual petition for ECHR made by Romanian individual and legal persons. In order to be accepted in the European Union, Romania had to comply with the Copenhagen criteria, criteria that also comprise the human rights.

Today, as a member state, Romania, belongs to a group that wants to be a model, internationally speaking, regarding the exemplary protection of the human rights and it requests to its partners to follow this path.

Romania has ratified the majority the European and universal treaties concerning the human rights.

According to the 20th article of Romanian Constitution: "The constitutional provision on citizens' rights and freedoms will be interpreted and applied in agreement with the Universal Statement of Human Rights, with the pacts and the other treaties to which Romania belongs. If there is any disagreement between the pacts and treaties regarding the fundamental human rights, at which Romania belongs, and the internal laws, the international regulations will come first, excepting the case when the Constitution or the internal laws comprise more favourable dispositions.

Being a member state in the "European Convention for protecting the human rights and the fundamental freedom", Romania obeys the jurisdiction of the Human rights European Court in Strasbourg. Also, within the European Union, Romania signed in December 2007, the Lisbon Treaty that contains "The Charter of Fundamental Rights".

The Romanian Constitution ensures, in equal measure, the right to life and mental and physical integrity (article 22), the right of defence (article 24) and consciousness or speech freedom (articles 29 and 30). The European Convention on Human Rights also enshrines the right to freedom and safety (the 5th article) freedom of assembly and association (article 11). Regarding the civil or political rights, Romania is a party to the two documents adopted within UN: "The International Covenant on Civil and Political Rights" and "The International Covenant on Economic, social and cultural Rights".

Romania has also proven that the attention given to the minorities' rights, to ways to assert and protect ethnic and cultural identities, is the way to stability, peaceful coexistence and social development, our country has established the

institutional and legislative mechanisms through which the ethnic minorities' rights are ensured.

Our country has made progress when it comes to promoting and defending the human rights, progress that was appreciated by the majority of the delegations present when the national report regarding the respect of the human rights in our country was presented, within the universal periodic examination made by UN Human Rights Council.

CONCLUSIONS

As we all know, respecting the human rights has become one of the conditions that Romania had to fulfil in order to be accepted in EU, but in the same time it also represents one of the principles that governs the EU's external relations. This principle has to go beyond simple statements and become a reality that is imposed with power and which must govern the relation between the states not only at a European level but also at international level.

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PREVENTION OF BULLYING IN EDUCATIONAL INSTITUTIONS

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Abstract

The phenomenon of bullying in educational institutions represents a threat to the entire educational endeavor and can manifest itself both physically and verbally, socially or online. The protagonists of bullying are: the aggressor, the victim and the observer. The typical profile of the aggressor is that of an irritable person, with poor self-control, vindictive, rigid, and the typical profile of the victim is that of a vulnerable, silent, solitary, insecure person, there being the submissive and defiant victim category. The effective prevention of bullying actions is possible in a multidisciplinary team effort, and the process must take place on multiple levels: individual, family, school, class, relational, curricular, by involving all professional and civil organizations, interest groups and companies that have a relationship with the school and students, including social services and organizations dealing with health and crime.

Key words: *bullying, cyberbullying, aggressor, victim, prevention.*

INTRODUCTION

The phenomenon of bullying was always present in the dynamics of students, aggressions often being "hidden"[1], and with the advent of the Internet and implicitly of e-mail, messenger and social networks, the phenomenon took on a new dimension, which aroused intense interest scientific and social.

Bullying is one of the biggest threats to children's educational and personal development, and today's schools and society as a whole are increasingly talking about adolescent aggression and the harm it causes.

[1] Palaghia,C., *The phenomenon of school bullying. Victimological and criminological perspectives* in *University Journal of Sociology*, 1, 2019, 121

There are serious forms of violence that occur within the school, acts that are rarely sanctioned and that escape judicial denunciation, considered both brutal and chaotic aggression, and the repetition of several stressful events.

Bullying is not an individual characteristic, but rather a social strategy in the school community, the purpose of which is to gain peer acceptance, to gain dominance, and ultimately to own certain resources.

Between 15% and 20% of students frequently bully other classmates and between 15% and 25% of students have been bullied at school because of race, gender, religion, sexual orientation or disability[2].

Worryingly, 25% of teachers see no problem with bullying or humiliating behavior among students, and therefore only intervene in 4% of bullying cases; more than 60% of students say that adult intervention is rare and unnecessary, and they fear that by telling them, they will be bullied even more in the future[3].

The proportion of bullied students, like the proportion of bullying participants, decreases significantly with age. Therefore, victimization is more common among primary school students than in high school classes.

In a meta-analysis involving 28 studies, a significant but weak correlation was found between students' socioeconomic status and certain roles in bullying. Low socioeconomic status was associated with a higher risk of becoming a bully or victim, with early experiences (parental neglect, abuse) playing an important role. The protective power of higher socioeconomic status comes from easier access to intellectual resources (general and specific knowledge, norms, values, problem-solving ability), which support the development of social skills and coping strategies, reducing the likelihood that the child will have relationships problems with colleagues. The results draw attention to the fact that the lower material situation of families in our country can be considered a risk factor in itself in terms of peer bullying[4].

In 1998, the World Health Organization carried out an international survey: "Health behavior of school-aged children", on 15,686 students from the 6th grades. 29.9% of students in the sample reported being involved in bullying - 13% as aggressors and 10.6% as victims of bullying, 17% of students reported being bullied during the researched period, 19% mentioned having former aggressors.

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[2] Palaghia, *The phenomenon*, 125

[3] Grădinaru,C., Stănculeanu,D., Manole,M., *Bullyingul în rândul copiilor. Studiu sociologic la nivel național realizat de Organizația Salvați Copiii*, 2016, 9

[4] Várnai,D., Zsíros,E., Németh,A., *Broader context of bullying: from the aspect of several school level and social level variable* in *Social Science Journal*, Volume 5(4):75, 2016; DOI: 10.18392/METSZ/2016/4/4

1. THE CONCEPT OF „BULLYING”

Criminologists use the term "terrorism"[5] to refer to bullying, that is, to the situation where there is a report of persecution in which the bully bullies, humiliates and deprives a particular student, and repeated bullying becomes terror.

Dan Olweus first developed a definition of bullying in 1978, delimiting with this type of behavior the situation in which a person or a group causes or intentionally tries to harm another person, the victim being subjected to aggressive actions of injury, persecution, bullying repeatedly and over a long period of time.

Olweus distinguishes between: "rough play", "real fight" and "bullying". In rough play, children are friendly, there is a relative balance of power in their relationships, no intent to harm is present, and the disposition is "friendly, positive, and reciprocal" (eg: situations where they struggle to recover a ball, when "they can happily engage in rough play"). The real fight belongs to children between whom there is no friendship, but there is a balance of forces, and this situation is characterized by spontaneous and unrepeated behavior, but the intention to do harm is present, the mood is negative, tense and aggressive (for example: when a conflict on the field of play, after a competitive match and the opponents are involved in a real fight)[6].

Bullying actions represent an aggressive exercise of power over another person, having the following characteristics: it is a deliberate, repeated phenomenon; the children involved are usually not friends, but there is an imbalance of power and resistance between the actors of this type of behavior; the intention is to harm the other and the behavior of the aggressor differs from that of the victim.

Bullying includes three "key elements: intent to harm, power imbalance, and repeated aggressive actions or threats"[7]. Children who bully may do this continuously, hurting others without feeling remorse, regret or pity.

It is important to make a conceptual distinction between rudeness, meanness, violence and bullying so that teachers, school counselors, school administrators, the Police and all professionals who work with young people, parents and children know "what to look out for and when to intervene"[8].

Unlike aggressive behaviors, which appear spontaneously in children as a result of intense emotions (e.g. anger, frustration, fear, etc.) and are eliminated as the intensity of emotional experiences decreases, bullying behaviors do not disappear by themselves, representing a relationship problem, which always

[5] Palaghia, *The phenomenon*, 121
[6] Ibid., 123
[7] Whitson,S., Le phénomène de l'intimidation, 8 stratégies pour y mettre fin, Bucarest, Édition Herald, 2017, 22
[8] Ibid., 25

requires a solution that involves changes in the relationships between the children and in the group dynamics.

2. THE DIMENSION OF BULLYING

Bullying can manifest itself in a multitude of types[9]:

1. Direct physical, which includes, but is not limited to: physical assault, hitting, spitting, slapping, pushing, injuring, obstructing, stabbing, crushing, destroying or throwing personal items, stealing, threatening with weapons, touching of a sexual nature;

2. Non-physical/direct/verbal, including but not limited to: insult, mockery, offense, threats, yelling, sarcasm, insult, teasing, humiliation, intimidation, nicknames, slander, refusal to comply with a request, transmission of messages with homophobic or racist content;

3. Non-physical/direct/non-verbal, which includes, but is not limited to: lewd gestures, intimidation, humiliation, tongue pointing, rolling eyes;

4. Non-physical/indirect/verbal, which includes but is not limited to: persuading another person to insult someone, discrimination, racial slurs, spreading bad rumors, manipulating friendships;

5. Non-physical/indirect/non-verbal, often hidden, difficult to identify or recognize, carried out with the aim of destroying a person's social reputation; includes, but is not limited to: deception with the purpose of placing the victim in a situation of public humiliation or creating embarrassing situations, belittling, intimidating, manipulating, moving or hiding personal belongings, deliberately excluding from a group or a activities, rejection, social marginalization, silent treatment, ostracism;

6. Cyberspace is, nowadays, the environment in which socialization takes place, especially for children, which makes the presence of a new form of bullying felt among students, cyberbullying, also called "cyber aggression", hidden or open, represented by bullying through digital technology (mobile phone, computer, laptop, tablet), which includes but is not limited to repetitive, intentional and harmful behavior: websites, blogs, emails, blogs, posts, messages, images, movies with abusive/offensive content, deliberately excluding a child from the online space, removing the password from personal accounts (email, social media, etc.), publishing rumors about a person, threats, malicious remarks, false statements about the victim's personal information. Cyberbullying generates virtual intimidation, whereby a person is tormented, harassed, humiliated, placed in an unpleasant situation or victimized[10].

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[9] Palaghia, *The phenomenon*, 125

[10] Onofrei, L, *Violența în spațiul public. Derapaje ale comunicării*, Iași, Editura Fundației Academice AXIS, 2015, 162

In the online environment, the aggressors are "protected" by creating fake accounts behind which they hide their identity; the weak, who can be victimized in real space, "can turn into ferocious aggressors in virtual space"[11].

3. THE ACTORS OF BULLYING IN THE SCHOOL ENVIRONMENT

Bullying affects a large number of children and young people from all socioeconomic backgrounds and shows a strong correlation between: bullying behaviors and negative psychosocial functioning characterized by: low self-esteem, high levels of depression, anxiety, feelings of loneliness, suicidal ideation and high rate of school absenteeism.

In a study of 4,000 Norwegian middle school students, it was found that the role of reactive (spontaneous) bullying in the victimization of others is decreasing, and that of proactive bullying in the case of aggressors is increasing. This means that school bullying in the early years is more likely to be committed out of anger, but the older bully acts more "in the cold": bullying therefore becomes a basic social strategy over time; the roles - including that of the victim - become more and more fixed[12]. The indirect/contact bully is often a popular person with high social intelligence who can manipulate their peers.

The main participants in bullying actions are: the aggressor, the victim and the third party, the observer. But, in addition to these protagonists, attention was also paid to a "mixed" type[13], who moves between the role of abuser and that of victim. Thus, perpetrators and victims are not two distinct, radically different groups, but there is an overlap between them. Students with higher aggression can be aggressors, but they can also be victims.

The victim of bullying gives an aggressive response to victimization, that is, he himself begins to abuse others. In the literature, this role player is referred to as the "bully/victim" or "reactive bully". Some researchers speak directly of an "aggressor-victim continuum," referring to the fact that the victim who never assaults others in any way is rarer. "Continuum" refers to an alternation between two roles and includes the continuity and change that this actor maintains in the series of bullying events[14].

The bully likes to have an audience; therefore, in 80-85% of bullying incidents, other actors are also present. The bullying event can also be understood as a demonstration of the aggressor's power, a repeated ritual, whose function is to raise awareness of power relations and to reinforce them repeatedly in the community. Witnesses are in a key position: they are the ones who could stop the abuser if they convey to him that they do not recognize his power and disapprove of his actions. But the majority of witnesses to bullying behave in a way that

[11] Palaghia, *The phenomenon*, 130
[12] Buda, Kőszeghy, Szirmai, *School*, 379
[13] Ibid., 377
[14] Ibid.

perpetuates it rather than preventing it: 20-30% of those present support the bully, 25-53% are neutral, do not participate in the events in any way, and only 17-25% are those who protect the victim in some way[15]. An insecure child may fear that he also will become a victim.

It has been observed that, in school practice, boys are more exposed to bullying than girls, both as victims and as aggressors, a marked trend especially in the upper grades, where the number of bullied students is higher[16]. Thus, it was found that, among the 8,273 teenagers examined, six times more boys than girls were classified as victims of bullying[17].

Bullying between girls is characterized by more subtle and indirect means, such as manipulating friendships, spreading rumors and slander. It was also discovered that the most widespread form of bullying in the school environment is the verbal one. Over 50% of girls bullied were primarily bullied by boys and only 15-20% were bullied by both boys and girls. On the other hand, among boys, more than 80% are bullied mainly by boys, with relationships between boys being much harsher and more aggressive than those between girls[18].

3.1. Profile of the aggressor in the school environment

According to Olweus, the typical aggressor is impulsive and has a positive attitude towards violence. If it's a boy, he's usually stronger than the bullies. The aggressor is prone to anger easily, has poor self-control, may exhibit vindictive, rigid or compulsive behavior, may misjudge the intentions of others, has mental problems, depressive symptoms, suicidal experiences, substance abuse, eating disorders , deviation from the norm, has friends who are big abusers, starts dating early, is aggressive towards partners, does not show compassion, has parents with authoritarian style, parent-child communication is weak, has no role model in life; come from a hostile environment, where they were abused as children; academic performance and school adjustment are low.

Bullies have a strong need for dominance and power, they want to be in control and see others in submission, getting satisfaction when they cause hurt and pain to others; they often force their victims to give them cigarettes, money, alcohol and/or other valuables, thereby gaining social prestige.

When a group of students engages together in bullying behaviors towards another student, certain social/psychological mechanisms may occur, such as: decreased control or inhibitions against aggressive tendencies, gradual cognitive changes in the victim's perception of bullying, and diffusion of responsibilities; all

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[15] Ibid., 380
[16] Grigore,A., *Violența în context educațional: forme actuale*, Iași, Editura Universității „Alexandru Ioan Cuza”, Iași, 2016, 77
[17] Buda, Kőszeghy, Szirmai, *School*, 376
[18] Grigore, *Violența*, 78

of these mechanisms explain why certain students, who are generally not aggressive, may end up participating in acts of bullying[19].

In families of abusers, inconsistent parenting/discipline, lack of acceptance, lack of patterns of cooperation and constructive problem solving, mental and physical abuse are more common. Regarding the social environment, it represents a risk factor if the child joins a violent, deviant group[20].

3.2. The profile of the victim of bullying in the school environment

Two types of victims are observed[21]:

1. The passive or submissive victim, who conveys to others through attitude and behavior that he is an insecure person who will not react to bullying. This type of individuals are weaker than their peers, both physically and emotionally, have a low level of physical coordination, are weak in sports activities, lack social skills, are passive, have low self-esteem, get angry and cry easily, have difficulty defending themselves in front of others when attacked, can communicate better with adults than with peers, have suicidal ideation, symptoms of depression, anxiety, certain mental problems, low popularity, mood disorders nutrition, they are quiet, withdrawn, insecure, joyless, underestimate themselves and often have no friends[22].

Because of bullying, the victim feels "anger, frustration, humiliation, isolation, despair, and their mental state is affected; they show psychological and somatic disturbances, they are no longer interested in school and often face failure"[23], may experience stress and negative feelings, anxiety and isolation increase and a vicious circle of victimization develops. During bullying, the power of the aggressor increases and that of the victim decreases[24].

Victims usually have overly caring parents or teachers and therefore do not develop strategies to deal with conflict situations. Most want the bully's approval, even after the bully has rejected them, with some still trying to interact with the bully[25]. Since they have no friends, they are drawn to their violent peers, who satisfy their need for power through aggression. Of course, there are cases where students can be victimized by their peers just because they are different, with physical or mental disabilities, or belonging to a different religion or ethnicity, etc., but there are cases where violent students focus on a particular

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[19] Ibid., 79-80
[20] Buda, Kőszeghy, Szirmai, *School*, 381
[21] Palaghia, *The phenomenon*, 128
[22] Grigore, *Violența*, 78
[23] Irimescu,G, *A new image of violence against children – bullying type behavior/ Une nouvelle image de la violence contre les enfants - comportement de type intimidation* in *Annales scientifiques de l'Université "Alexandru Ioan Cuza"* Iaşi, Volume IX, 1, 2016, 11
[24] Várnai, Zsíros, Németh, *Broader*, 66
[25] Jigău,M., Liiceanu, A., Preoteasa,L., *Violența în școală*, Institutul de Științe ale Educației, București, Editura ALPHA MDN, 2006, 82

classmate without a special reason, and the victim feels that something is wrong with him and tends to blame himself.

2. Challenging victims are much less numerous and are characterized by anxious and aggressive behavior, most of them being boys, who are often tempted to react violently in situations where they are or feel victimized. Those in this category have an angry temper, are hyperactive, have difficulty concentrating, lack tact, have habits that irritate those around them, not having the ability to develop relationships with children. and adults, including teachers, and may take it out on younger children to work out their frustrations stemming from victimization.

The student victim of bullying in the school environment usually goes home with books, clothes or other objects destroyed, has unexplained injuries, bruises or scratches, never brings his friends home after school hours, spends his free time alone. He finds school unfriendly, even scary, seems afraid to go to school, takes a longer or unusual route to school, has no appetite, has headaches and/or stomach aches, especially after school from school, sometimes asks for more money than parents usually give, is despondent, unhappy, depressed and cries when he comes home from school, mood swings, irritable, often in a bad mood, no he sleeps well, loses interest in school activities and, as a result, experiences a decline in school performance; it may happen that they talk about suicide or even have such attempts.

Victims of school bullying are more dependent on the protection of adults and less safe than their peers. The more often the child is a victim, even in cases of minor bullying, the more opaque, disorganized and violent the world seems to him, his school performance is affected, absenteeism sets in, the risk of dropping out of school, the desire to run away from school and/or home or even joining delinquent groups.

Students who are victims of bullying often have problems with concentration, difficulties with writing and reading, they often behave in ways that can cause tension, some of them can be described as hyperactive, their behavior can cause negative reactions from their peers.

Symptoms of post-traumatic stress can affect the overall development of bullied students in the school space, as they become unable to establish healthy relationships[26].

Children and adolescents with disabilities, mental health problems, overweight, from ethnic minority groups are at high risk of being bullied by their peers[27].

[26] Ibid., 83-84

[27] Palaghia, *The phenomenon*, 130

4. CAUSES OF BULLYING

Bullying has causes at the individual, family, group, school and society levels. So there is no single cause of bullying, but all these factors that lead to the risk of a child or young person becoming a bully. Aggressive behaviors are linked to other problem behaviors, including vandalism, fighting, drinking, truancy, dropping out of school, and other antisocial behaviors[28].

Both perpetrators and victims have significantly poorer psychosocial adaptability.

Various school problems and more frequent drug use are more typical for victims of bullying. Bullies have a higher risk of health-damaging behaviors such as smoking, excessive alcohol consumption, or other risky behaviors[29].

In some countries and regions, victimization is linked to family well-being, with children from wealthier families having a much lower risk of becoming victims of peer bullying[30].

5. SHORT AND LONG TERM CONSEQUENCES

Researchers have discovered the existence of a link between the suffering caused by bullying and certain psychological and social disorders: depression, loneliness, general and social anxiety, reaching suicide attempts or even suicide.

Students - victims of bullying - are more marginalized, weaker, more likely to smoke and drink alcohol. Bullies are more likely to drink, smoke and use drugs, and are more likely to bring a gun to school than victims or other peers.

Successful bullying makes it more difficult for the bully to acquire socially adaptive behavioral strategies[31], so they are more likely to gravitate toward deviant groups.

Bullying negatively affects the development of students' personality, lowering their self-esteem, socialization; it can cause them psychosomatic symptoms (headaches, sleep problems, stomach pains, enuresis, feeling tired, other disorders in the functionality of organs, including the nervous system) and various ailments; it can affect them psychologically (they become sensitive, lose self-control, feel powerless) and behaviorally (they stop attending classes, their attention is disturbed).

"Aggressive children are at high risk of becoming aggressive adults who engage in physical violence and criminal behavior"[32].

In a survey of 15,288 adults in England, it was found that those who were bullies/victims at school were particularly at risk of becoming victims at work.

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[28] Grădinaru, Stănculeanu, Manole, *Bullyingul*, 9
[29] Várnai, Zsíros, Németh, *Broader*, 67
[30] Ibid., 68
[31] Buda, Kőszeghy, Szirmai, *School*, 382
[32] Palaghia, *The phenomenon*, 127

29% of unemployed adults surveyed reported being bullied at least once during their teenage years[33].

Those who are able to learn more success strategies can break out of the victim role, and those who are not can remain victims even into adulthood.

6. STATISTICAL DATA AT THE NATIONAL LEVEL

HBSC international research has been conducted in cooperation with the World Health Organization for more than 30 years, with 44 countries currently participating. In the study carried out in Romania[34], the most recent nationally representative data collection took place in 2014 among students in the 5th, 7th, 9th and 11th grades. The statistically processed sample size was 6,153 persons and was drawn up using a stratified sampling procedure to ensure national representativeness[35].

Thus, our country ranks third in the European ranking of the 42 countries in which the phenomenon of bullying was investigated. 17% of 11-year-olds and 23% of 13- to 15-year-olds admitted to bullying other students at least three times in the previous month. Out of a total of approximately 1,300,000 middle and high school students: 400,000 are excluded from the group, 325,000 are humiliated in public, 390,000 are threatened with hitting or beating, 220,000 are repeatedly beaten by their peers.

Almost 50% of students were victims of bullying, having devastating consequences on the educational process, the school dropout rate, their physical and mental health.

According to a study carried out by the "Save the Children Romania" Organization[36], 16% of teenagers feel tense when they are present at school, 12% scared, 5% sad, more than 4% say that they spend their breaks alone, without communicating with other colleagues.

"Face to face with the phenomenon of bullying" is the first sociological study in Romania, carried out in 2019 by Asociatia Telefonul Copilului (ATC)[37], which follows the perspective of children, teaching staff and parents regarding bullying, including both a quantitative research and and a qualitative research, which approached four case studies, developed on the basis of 50 interviews. The results revealed that 60% of the behaviors of witnesses who intervened in the defense of the victim or notified a teacher/adult in the school went unnoticed, 21%

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[33] Buda, Kőszeghy, Szirmai, *School*, 383

[34] World Health Organization, *Health behaviours among adolescents in Romania: Health Behaviour in School-aged Children (HBSC) study 2018: Research report*, 2020

[35] Reprezentare proporțională a tuturor tipurilor de școli și așezări, precum și a tuturor regiunilor geografice

[36] https://www.salvaticopiii.ro/sci-ro/media/Documente/Studiu-Peste-un-sfert-dintre-copii-au-fost-agresori,-jumatate-spun-ca-au-fost-victime-ale-bullying-ului.pdf

[37] http://www.telefonulcopilului.ro/arhiva-noutati?id=3027

believe they were seen as heroes, 16% were considered turners, and 10% they were also then assaulted. 72% of children have experienced aggression directed against them at least once. Of the total number of bullied children interviewed, only 40% had the courage to recognize their status as a victim, 51% believe that the main reason for bullying is their physical appearance, 62% were bullied by another student, 33% were bullied by a group of students.

Cyberbullying took place on the online platforms most used by students: Facebook (23%), WhatsApp (21%), Instagram (19%).

From the perspective of the aggressors, 50% considered that the victims deserved this treatment, 36% stated that they were also assaulted by the person in question and felt the need to take revenge, 29% felt the need to assert themselves, 15% stated that several colleagues behave this way with that person and they did the same, 11% did it for fun, 6% stated that such behaviors are something common in the school where they study and do not consider that they did nothing out of the ordinary.

The perspective of teachers, students and parents: 7 out of 10 teachers recognize the presence of the phenomenon of bullying in the school where they teach, 81% of the students and all the teachers interviewed believe that it is necessary for the teacher/director to talk to them about bullying in class, while teachers, and the school curriculum to include details about this phenomenon.

Regarding the gender distribution in bullying, 14% of boys and 8% of girls were aggressors towards other peers, 12% of boys and 11% of girls were victims; in terms of cyberbullying, 8% of boys and 4% of girls were bullies towards other peers, 6% of boys and 3.8% of girls were victims.

7. BULLYING PREVENTION METHODS AND STRATEGIES

Bullying is a complex and multifaceted phenomenon that includes the individual and family situation of the student, the atmosphere, the conditions, as well as the wider social environment of the school, aiming at a favorable school climate, an inspiring learning environment, supervision, parental involvement, the role to help colleagues.

In recent decades, numerous anti-bullying prevention and intervention programs have been developed around the world. Although Olweus reported that his intervention program reduced the incidence of bullying in schools by 50%, this result was not repeated[38]. Any program is likely to be effective in the short term, as general attention to the problem and effort to change can bring results in themselves.

The development of adolescents' social skills is important throughout the entire educational process, because they first acquire social skills in the family,

[38] Buda, Kőszeghy, Szirmai, *School*, 383

then develop them at school and in society, and thus their unacceptable, inappropriate or intolerable behaviors will be prevented.

7.1. Individual level

In order to create friendly and pleasant relationships with peers, it is important that a teenager can initiate communication, listen to his interlocutor, know how to share with others and be able to control his negative emotions.

The methods of preventing bullying at the individual level are as follows:

- Identifying and assisting the students involved, as well as the causes of bullying manifestations, by consulting students, teachers, specialized staff (psychologists, social workers) and parents/relatives;

- Development and implementation of individualized assistance programs in bullying situations among students (perpetrators or victims), aiming at: guiding students to acquire knowledge about the formation of negative attitudes towards bullying, developing tolerance, responsibility towards their behavior and the consequences of inappropriate behavior on others (colleagues, teachers, parents, friends, etc.); preventing the appearance of negative affective states (resentment, excessive suspicion, irritability, hostility, negativism);

- Involvement of students who repeatedly commit acts of physical or psychological violence in assistance programs run in partnership with other specialized institutions: Police, General Directorate of Social Assistance and Child Protection (DGASPC), Church, other organizations specialized in programs for the protection and educating children and young people;

- Capitalizing on the interests, skills and capacities of students exposed to the risk of bullying behavior, in school and extracurricular activities (sports, arts, etc.);

- Accountability of students who behave violently by applying intervention measures with educational and formative potential; avoiding focusing exclusively on the sanction and eliminating from educational practice some sanctions that go against the pedagogical principles (eg: sanctioning violent behavior through grades, repetition, expulsion, etc.);

- Encouraging students to behave according to the moral norms established in society.

7.2. Society level

Responsibility is a very important factor in the prevention of bullying at the level of society. The degradation of the family, the destruction of the community spirit, the lack of public responsibility towards the behavior of each citizen lead to an increase in the share of the young population that exceeds the values of social norms[39].

[39] Palaghia,C., *Dimensions de la déviance scolaire*, București, Editura PROUNIVERSITARIA, 2016, 23

PREVENTION OF BULLYING IN EDUCATIONAL INSTITUTIONS

OLWEUS Antibullying Program is the most recognized antibullying program, initiated by D. Olweus in 1983 in Norway[40]. Its goals are: understanding the phenomenon, the active involvement of parents and teachers in the targeted program, the elaboration of clear rules directed against bullying in schools, the support and defense of bullying victims. The basic ideas of the program have been taken up in several countries (Austria, Sweden, Finland, Germany, Iceland, etc.). In Portugal and England there are similar programs - "Safe Schools Program", in Sweden - "Farstal", in the Netherlands - "Peaceful School", etc.

The European Antibullying Network (EAN) project[41], carried out in several countries, focused on the principles of the United Nations Convention on the Rights of the Child, states that bullying and violence in school are problems of violation of children's rights.

In Romania, the specific legislation is Law no. 221/18 November 2019 for the amendment and completion of the National Education Law no. 1/2011, which provides for combating bullying in educational institutions, but Law no. 272/21 June 2004 on the protection and promotion of children's rights.

The methodological rules of application/May 27, 2020 of Law 221/2019 state that each educational unit must introduce the objective "school with zero tolerance to violence" into the Internal Order Regulation, an anti-bullying action group must be created and implement a plan based on the following: information and awareness activities on the phenomenon of bullying; intervention procedures in bullying situations; mobilizing teaching staff regarding immediate intervention in reported or identified bullying situations; the organization of activities such as: forum, theater, contests, etc., aiming to encourage compliance with the stated mission and values of the school; activities to assess the impact of the actions included in the anti-bullying plan and the effectiveness of the action group.

The School Safety Police was established by MAI Order no. 1842/ September 8, 2020, at the level of the General Inspectorate of the Romanian Police, involving public order, traffic, anti-drug, local, gendarmes, psychologists. This institution deals with the prevention and combating of bullying in schools, drug trafficking in schools, but can also intervene in cases of family violence.

In 2017, the National Strategic Campaign for Awareness, Prevention and Combating Bullying was launched, within which, in October 2022, the application "Education without bullying" was launched[42], the only application that helps to prevent and combat bullying in Romania; it is created by the specialists who worked on the Bullying Prevention Law in pre-university education units;

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[40] Olwus,D., Limber,S., *The Olweus Bullying Prevention Program. Implementation and Evaluation over Two Decades*, In The Handbook of Bullying in Schools: An International Perspective, Edited by Jimerson,S.R., Swearer,S.M., Espelage,D.L., New York: Routledge, 2010, 377

[41] Alevizos,S., Boldrini,F., *Strategia EAN-document de opoziție*, 2014, 87

[42] https://copii.gov.ro/1/s-a-lansat-aplicatia-educatie-fara-bullying/

provides easy access to bullying legislation; it is intended for both students, teachers and parents; it can be downloaded for free from Google Play or the App Store; preserve the user's anonymity; it is very easy to use; helps the user to reach directly the institutions capable of offering solutions in the case of aggression or specific bullying and cyberbullying; it is designed as a tool to help victims and witnesses of bullying; has multimedia content useful in education and counseling regarding bullying and cyberbullying situations and includes a guidance tool for solving cases of violence in schools, based on the legal framework in force, which relates to the user's home and the complexity of the case.

Asociattion Telefonul Copilului (ATC) - 116.111 - offers real and immediate support to children in situations of violence, free assistance, as follows: information and advice on the promotion and respect of children's rights; guidance to institutions capable of providing the necessary assistance; tracking how cases are resolved; monitoring the respect of children's rights following registered cases and informing the competent institutions about the problems encountered by children.

Against the background of the registration of an increasing number of requests for counseling and guidance from children and adolescents (between November 2001 and December 2020, ATC received 2,636,108 calls), the Association Telefonul Copilului initiated in Romania "Stop bullying"[43] - the first project that aims to draw attention to bullying.

The Government of Romania initiated for the first time, in 2021, the National Support Program for children "Out of care for children", in the context of the Covid 19 Pandemic[44], whose priorities are: protecting the psycho-emotional integrity of children by creating evaluation and intervention mechanisms for ensuring their mental health; the development of a mechanism for both prevention and multidisciplinary intervention for cases of physical, sexual and emotional violence in the family, community, institutional and online settings.

The main measures of the Program are: 70,000 hours of psychotherapy and psychological counseling for children diagnosed with psycho-emotional disorders caused by the Covid-19 Pandemic; the introduction, by the Ministry of Education, into the school curriculum of psycho-emotional education, emotion management, online safety; providing training sessions for at least 7,000 specialists in the field of emotion and relationship management, identification methods and intervention in psychoemotional disruptive situations; creating hearing rooms for child victims of crimes in each county; development of an integrated computer system for intuitive analysis and sorting of images and video clips of an abusive nature against children; implementing a real-time alert mechanism for missing children; development of the resource platform

[43] http://www.telefonulcopilului.ro/stop-bullying
[44] https://dingrijapentrucopii.gov.ro/1/

dingrijapentrucopii.gov.ro intended for children, but also for specialists and parents.

As part of this Program, the new children's telephone number – 119[45], was launched in 2022, which supports all children who are victims of violence of any type, including through immediate interventions by the Police or medical teams; is operationalized by the Special Telecommunications Service; callable 24/24, free of charge, from any fixed or mobile phone network; operated by DGASPC advisers.

The "Save the Children" association implemented advocacy campaigns to improve Law 272/2004 by: prohibiting all forms of violence against children; the development and improvement of public policies in this sector; increasing the level of awareness among the population regarding the negative consequences of violence on the healthy development of children.

7.3. Family level

The methods of preventing bullying at the family level are as follows:

- Programs based on information and training components: courses with parents on various topics focused on child psychology and ways to identify specific elements of school violence; presentation of cases of aggression; offering possible ways to solve typical bullying situations and to assist the victim;

- Informing parents about bullying incidents, cooperating with them and offering effective help to their children;

- Family education in the spirit of improving self-image (positive self-attitude, correct assessment of personal qualities and flaws, positive perception of life experiences, projecting positive experiences for the future); the development of autonomy (resistance to the evaluations of others through the crystallization of positive personal values); acquiring self-control over momentary impulses and the capacity for self-analysis; modeling a behavior characterized by compassion and respect towards any person; developing behavioral skills that give safety: tolerance, strengthening self-confidence, esteem, promoting communication and cooperation.

7.4. School level

"In all civilized societies, the school is a child protection institution"[46]. It is necessary to ensure an adequate school environment for the development of didactic activities in optimal conditions by: avoiding overcrowding of groups of students, both at the school level and at the class level; security service; surveillance equipment and functional security, in order to monitor audio-video in public spaces within the perimeter of educational institutions.

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[45] https://www.sts.ro/ro/comunicate-de-presa/119-numar-unic-de-telefon-la-nivel-national-pentru-cazurile-de-abuz-impotriva-copiilor

[46] Neamţu,C., *Specificul asistenţei sociale în şcoală* în *Tratat de asistenţă socială*, Iaşi, Editura Polirom, 2011, 1024

According to the Regulation on the Organization and Operation of Pre-University Education Units, approved by OMEN no. 5447/2020, with subsequent amendments and annexes, and the Student Statute, approved by OMEN no. 4742/2016, every student has the right to non-discriminatory treatment, the school being obliged to ensure that no beneficiary is subjected to bullying by another student, teaching staff or auxiliary staff.

It is important to develop in all schools a universal practice of preventing bullying towards colleagues[47]. Antibullying programs with a predominantly interventionist or therapeutic focus can be designed according to the school's involvement in bullying. Treating social inequalities, like other public health problems, can have a positive effect.

It is necessary to create a safe social environment throughout the school. All members of the school community must know how to react and behave in the event of bullying. Teachers must assess the magnitude of the bullying problem, organize conferences on the topic, help create school behavior rules, form watchdog groups, and learn how to observe and respond appropriately to student behavior.

The teacher has a central role in the prevention of bullying[48] and it is necessary for him to have the necessary knowledge and experience to support the self-confidence of students, help them get to know each other, find common points, encourage the formation of friendships, strengthen the collective , improve the classroom climate, form and strengthen students' social skills, to develop a tolerant and positive attitude towards acceptable social communication and a negative attitude towards bullying.

School counselors have a relevant role, but they are assigned too many students and too few counseling hours per student to make real positive changes in school climate. Counseling is "a method of psychosocial intervention to induce a change in the client's attitude and social situation"[49]. The objectives of school counseling are: "to carry out counseling activities, individually or in groups, with students and their parents, to support the school adaptation of students with problems, both at school, at home or in the community, and to identify school resources and / or of the community, necessary to achieve the objectives of school education"[50].

The cognitive-behavioral approach is distinguished by techniques in which the school counselor identifies problematic behaviors, their antecedents, which are based on false beliefs, then, in collaboration with the student, parents, friends and

[47] Várnai, Zsíros, Németh, *Broader*, 75
[48] Malecová,B.V., *Possibilities of Bibliotherapy in the Prevention of Bullying at Elementary School* in *Scientific Studies of the Faculty of Education of Catholic University in Ruzomberok*, Volume 3, 2021, 122
[49] Neamțu,C., (coord.), *Enciclopedia asistenței sociale*, Iași, Editura Polirom, 2016, 238
[50] Neamțu,C., *Specificul*, 836

teachers, manages to reduce bullying through appropriate behavior. "As the student learns, unlearns or relearns specific behavioral ways, the counselor acts as a teacher, consultant, support person, facilitator"[51].

The school counselor must assume a proactive role in the school community, by disseminating the offer of psychological support and by getting involved, outside the school office, in identifying and solving bullying situations.

Extremely effective in school is conflict mediation, which creates a peaceful environment, reduces tensions and helps to identify problems before they become a source of bullying by encouraging the parties involved in the conflict to "focus on the problem rather than the to see themselves as enemies"[52], giving them the opportunity to present their own version of the event and listen to the other side's story, to learn that there is a possibility to resolve a conflict constructively, to change their behavior, if they realize how they influence others. At the same time, the parties involved are more likely to support a decision in which they participated and to identify solutions appropriate to the situations in which they find themselves.

The internal order regulation is an effective means of preventing bullying through: the functional and clear definition of school discipline and school conduct criteria for all factors (students, teachers, auxiliary staff); adapting the provisions to the specific context in which the institution operates; the involvement of factors at the school level (students, teaching staff) in the application of its provisions.

The agenda of the school's formal meetings (Board of Directors, Teacher's Council, Student Council, Parents' Committee) to include topics related to bullying, aimed at raising awareness of the scale of the phenomenon and analyzing the forms, actors and causes of situations that may arise at the level the institution; the development of coherent prevention and intervention mechanisms, the initiation of programs that respond to specific cases of the educational unit (identification of risks in the context of the school, of people with violent potential or at risk of becoming victims), with the active involvement of students as partners.

It is necessary to improve the communication management between all the factors at the school level, by identifying the main communication barriers and by diversifying the strategies and communication channels with the students, by carrying out more informal activities, so that the student-teacher relationship is improved, and the students recognize the teacher as a person they can turn to for any problem; to create a group of students at the class level to give aid and provide assistance to victims; to promote cooperative learning that includes all

[51] Gîrleanu,D.T., *Consiliere în asistență socială*, Editura Universității "Alexandru Ioan Cuza", Iași, 2002, 52.
[52] Gîrleanu, *Consiliere*, 210

students in social groups; to carry out activities that support the integration and adaptation of all students.

The prevention of bullying among students is effective when teachers apply pedagogical measures such as: promoting positive student behavior, creating a safe environment, communicating individually with students, educating them and their parents about socially acceptable communication, seeking help, organizing various activities to help develop students' social skills.

Increasing the transparency of the assessment of student results (criteria, methods) is aimed at reducing the tensions that lead to bullying situations (between students and teachers or between students).

It is important that schools pay more attention to the training of social skills at all levels of schooling, which help to develop the ability of students to protect themselves in unpleasant situations. Teachers should assess the student's social skills and identify those that need to be developed. For this, the teacher can apply the observation method, regarding how the student responds to a colleague's challenge, how he reacts to failure or success. A student who develops strong moral and civic attitudes and social skills can gain more self-confidence, control their emotions and behavior more easily, which will help them resist the challenges of bullying.

7.5. Class level

In order to avoid bullying, rules of behavior are established at the class level, which are developed by the students together with the teachers, rules that define their behavior - positive, desirable and friendly. Also, teachers create a positive atmosphere in the classroom. It is very important for teachers to introduce students to different cultures and religions as thoroughly as possible, so that they understand that we are different, but each person must be respected.

At the same time, it is necessary for teachers to spend enough time in the classroom so that students can discuss the relationships between them and the phenomenon of bullying, and leadership classes and social education lessons emphasize the established rules for communication between students.

Capitalizing on the results of the Report on the implementation of the Students' Status at the National Level, 2021, carried out by the National Council of Students[53], their representatives developed the following recommendations: the application of sanctions for teachers who perform discriminatory behaviors at the school level, according to the code of ethics of the teaching staff; supporting, during management hours, some information sessions on the negative effects generated by the perpetuation of the phenomenon; the gradual sanctioning of students who adopt discriminatory and/or aggressive behaviors, so that the

[53] https://consiliulelevilor.ro/wp-content/uploads/2022/08/Raportul-privind-implementarea-Statutului-elevului-la-nivel-national-2020-2021.pdf

aggressor is treated with zero tolerance; streamlining the commission to prevent and combat violence in the school environment.

7.6. Curricular and extracurricular level

The methods of preventing bullying at the curricular and extracurricular level are as follows:

- Debating, during the counseling and guidance classes, the bullying situations observed in the school or in its vicinity and encouraging the expression of the students' opinion regarding these cases, with possible solutions;
- Capitalizing on topics relevant to the issue of bullying, which do not yet exist in the curriculum of school subjects, through the use of active-participatory strategies (case study, role play, critical analysis of audio-visual messages with violent content, problematization, etc.), which to generate students' awareness and development of a critical attitude towards the issue of school violence;
- Carrying out extracurricular programs and activities on the topic of combating bullying;
- Organization of information programs for students regarding the appropriate ways to manage concrete situations of bullying, focused on the development of skills of understanding and self-control, negotiation of conflicts, communication, means of self-defense;
- Initiating intra- and intergenerational education and parental education programs aimed at improving relations between children-parents-teachers-school management;
- Raising teachers' awareness of the issue of bullying (forms of bullying, generative causes, prevention mechanisms, improvement strategies, legislative and institutional framework) through training activities carried out at the local level: training courses, thematic pedagogical circles, experience exchanges;

7.7. Interinstitutional colaboration level

Effective prevention and combating of bullying actions is possible in a multidisciplinary team effort, in an inter-institutional network and in partnership with the family; broad social cooperation is needed: the involvement of all professional and civil organizations, interest groups and companies that have a relationship with the school and students, including social institutions and organizations dealing with health and crime.

Parents must be informed about the services that the school can offer in order to prevent bullying and cyberbullying and improve parent-child relationships (counseling, psychological assistance); the involvement in such activities of specialized staff (psychologists, social workers); providing support to families requesting assistance and directing them to specialized services; the school's collaboration with the families of students with violent potential or who have committed acts of violence, in all phases of their assistance process (information, establishment of a common intervention program, monitoring of reported cases); the organization of visits to families, school meetings,

extracurricular activities with the participation of all categories involved: students, parents, teaching staff and specialists from other sectors of activity; identifying parents to be actively involved in prevention actions or in solving bullying situations.

It is necessary to organize informal activities for students-teachers-parents, as well as to initiate programs for parents, focused on awareness, information and training regarding the difficulties of adapting children to the school environment and various aspects of school violence, respectively bullying (forms, causes, methods of prevention, partners).

The school has the responsibility to report cases of families with repeated violent behavior towards children, to get involved in solving them (in extreme cases, participating in procedures for establishing family placement) and to collaborate with institutions with responsibilities in this field - DGASPC, Police, etc.

CONCLUSIONS

Nowadays, the aggression of children and young people is increasing, which can often turn into bullying. The longer the bullying continues, the more difficult it is to manage and the more serious the consequences for the victims.

Bullying must be treated as unacceptable and intolerable behaviour. For all the children involved (victims, aggressors, witnesses), it is necessary to ensure: unitary and specialized interventions in educational and health contexts; access to assistance and specialized services; stability and continuity in care, growth and education.

The best interest of the child must be considered in all actions and decisions that concern him, respecting confidentiality and professional deontological norms, without prejudice to the activity of reporting situations of violence or handling cases.

Each person is called to contribute to the development of a culture that encourages the inhibition of such violent behavior, a culture of acceptance of all individuals, regardless of their intrinsic characteristics, by forming their own mentality in this regard, and then convincing others to follow the same example.

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THE RELATIONSHIP BETWEEN THE EUROPEAN PUBLIC PROSECUTOR'S OFFICE AND THE OTHER JURISDICTIONAL BODIES AT THE EU LEVEL

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Abstract

Judicial cooperation in criminal matters represents one of the novelties of criminal law in the European Union. The purpose of this work is to highlight the role that the EU judicial institutions have in the fight against the phenomenon of white collar crime. Knowing that only one institution is working very hard in the fight against a phenomenon that has gained momentum in recent years, financial fraud against the EU, we must refer to their collaboration. Thus, we will analyze the collaboration of the European Prosecutor's Office with other prestigious institutions such as OLAF or EUROJUST, as well as with the specialized structures within the participating states, but also the trend of collaboration with third countries.

Key words: *European Public Prosecutor's Office, judicial cooperation, European Union, economic crimes;*

INTRODUCTION

THE EUROPEAN PUBLIC PROSECUTOR'S OFFICE

The concept of judicial cooperation in criminal matters is the creation of effective legal cooperation mechanisms in order to prevent and combat the criminal phenomenon, carried out on two main axes: that of mutual recognition, which allows overcoming the diversities arising as a result of the multitude of judicial systems at European level and international, as well as on the axis of extradition in criminal matters, a concept that is strongly influenced by the sovereignty of each country. *(Pătrăuș, 2021, p.10)*

The European Public Prosecutor's Office appeared in the current context of the European Union as an urgent solution in relation to the financial problems caused by the phenomenon of "white collar" crime. Even if the ideal of this EU jurisdictional body has been drawn up since the 2000s, its realization only

appeared in 2016, with the adoption of Regulation 1939/2017 of the Council and the European Parliament, representing the first cornerstone in this regard.

The need to establish this institution materialized because another institution, EUROJUST, did not come close to the expected performance in terms of preventing and combating the mentioned phenomenon.Thus, 22 member states of the European Union have decided to recognize and participate in this consolidated form of judicial cooperation in criminal matters, representing partners of the EPPO in combating crimes that endanger the financial interests of the European Union.

The European Public Prosecutor's Office consists of a central structure formed by the College of European Prosecutors and the European Chief Prosecutor, as well as a decentralized structure formed by the European Prosecutors-delegates who act under the close supervision of the Permanent Chambers. We can observe that the EPPO strategies converge towards an efficiency of the judicial act through these two subordinate structures, as well as from the permanent collaboration with the judicial institutions on the territory of the participating states and the other jurisdictional institutions of the European Union: OLAF, EUROPOL or EUROJUST.

1. RELATIONSHIP OF THE EUROPEAN PROSECUTOR'S OFFICE WITH THE EUROPEAN ANTI-FRAUD OFFICE

The European Anti-Fraud Office is the EU body whose objective is to combat fraud, corruption and other illegal activities that affect the financial interests of the European Union. Their competence is also extended by investigating criminal or disciplinary acts committed by officials or agents of various institutions in the exercise of their duties in the aforementioned field.

OLAF has powers, unlike the EPPO, in all the member states of the European Union, an aspect that allows for increased efficiency in the investigation of cross-border crimes. The activities undertaken by OLAF inspectors include the hearing of the persons concerned, the consultation of relevant documents emanating from public institutions such as town halls or the Agency for the Financing of Rural Investments, but also documents from financial institutions such as ANAF or the Court of Accounts. *(Sandru; Morar; Herinean; Predescu, 2021, p. 335).*

Apparently the mandate of OLAF is almost similar to that of the EPPO, essential differences not being identified. However, the attention of the current legislator is to standardize and complete Regulation 1939/2017 regarding the organization of the EPPO and Regulation 883/2013 regarding the organization of OLAF in order to streamline joint actions to protect the financial interests of the EU.

Currently, it is desired to avoid the investigation of the same cases by both institutions; they collaborate when the EPPO's mandate overlaps with that of

OLAF. In this sense, it is essential to highlight recital (51) of the EPPO Regulation, which recommends to all EU judicial institutions, that when the crimes they investigate coincide with OLAF's mandate, it should be notified in order to exchange information and data that can be used in the investigation. Moreover, in article (35) of Regulation 883/2013, it is mandatory for OLAF to notify the other bodies such as the EPPO when it discovers facts within the competence of these institutions, and a presentation of the facts, an evaluation of the damage, as well as a possible legal classification of the act.

Last but not least, we must also mention the CMS mechanism through which OLAF and EPPO collaborate, being a secure data system through which the case file and documents from the files are jointly managed, allowing a better efficiency of judicial cooperation in criminal matters.

Shortly after the EPPO began its activity, the European Chief Prosecutor signed a collaboration and coordination agreement with the Director General of OLAF to delimit and clarify certain procedural aspects in order to prevent overlaps in the conduct of investigations. The protocol was drafted with the hope that the legislator will, in the future, complete the organization and operation regulations of the two institutions in order to expand their powers for the purpose of joint cooperation.

We do not rule out, by law, that the OLAF institution merges with the European Public Prosecutor's Office in the future, or that a certain structure of the office acts under the coordination of European prosecutors-delegates on the model of the protocol between the National Anti-Corruption Directorate and the Ministry of Internal Affairs.

2. COLLABORATION OF THE EUROPEAN PROSECUTOR'S OFFICE WITH EUROPOL

Even though, apparently, we could consider that Europol's mandate would not have tangents with that of the European Public Prosecutor's Office, these two institutions represent a stable core of judicial cooperation in criminal matters at the level of the member states.

Europol is one of the oldest police institutions in the European Union. It is composed of judicial police bodies that support the institutions with attributions in this sense (both on the territory of the member states and institutions belonging to the EU), with the aim of combating criminal phenomena that endanger unity and union principles. Their mandate is an extended one, thus not being a limitation of competence as in the oasis of the European Anti-Fraud Office, which exercises its powers in the field of combating the phenomena of financial crime.

The basic pillars on which the Europol police work are: terrorism and radicalization, serious crime and cybercrime. At a first analysis, we would find that none of these areas would have any parallels with the criminal phenomenon

under the jurisdiction of the European Public Prosecutor's Office, but things are much broader. We state at the outset that the criminal phenomenon of white collar crimes represents a big problem from the perspective of the financial interests of the European Union; this phenomenon has multiple meanings, including crimes of corruption, illegal access to computer systems, crimes committed by high officials, etc., EPPO having to be a constant in this sense in combating all financial fraud mechanisms that have appeared. *(Sandru; Morar; Herinean; Predescu, 2021, p.340).*

In this sense, it is essential to refer to recital (69) of the EPPO Regulation which recommends the European delegated prosecutors to collaborate equally with both the EPPO and Europol, but also with Eurojust. The collaboration mandate between the EPPO and Europol, in the considerations presented but also from a doctrinal perspective, would represent a permanent exchange of information between the two institutions, as well as a permanent collaboration in carrying out the criminal investigation. This is also provided for in Regulation 794/2016 on the establishment with the help of Europol staff of joint investigation teams if the judicial institution requests this.

From the protocol perspective of these aspects, the European legislator is in a permanent legislative quagmire. We affirm these aspects because legally it does not appear according to the regulation of the European Public Prosecutor's Office that there is a provision regarding effective collaboration with Europol.

Moreover, the Director General of Europol has not yet concluded any official protocol with the European Chief Prosecutor that would result in certain directions for the staff of the two institutions to follow in carrying out investigations. We believe that there is no need to create a legislative framework as quickly as possible either by amending Regulation 1939/2017 and Regulation 764/2016 on the organization of Europol in the light of a precise collaboration framework. This should also be reflected in the collaboration with the police authorities at the level of each Member State, as at the moment no police institution in any Member State is obliged to follow or cooperate with Europol, but only to provide data which would fall within the competence of this institution.

3. THE COLLABORATION OF THE EUROPEAN PUBLIC PROSECUTOR'S OFFICE WITH THE NON-PARTICIPATING STATES

When the legislative framework was drawn up for the acceptance and recognition of the European Public Prosecutor's Office in the European Union, only 22 of the member states answered in the affirmative. Poland, Hungary, Sweden, Ireland and Denmark chose not to join the initiative to strengthen this form of judicial cooperation in criminal matters. This aspect can raise big problems in the efficiency of the investigations that the European prosecutors

supervise, since these states do not have the obligation to collaborate with the EPPO in the situation in which their help is requested.

The most truthful example is Hungary, which has become a country increasingly "resistant" to Western changes. The non-recognition of the competence of the European Public Prosecutor's Office is a confirmation of the fact that internal policies prevail over external ones, as the government itself announced a year ago. It is obvious that even the European Union did not remain a spectator to these "declarations of independence", taking the natural decision to suspend Hungary's access to European funds, as well as the lack of negotiations regarding the signing of the financial year called the National Recovery and Resilience Program. We believe that the decision of the European Commission to stop the collaboration with a state that does not accept to follow the path that it committed to with the accession and that does not want to become transparent regarding the expenses regarding external funds is natural. Even the European Anti-Fraud Office published a report last month on the management of European funds by the Hungarian government, and the result revealed a fraud of about 4% between the years 2015-2019.

The most frequent example in the matter of cases that impede the effectiveness of criminal prosecutions from the perspective of the relationship between the EPPO and the non-participating Member States is related to cross-border crimes. If at the level of Romania or another participating state, the financial and judicial institutions have to provide any information requested by the European prosecutors-delegates, in the case of the non-participating states, this does not represent an obligation. As the criminal process is essentially represented by the evidence brought by the parties, we can notice a big problem from the perspective of the European prosecutors in administering evidence from the territory of those states. We can see, therefore, a situation similar to that of the judicial police bodies belonging to Europol, whose investigations cannot be exploited in view of the omission of the non-participating states. Thus, investigations that have involved a lot of analysis and research can suddenly stop as a result of the lack of interest that the non-participating states show.

What could the European legislator do under these conditions?

As I have considered in other situations, it is necessary for these states to be forced to collaborate with the institution of the European Public Prosecutor's Office, even if they are not participating states. This seems to denote the lack of involvement of governments in the fight against corruption and the defense of the financial interests of the European Union, and it is necessary to take measures to support their involvement. It is all the more serious as this lax attitude would discourage other states from actively fighting against white collar crimes. The fact that the invitation to join the initiative on the operation of the European Public

Prosecutor's Office is permanently open must represent for these 7 states a strong question mark regarding their role in judicial cooperation in criminal matters.

4. JUDICIAL COOPERATION BETWEEN THE EUROPEAN PUBLIC PROSECUTOR'S OFFICE AND EUROJUST

Since the beginning of the 2000s, the ideal of a judicial body to defend the financial interests of the Union institutions has taken shape at the European Union level. This was achieved in a very short time by establishing an institution with a role in fighting against organized crime called EUROJUST. Gradually, the effectiveness of this institution was questioned by the large number of crimes committed in the fields otherwise common with Europol (e.g. terrorism, acts of high-level corruption). Thus, the European Public Prosecutor's Office came into existence, which was thought of as an institution that would help both the already existing institutions in terms of combating the criminal phenomenon, but also the member states, having limited powers expressly provided by the regulation. *(Sandru; Morar; Herinean; Predescu, 2021, p.326).*

The major difference between the EPPO and Eurojust is the object of the activity: whereas in the case of the European Public Prosecutor's Office, criminal investigations and prosecutions are carried out under the coordination of the European Delegated Prosecutor, in the case of Eurojust the coordination and cooperation of criminal investigations is carried out at the level of the competent national authorities, through the Judicial Network European, aspect established by article 85 para. 1 letter c) of the TFEU.

Considering the fact that these two institutions have as their object of activity: the fight against the white collar criminal phenomenon, the legislator did NOT foresee a collaboration protocol between these two institutions. The only basis which the staff of the two institutions can rely on is a collaboration protocol drawn up and signed by the European Chief Prosecutor and the Director General of Eurojust (similar to that of OLAF) through which the two entities collaborate in order to carry out investigations.

An aspect that must be specified is related to the common strategies of the two institutions. The protocol provided for investigations related to public procurements carried out during the COVID-19 pandemic, a topic of interest from a social point of view, all the more so since European prosecutors opened a first file of great importance, which concerned the procurement of vaccines carried out by the European Commission.

We believe that it would be of particular importance that, at least in the case of Eurojust and EPPO, in order to have an effective collaboration, the legislator should provide a clear corollary from the perspective of sharing the powers of the two institutions.

5. THE ACTIVITY OF THE EUROPEAN PUBLIC PROSECUTOR'S OFFICE IN ROMANIA COOPERATION BETWEEN THE EUROPEAN PUBLIC PROSECUTOR'S OFFICE AND THE NATIONAL ANTI-CORRUPTION DIRECTORATE

The European Public Prosecutor's Office carries out its activity at the level of the participating states, enjoying the independence that Regulation 1939/2017 conferred. Yet still, what would be the problems that the European delegated prosecutors would encounter if there were certain inconsistencies between national and European law?

The principle of legality is the main basis of criminal liability. No natural or legal person can be investigated or convicted in the absence of a legal provision characterizing the typicality of the committed act. This was cut through the PIF Directive which was adapted in the laws of the participating states in order not to create certain disputes regarding the principle of legality of criminalization. In Romania, the provisions of the directive have modified Law 78/2000 for the prevention, detection and sanctioning of acts of corruption in order to align with the Union norms.

Thus, a wide range of powers regarding the facts investigated by the National Anticorruption Directorate, the Section for combating crimes assimilated to corruption, the Service for combating corruption crimes directed against the financial interests of the European Union previously provided for in Art. 13 paragraph (2) from O.U.G 43/2002 regarding the National Anti-corruption Directorate related to Art 4 paragraph (2) letter b of Order 1.643/C/2015 regarding the Internal Order Regulation of the National Anticorporation Directorate.

Therefore, the legislator created the legal basis for the facts provided for in the directive to be provided for in Romanian law, thereby conferring the possibility of legal framing according to the principles of the Romanian Penal Code.

Although there was a transfer of competence between these institutions, the cooperation between them did not end, the prosecutors and the staff of the National Anticorruption Directorate acting jointly when the European prosecutors-delegates ask for their help. This is also provided for in Regulation 1939/2017 on the organization of the EPPO at recital (69) which provides that the institutions with specific powers within the participating states support the activity of the EPPO at a decentralized level.

In other words, whenever the DNA prosecutors will investigate facts that are within the competence of the EPPO, they will decline the competence to this institution, supporting them in carrying out the investigations.

CONCLUSIONS AND *DE LEGE FERENDA* PROPOSALS

The European Public Prosecutor's Office is a necessary institution for any state of the European Union. In every country we encounter increasingly extensive crimes and methods of financial fraud that can endanger the stability and economic relations that states have undertaken throughout the formation of the European Union.

Cross-border crime represented a real challenge for both national and European institutions, as most of the EU member states are also members of the Schengen area, an aspect that amplifies the activity of criminals. Thus, it is essential that the EPPO be able to supervise both at the central and at the decentralized level the criminal groups that through their activity harm the financial interests of the EU, so that the efficiency of the institution can face the new challenges.

We consider that at the central level, through the European Chief Prosecutor and the College of European Prosecutors, procedures should be started by which Regulation 1939/2017 will be amended so that the collaboration between the prosecutor's office and the other jurisdictional bodies mentioned can rise to the level of law in order to make common actions more efficient on an institutional level.

It would also be of interest for the essential EU institutions (European Parliament, European Commission and EU Council) to create a legislative framework that should not allow the other member states to choose whether or not to participate in this form of judicial cooperation in criminal matter. We believe that the mentioned example, which reflects Hungary's situation, is representative of what the mandatory recognition of this institution by all states should mean.

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APPEAL PROCEDURE OF FISCAL ADMINISTRATIVE ACTS. THE MANDATORY PRELIMINARY APPEAL PROCEDURE

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Abstract

In a period in which are being organized more and more often control campaigns of the National Agency for Fiscal Administration (A.N.A.F.), with the aim of improving voluntary compliance and achieving the specific objectives of the agency, that of preventing and combating fraud and tax evasion, we believe that emphasis must be also placed on the rights of the taxpayer to ensure a balance between the general interest and the legitimate expectations of the individual, in a relationship based on good faith and compliance with the law.

Contemporary reality proves us that even in this field we are still facing some "disorder" inherited or perpetuated from the complex of circumstances and difficulties through which the set of institutions and bodies with duties of carrying out the financial and fiscal policy of the state went through (thus including, here, and similar dispute resolution structures).

Key words: *appeal, tax administration, administrative appeal;*

INTRODUCTION

In the current period in which the "tax administration that simplifies our lives" [1] is always brought up, it is important to see what is the role and efficiency of the disputes resolving structures in fiscal matters, respectively, how this procedure is carried out.

In the economic and social context of these years marked by crisis, the leading factors must understand that in order to improve the relations between taxpayers and inspection bodies, the measures should be designed to ensure good governance, responsibility in the management of taxpayers' rights. Taxpayers are

[1]Furthermore https://static.anaf.ro/static/10/Anaf/AsistentaContribuabili_r/CARTA_CONTRIBUABILULUI_10032010.pdf - site accessed on 02.08.2022, 17.00 o'clock.

often "disappointed and consider themselves aggrieved by the way in which taxation decisions or tax inspection reports are substantiated" (Bufan Radu, Svidchi Nadia, 2021, p.17) and in addition, they do not trust the exercise and finality of the preliminary procedure administrative when they were injured in their rights by a fiscal administrative act.

1. CONTESTING ADMINISTRATIVE-FISCAL ACTS. GENERAL CONSIDERATIONS

Beginning from the importance of such a prior procedure, sometimes it is necessary to sound the alarm on the negative effects, the distortions that can be generated by the inefficiency of the authorities through which it is carried out, effects consisting of: disruptions in the taxpayer's activity (for example, when when the tax inspection is ordered to be restored), diminishing taxpayers' trust in the efficiency, integrity, authority, impartiality of the tax administration.

In *Carta Contribuabilului (The Taxpayer's Charter)*[2], the tax administration presents itself as an authority that "respects the person and his rights" and reiterates the possibility of contesting his position expressed in the fiscal administrative acts: "You can contest our position. To exercise your rights, we facilitate to you the comprehension of our decisions ... The motivation must be based on the regulations, but also on the thorough and clear analysis of the circumstances of the case. ... In principle, unnecessary litigation must be avoided"[3]. Starting from these rules, through our approach we aim to see how and how much of these wishes are respected in practice, trying to sensitize and encourage the authorities, professionals interested in preventing and eliminating vulnerabilities in this activity.

In order to deepen the topic, we also begin from the historiography of the issue from the point of view of regulatory evolution[4].

In the evolution of the Romanian legislation on the matter, the period of 1997-2001 holds our attention, in which two types of appeals were regulated against the documents issued by the bodies of the Ministry of Finance. Thus, the person who considered him/herself injured in his right or in a legitimate interest, by a fiscal administrative act issued by the competent fiscal bodies, had open, on the one hand, the administrative avenues of appeal, being able to advance in this meaning objections, appeals and complaints[5], respectively the judicial ways[6]. The

[2] https://static.anaf.ro/static/10/Anaf/AsistentaContribuabili_r/CARTA_CONTRIBUABILULUI_10032010.pdf , site accessed on 10.08.2022, 19.00 o'clock.

[3] *Ibidem.*

[4] FURTHERMORE THE LAW NO. 661/1923 FOR THE UNIFICATION OF DIRECT CONTRIBUTIONS AND FOR THE ESTABLISHMENT OF THE GLOBAL INCOME TAX PUBLISHED IN OFFICIAL GAZETTE (MONITORUL OFICIAL) NO. 253/23.02.1923.

[5] Art. 1-6 (preliminary administrative ways) from Law no. 105/1997 for the settlement of objections, appeals and complaints on the amounts ascertained and applied through the control or

Constitutional Court was referred to various exceptions of unconstitutionality of the provisions of Law no. 105/1997[7], for our research, being relevant the following decisions: Decision no. 178/1999[8] and Decision no. 208/2000[9].

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imposition acts of the bodies of the Ministry of Finance, published in Official Gazette (Monitorul Oficial) no. 136/30.06.1997.

[6]Art. 9 f the Law no. 105/1997 according to which: "An action can be taken against the decision of the Ministry of Finance, within 15 days from the notification of the decision, at the court provided for in the special law on the establishment of disputed taxes and fees. In the situation where the special law does not specify the court's competence to resolves the action, it will be referred for resolution to the court of appeal in whose territorial jurisdiction the petitioner has its seat or domicile, as the case may be. Against the sentence of the court of appeal or the district court, an appeal can be made to the Supreme Court of Justice or the tribunal, as the case may be, within 15 days of communication".

[7]D.C.C. no. 134 of 20th Octomber 1998 published in the Official Gazette no. 57/09.02.1999; D.C.C. no. 173 of 10th December 1998 published in the Official Gazette no. 35/28.01.1999; D.C.C. no. 50 of 23rd March 1999 published in the Official Gazette no. 308/30.06.1999; D.C.C. no. 48 of 23rd March 1999 published in the Official Gazette no. 323/06.07.1999; D.C.C. no. 58 of 13th April 1999 published in the Official Gazette no. 308/30.06.1999; D.C.C. no. 181 of 16th November 1999 published in the Official Gazette no. 3/07.01.2000; D.C.C. no. 84 of 4th May 2000 published in the Official Gazette no. 367/08.08.2000; D.C.C. no. 22 of 23rd January 2001 published in the Official Gazette no. 109/05.03.2001; D.C.C. no. 77 of 6th March 2001 publicată în M. Of. nr. published in the Official Gazette no. 235/09.05.2001; D.C.C. no. 114 of 24th April 2001 published in the Official Gazette no. 293/04.06.2001; D.C.C. no. 116 of 24th April 2001 published in the Official Gazette no. 320/14.06.2001.

[8] D.C.C. no. 178 of 16 November 1999 published in the Official Gazette no. 267/14.06.2000. Although the Court, with a majority of votes, rejected the exception formulated in relation to art. 2-8 of Law no. 105/1997, the President of the Court formulated a separate opinion considered "based on the interpretation of the constitutional provisions in the light of the European Convention on Human Rights and the jurisprudence of the European Court of Human Rights". The reasoning in this separate opinion also represented the basis for D.C.C. no. 208/2000. The President of the Constitutional Court considered that the provisions of art. 2-5 of Law no. 105/1997 were unconstitutional, because the procedure regulated by law did not allow the resolution, within a reasonable time, of the cases related to the objections, appeals or complaints on the amounts ascertained and applied through the control acts of the bodies of the Ministry of Finance. Thus: "In the light of the provisions of art. 11 [according to which" (1) The Romanian State undertakes to fulfill exactly and in good faith the obligations deriving from the treaties to which it is a party. (2) The treaties ratified by the Parliament, according to the law, are part of the internal law".] and the provisions of art. 20 para. (2) of the Constitution (according to which "If there are inconsistencies between the pacts and treaties regarding fundamental human rights, to which Romania is a party, and the internal laws, the international regulations have priority".), the provisions of art. 2-5 of Law no. 105/1997 contravene the provisions of art. 6 paragraph 1, first sentence of the Convention for the Protection of Human Rights and Fundamental Freedoms, according to which: "Every person has the right to a fair trial, in public and within a reasonable time, by an independent court and impartial, established by law, which will decide either on the violation of his rights and obligations of a civil nature, or on the merits of any accusation in criminal matters directed against him. [...]".

[9] D.C.C. no. 208 of 25th October 2000 published in the Official Gazette no. 695/27.12.2000. Through this decision, a change was made in the orientation of the Constitutional Court's

The field of financial science is exposed to frequent changes in legislation, thus, even with regard to the proposed topic, through the provisions of Law no. 295/2020[10], starting from March 31st, 2022, the powers of resolving appeals filed against debt securities issued by the central fiscal body came under the competence of the Ministry of Finance, being taken over from the National Agency for Fiscal Administration. By order of the competent minister, respectively order no. 1.021/2021, instructions were approved regarding the resolution by the specialized structures within the ministry of appeals against fiscal administrative acts.

By the same order, the organizational structure of the General Directorate for the resolution of objections was also approved, which includes: the Service for the resolution of appeals filed by large taxpayers (1 and 2), the Service for the resolution of appeals filed by small and medium-sized taxpayers, the Service for legislative coordination and guidance methodology of the territorial structures, the Office for the resolution of appeals filed by natural persons, as well as against the documents issued by the fiscal bodies of the central apparatus of the A.N.A.F., appeals resolution services from Bucharest, Ploiesti, Brasov, Timisoara, Cluj-Napoca, Iasi, Galati, Craiova.

Comparing the previous regulation with the text of the new provisions, it can be shown that the changes are of form and less of substance, being able to observe that the previous procedure is in a certain weight taken over in the new regulation.

These aspects can create problems. The resolution of the appeal is the competence of the specialized structure within the relevant ministry, but taxpayers ***continue to submit appeals to the fiscal bodies that issued the relevant administrative-fiscal acts***[11]. It draws our attention the provision according to which upon receipt of the appeal, the issuing body of the fiscal administrative act, within no more than five days from the date of receipt, will draw up and transmit to the competent appeals resolution structure the appeal file, as well as the report with resolution proposals (this report contains clarifications regarding the fulfillment of the procedural conditions, mentions regarding the legal status of the company, as well as proposals for resolving the appeal, taking into account all the arguments of the appellant, both procedural and on the merits of the case, and the supporting

jurisprudence in the matter of the constitutionality of the legal provisions regarding the prior administrative procedure from Law no.105/1997.

[10] Law no.. 295/2020 for the amendment and completion of Law no. 207/2015 regarding the Fiscal Procedure Code, as well as the approval of some fiscal-budgetary measures, published in the Official Gazzete no. 1266/21.12.2020.

[11] According to the instructions for applying art. 269 C. fiscal procedure "the appeal is submitted to the fiscal body issuing the claim title or other fiscal administrative documents contested".

documents. The report it is approved by the head of the fiscal body issuing the title of debt or of the contested fiscal administrative act[12]).

Can we understand from this wording that the tax authorities issuing the contested act maintain an important role in the preliminary administrative procedure, even if the solution will belong to the Ministry of Finance?

Let's also remember that, where necessary, for the clarification of the causes, the dispute resolution structure can request points of view from the tax/customs body issuing the title of claim, respectively of the challenged administrative act, and regarding the clarification of the interpretation of the legislative framework, from the specialized departments within the Ministry of Finance, the National Agency for Fiscal Administration or other institutions and authorities. In the situation where contradictory points of view or contrary to the point of view expressed by the dispute resolution structure will be presented for the same case, the respective case may be submitted to the debate of the Central Fiscal Commission of the Ministry of Finance.

Last but not least, we must mention that, in the new procedure, the possibility of re-examining the settlement decision was introduced, a stage that reflects the principle of legal security. Thus, the decision issued in the settlement of the appeal can be re-examined, by the competent settlement body, at the taxpayer's request, in the situations expressly and limitedly provided by the law[13].

According to the provisions of the Fiscal Procedure Code, the person who considers that his rights have been violated by a fiscal administrative act has the right to appeal. The object of this appeal is represented by amounts and measures established and entered by the fiscal body in the title of claim or in the challenged fiscal administrative act, as well as by amounts and measures not established by

[12] Furthermore the Order no. 1021/19th April 2022 regarding the approval of the Instructions for the application of title VIII of Law no. 207/2015 regarding the Fiscal Procedure Code published in the Official Gazzete no. 482/13.05.2022.

[13] Furthermore art. 281¹ of C.pr.fisc., according to which: "The decision issued in the settlement of the appeal can be re-examined, by the competent settlement body, at the request of the taxpayer/payer, for the following situations:

a) the application in the case of certain legal provisions that would have fundamentally changed the adopted solution was not considered;

b) after the issuance of the decision by the dispute settlement structure, a decision is issued by the Central Fiscal Commission that offers another interpretation of the legal provisions incident to the case;

c) before or after the issuance of the decision by the dispute settlement structure, a judicial decision of the High Court of Cassation and Justice of Romania is adopted, either for the resolution of some legal issues in principle, or an appeal in the interest of the law that dictates a certain judicial practice for issues subject to analysis different from the one in the appeal resolution decision;

d) before or after the issuance of the decision by the dispute settlement structure, a decision of the Court of Justice of the European Union is adopted, which is contrary to the administrative dispute settlement decision".

the fiscal body, but for which there is this obligation according to the law. To resolve the appeal, the competent resolution body will issue a decision, which is binding for the fiscal body issuing the contested fiscal administrative documents. The next period will show us whether the arguments/advantages considered by those who initiated and promoted the changes in the analyzed procedure are effective and achievable, respectively:

- will a higher level of independence be ensured and, implicitly, premises for increasing impartiality in decision-making regarding the appeals filed by taxpayers against all documents issued by the tax administration by placing the structures outside ANAF?

-will this ensure the exercise by the Ministry of Finance of its legal prerogatives arising from the role of competent fiscal authority, as well as that of coordinating the unified application of the provisions of fiscal legislation?

-will the fiscal bodies issuing fiscal administrative acts be exempted from resolving appeals against these acts?

CONCLUSIONS

In one opinion it was shown that "in most cases, the preliminary procedure is nothing more than a confirmation of what was ordered by the fiscal inspection act" (Bufan Radu, Svidchi Nadia, 2021, p.17)*, and if we analyze the statistics, we note that official data often validates this situation. For example, in 2021 62.3% of all appeals pending before resolution bodies were rejected, in 2020 the percentage was 67.1%, in 2019 the rejection percentage was 71.2%*[14]*. We must also take into account the period of time that passes until the resolution body's decision is issued (for the year 2020, the statistics indicate a number of 61 days - average resolution time compared to the number of decisions issued*[15]*).*

We wish that through sustained effort, by continuing the analysis of the theme, to contribute to the development of the doctrine, taking into account the complex knowledge requirements and needs of modern society.

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COMPARATIVE TREATMENT REGARDING THE LEGAL CLASSIFICATION OF ACTS THAT AFFECT THE SEXUAL LIFE OF MINORS

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Abstract

This article aims to carry out an analysis of the different methods of regulating offences against sexual self-determination, especially in relation to minors.

From this comparative view will result the different views on this aspect of the European legislators in Germany and France, for example regarding the value of the consent of a minor victim of such crimes.

This approach can be useful for a better understanding of the optimal way to legislatively counter this criminal phenomenon, namely what changes could be made in the national legislation in this regard. Also, this analysis can even provide certain criteria to be considered by the magistrates when they establish the gravity of the offence.

At present, this theme is of greatinterest,given that some opinions claim that the current legislation in Romania should be modified, for example because according to the current situation, a minor under 14 years old can consent to a sexual act.

Key words: *crime, sexual self-determination, minor, legislation;*

INTRODUCTION

In this article, we will compare the regulation of some of the crimes regarding sexual life in the legislation of Germany and France with the domestic legislation, and we will analyze the changes that have occurred as a result of the implementation of various mandatory provisions at the European level assumed by the member states of the EU and the Council of Europe through directives or conventions.

Our attention will be focused mainly on the acts that in Romanian legislation are incriminated as rape, sexual assault, sexual act with a minor and sexual corruption. We will also present the differences the occur in the legislations of Germany and France, regarding the same offences.

Thus, we will analyze the offences against self-determination committed in the context of the absence of a valid consent of the victim, as well as sexual acts of any nature committed in relation to a minor victim, regardless of their consent.

Sexual acts refer to those involving penetration, regardless of their form, as well as to other types of sexual acts (referred to as acts of a sexual nature in domestic law). There are also sexual acts that do not involve physical contact with the victim, but nevertheless fall within the scope of criminal protection because of their negative effect on the right of sexual self-determination of minor victims. Such acts are, for example, sexual intercourse performed in the presence of minors, or presenting pornographic materials to minors.

Important legislative changes have taken place in recent years in the European states, including provisions of substantial law regarding offences against self-determination, with the implementation of a more favorable legislative framework for victims. For example, the cases in which the victim could not object for various reasons to the sexual act are classified as rape.

At least some of these changes occurred as a result of the implementation by the member states of the EU and the Council of Europe of acts that aim to ensure better protection of vulnerable people against abuse, aggression of any kind and discrimination.

Such act is the Convention on preventing and combating violence against women and domestic violence, adopted in Istanbul on May 11, 2011 *(signed by Romania on June 27, 2014 and ratified by Law no. 30/2016)*, by which the member states agreed to sanction certain behaviors explicitly stated (provided in art. 36), and regardless of the nature of the relationship between the victim and the aggressor. Also, the member states agrees that the elements mentioned in art. 46 represent aggravating circumstances of the incriminated behaviors.

Another important act is the 2011/93/EU Directive on combating sexual abuse of children, sexual exploitation of children and child pornography, signed by EU member states. Through this document, states agree to criminalize certain behaviors and also impose minimum prison sentences, depending on the act and the circumstances shown in the text, including acts of sexual nature that do not involve physical contact with the minor (art. 3). States have also committed to criminalize the enticement of children for sexual purposes (art. 6), that is, the proposal to commit certain sexual acts by means of information and communication technology. Also, art. 9 provides for a series of circumstances that can be considered aggravating circumstances by the member states.

As an example regarding some legislative changes on this topic that have occurred in European legislation, in July 2019 the Greek incrimination of the rape has changed in such a way that the determining factor would be the lack of the victim's consent and not the traces of violence *(The report on the practice of the courts and the prosecutor's offices attached to them in the investigation and*

resolution of cases regarding sexual offenses with minor victims, made by the Judicial Inspection and approved by the C.S.M. on 27.07.2021, page 28).

Also, in 2018 and 2020, respectively, the legislators in Sweden and Denmark established that there is a lack of consent when the victim "freezes" or is taken by surprise and did not have time to react. Thus, the new legislation led to a significant increase in convictions and prosecution in cases that previously were not considered rape. We will observe the same change in German legislation.

Next, we will briefly present the German and French legal provisions on offenses against sexual self-determination, with the accent on the legislative differences between them and the domestic legislation.

1. GERMAN CRIMINAL LEGISLATION

Offences against sexual self-determination

German regulation divides the criminal acts into serious and less serious criminal offenses ("Verbrechen und Vergehen"). The latter are illegal acts punishable by imprisonment for less than one year or a fine, while serious criminal offenses are illegal acts punishable by a minimum of one year in prison or more.

German legislation regulates in Division 13 - art. 174-184i Criminal Code offenses against sexual self-determination.

Art. 174 regulates sexual abuse of persons in one's charge, the injured person being either a minor under 16 or under 18 years old. At art. 174a-174c Criminal Code we can find the incrimination of sexual abuse of prisoners, persons detained by official order, or sick or vulnerable institutionalized persons. In these cases, the victim, although not a minor, is in a state of vulnerability or dependence in relation to the perpetrator, i.e., is detained, prosecuted, ill, hospitalized in a center, or is in a counseling, treatment or care relationship with the perpetrator.

In the domestic legislation there is an aggravating circumstance when the act is committed against a victim that was in the care, protection, education, guard or treatment of the perpetrator. Also, national legislation has a general provision that states that it is an aggravating circumstance if the act is committed while taking advantage of the obvious vulnerability of the victim.

In this regard, we emphasize that this circumstance will also be applicable if there is an obvious disproportion of force, which makes practically impossible any attempt by the victim to defend oneself. Also, this situation must be external to the author's activity, i.e., not due to his actions, in which case they can represent preparatory or executional acts of the committed crime *(Mihai Udroiu, Criminal Law. General part, C.H. Beck publishing house, 2016, page 238).*

At art. 176 of the German Criminal Code deals with sexual abuse ("sexueller Misbrauch"), which implies sexual acts on children under the age of

14, offences that fall under the scope of sexual corruption in Romanian legislation.

Unlike the Romanian Criminal code, the German code uses the notion of sexual acts in a broader sense, which also includes the notion of acts of a sexual nature from Romanian legislation. Also, Germany, unlike Romania, transposed into their legislation the above mentioned 2011/93/EU Directive, by which even the attempt to meet with a minor with the aid of information technology means, whith the scope of committing acts of a sexual nature, represents a sexual offence.

In addition, it represents a crime to allow the child to commit sexual acts on the perpetrator, to determine the child to perform such acts on a third party or to allow a third party to perform such acts on the child.

Next, we will talk about some recent legislative changes, which can be found in art. 176 lit. a-e German Criminal Code (*https://www.gesetze-im-internet.de*).

Thus, art. 176a refers to the sexual abuse of children without contact with the child (for example, sexual acts in the presence of the child; it usually falls under sexual corruption in domestic legislation), art. 176b criminalizes the determination of the child to perform sexual acts, and art. 176c, entitled aggravated sexual abuse of children, is applicable for example when sexual intercourse or other similar sexual acts/acts involving penetration of the body are involved (the description of the crime is similar to that of sexual act with a minor in Romania).

In all these cases, the age of the minor must be under 14 years. By comparison, in Romania the offence of sexual intercourse with a minor refers to a victim younger than 16 years old, and the act is more serious if the minor is under 14 years old.

In German law, the act is more serious if: the author has committed similar acts in the last 5 years; if the act was committed by several people together; if the victim's health or physical or mental development was seriously endangered; if it had the purpose of producing pornographic materials; if the victim was in danger of death, or serious physical abuse was committed against the child.

Art. 177 deals with sexual assault, sexual coercion and rape, although the terms are not expressly defined by the article. Rape is present when the perpetrator, against a person’s discernible will, performs sexual acts on that person or has that person perform sexual acts on them, or causes that person to perform or acquiesce to sexual acts being performed on or by a third person. Other forms are present when the offender exploits the fact that the person is not able to form or express a contrary will, or that the person is significantly impaired in respect of the ability to form or express a will due to said person’s physical or mental condition (unless the offender has obtained the consent of that person), exploits an element of surprise, exploits a situation in which the victim is threatened with serious harm in case of offering resistance or the offender has

coerced the person to perform or acquiesce to the sexual acts by threatening serious harm.

Thus, in German legislation, just like in Romania, it must be assessed on a case-by-case basis, even when the child is under 14 years of age, whether the injured person was capable of actually consenting to a sexual act. If the victim could consent, the offender would by guilty only for sexual abuse (sexual act with a minor in Romanian law). Otherwise, he would be convicted for a joinder of offences – aggravated sexual abuse and rape.

Within this legal text we will find both the description of rape and that of sexual aggression from Romanian legislation, since German legislation does not criminalize sexual acts involving penetration and other sexual acts through distinct offences. Nevertheless, in German law the act is more serious if it involves in form of penetration.

Other circumstances that aggravate the crime: the perpetrator uses force, threatens the victim, carries a weapon/other dangerous object, uses this object, or takes advantage of a situation in which the victim is defenseless and at the mercy of the offender's influence.

Art. 182 German Criminal Code deals with sexual abuse of young people, when the perpetrator performs sexual acts/allows such acts to be performed on the victim or causes her to perform sexual acts on a third party/allows a third party to perform sexual acts on the victim, when the victim is a person under the age of 18 years old, and if the offender takes advantage of a predicament. Also, this crime is committed when a major author performs sexual acts for a consideration with a person under 18 years of age, or when the perpetrator is over 21 years of age and the victim is under 16 years old and the author performs sexual acts with her, have that person perform sexual acts on oneself or causes the victim to perform such acts with a third party, thereby exploiting the victim's lack of capacity for sexual self-determination.

The difference between sexual assault/rape and this hypothesis is the following: if the victim is totally incapable of expressing consent, art. 177 is applicable, and if the victim is aware and consents to the acts, but there is a difference in maturity and an imbalance of powers between the two people involved in the sexual act, then art. 182 is applicable.

Thus, when the victim is a child under 14 years of age, if sexual acts are committed against them (or are allowed to be committed by them/are determined to commit sexual acts), the offender commits a sexual abuse, or as the case may be, sexual abuse of young people, if for example the victim consents, but the offender exploits the victim's lack of capacity for sexual self-determination. But, for example, if a minor under 14 refuses the sexual act, or it is found that the victim was not able to form a valid consent - for example, she was not conscious -

, a joinder of offences will be present, specifically sexual abuse in conjunction with sexual aggression/rape.

So, if for example, the perpetrator performs sexual acts, including acts that involve the penetration of the body in any form, with a child under the age of 14, a joinder of offences will be applicable: rape and aggravated sexual abuse of children. Of course, the requirements of art. 177 must be fulfilled in one of the acts, for example if the minor expresses his refusal.

The joinder of offences is justified by the fact that the direction of protection of the two standards is different:

- Protection of children's undisturbed sexual development on the one hand;
- Protection of sexual self-determination on the other hand.

Also, in Germany, unlike Romania, in the case of a joinder of offenses, the aggregate sentence in this situation will represent the sentence for the most serious offence.

As a rule, the prosecution is initiated ex officio.

Art. 184h Criminal code states that 'sexual acts' are only those which are of some relevance to the protected legal interest in question. Thus, we observe a large margin of appreciation given to the judge in this matter. Regarding this aspect, the Federal Court of Justice ruled that "the term sexual act can be determined using only objective criteria if the activity, i.e., measured only by the external appearance, has a clear sexual reference. Externally ambivalent acts can be classified as sexual acts if they are not necessarily sexual when viewed separately, but are sexual from the point of view of an objective observer who knows all the circumstances of the individual case, i.e. also the purpose of the perpetrator, recognizing such sexual intent" *(the decision of April 7, 2020 - 3 StR 44/20, StV 2021, 363 no. 13).*

2. FRENCH CRIMINAL LEGISLATION

Offences against sexual self-determination

In the French Penal code, we also find a series of particularities.

First of all, criminal offences are categorized as according to their seriousness as felonies, misdemeanours or petty offences – "crimes, délits et contraventions*"*(https://www.equalrightstrust.org/ertdocument/french_penal_*code_33.pdf*).

In French legislation, sexual assaults are criminalized in section 3, art 222-22 to art 222-33. Unlike the national legislation, these also include rape.

Art. 222-22 defines sexual aggression, stating that "sexual aggression is any sexual assault committed with violence, constraint, threat or surprise."

It is specified that moral coercion may result from the age difference between a minor victim and the perpetrator or from the legal or de facto authority he exercises over the victim.

Another particularity is that in French legislation there is no minimum and maximum punishment for each crime, but a fixed punishment. Thus, the margin of appreciation of the judge is minimal in this respect.

For example, in the case of rape in the basic form, the punishment is 15 years. For other crimes against sexual self-determination, the prison sentence is accompanied by a fixed penalty with a fine, for example 75,000 euros or 100,000 euros.

The legal definition for rape is very similar to that in national legislation. However, in the French penal code, the alternative version of committing the act while taking advantage of the obvious vulnerability of the victim is not found in the definition of the crime. This hypothesis is regulated as a separate crime – "fraudulent abuse of the state of ignorance or weakness, which states that fraudulently abusing the ignorance or state of weakness of a minor, or of a person whose particular vulnerability, due to age, sickness, infirmity, to a physical or psychological disability or to pregnancy, is apparent or known to the offender, or abusing a person in a state of physical or psychological dependency resulting from serious or repeated pressure or from techniques used to affect his judgement, in order to induce the minor or other person to act or abstain from acting in any way seriously harmful to him, is punished by three years' imprisonment and a fine of €375,000" (www.codexpenal.just.ro – Penal Codes of the States of the European Union).

French legislation imposes harder punishments if the sexual assault or rape acts are committed in certain circumstances, of which we will mention only a few that are new for Romanian legislation: when the offense is committed by a person who is clearly intoxicated or under the obvious influence of narcotics; the rape victim is a person who practices prostitution; if the victim was put in touch with the author through an electronic communications network; because of the sexual orientation of the victim.

Art. 222-27 deals with sexual assaults, other than rape. This legislative model seems to have been a source of inspiration for the national legislation, where these acts are called acts of a sexual nature, other than the sexual acts that fall under the scope of rape.

As a rule, the offenses are more serious if they concern a minor under the age of 15.

As for consensual sexual acts with minors, they are in a separate section. Thus, in Section 5 Chapter VII of the French Penal Code we find the acts of endangerment of minors. Here, a wide range of acts are criminalized here, including the direct provocation of a minor to regular excessive consumption of alcoholic beverages, or to commit crimes. In this section, sexual acts or preparatory acts with a child under the age of 15 are criminalized.

Article 227-22 describes the offence of "assisting or attempting to assist in the corruption of a minor. The penalty is harder where the minor is under fifteen years of age, where the minor was put in contact with the offender by the use, for the dissemination of messages to an unrestricted public, of a telecommunications network, or where the offence is committed inside a learning or educational institution or, when the pupils are entering or leaving, outside such an institution."

Also, article 227-25 criminalizes "the commission without violence, constraint, threat or surprise of a sexual offence by an adult on the person of a minor under fifteen years of age."

The act is more severely sanctioned if it is committed while abusing the authority conferred by one's position, if it is committed by more than one person, if it is committed by electronic means, or by a person under the influence of alcohol or drugs. Finally, we note that the sexual act with a minor under 18 years old is criminalized, in the hypothesis where the author abuses one's authority over the victim - a situation similar to the one in the national legislation.

We also note that in the case of the French legal framework there are important similarities with the national legislation regarding the consent of minors to perform a sexual act, in the sense that the judge analyzes on a case-by-case basis whether the minor who is under 15 years old/under 18 years old has given a valid consent, in order to establish the correct applicable text - rape or sexual act with a minor.

CONCLUSIONS

Following this brief analysis, we can conclude that between the national legislation and the two analyzed legislations there are some differences, but also many similarities, especially when it comes to criminalization, having in mind that the general principles are the same.

For example, sexual abuse of children in Germany is sanctioned if the victim is under 14 years old, in France if the victim is under 15 years old, and in Romania, in the basic form, sexual intercourse with a minor is sanctioned if the child is under 16 years old, respectively under 14 years of age in an aggravated form, and sexual corruption is sanctioned in the case of minors under 14 years of age. As shown, in order to analyze whether the act constitutes rape, a contextual case-by-case analysis is necessary in all three legislations, in order to conclude whether or not there is a valid consent to the sexual act, even in the case of minor victims, passive subjects of the sexual act with a minor offense.

In all three legislations, there is a distinction between sexual acts involving penetration and sexual acts of another nature, the latter usually being assessed as such on a case-by-case basis, with the aid of jurisprudence. The penalty is always more severe when the acts involve any kind of penetration.

There are many identical or similar aggravating circumstantial elements to the three legislations, for example when the offender took advantage of the

special relationship he had with the victim, a relationship that helped him commit the crime (Tudorel Toader, Romanian Criminal Law. Special Part. Vol. I, Universul Juridic publishing house, Bucharest, 2019, p. 167). *Also, there are some differences when it comes to the aggravating circumstantial elements, as it was shown through the individual analysis of the three legal systems. Lex ferenda, part of the aggravating circumstances found especially in the German legislation should also be introduced into the national legislation, as a result of the commitments made by the Romanian state through the signing of the EU directive and the Council of Europe convention, as mentioned in the introduction.*

A general note on the German regulatory system: this legislation presents many particularities and nuances and has a very layered structure, in opposition with the French legislation, which presents a more general and laconic framework. In my opinion, the Romanian legislation is more similar with the German legislation in this matter, after the changes that occurred in recent years, which led to a greater schematization of the legal framework.

On the other hand, the German sanctioning system offers a lot of discretion to the judge, unlike the French legislation, which is very strict, without maximum and minimum limits. From this point of view, Romanian legislation is in an intermediate position, with minimum and maximum legal limits for each crime, but smaller in amplitude compared to German ones.

As a personal opinion, I consider that the national legal framework regarding offences against sexual self-determination is well balanced and structured, even if some acts described in the European acts specified above should be criminalized. I do not consider that we need to regulate legal presumptions regarding the existence of an invalid consent in the case of victims under a certain age, as this would not lead to a more effective act of justice and to the discovery of the truth in an easier manner.

The difficulties in solving accusations of committing crimes regarding sexual life will always exist, and in order to counter this phenomenon and ensure fair solutions, it is necessary, on the one hand, for magistrates to correctly analyze the evidence on a case-by-case basis, without prejudices, to know and apply the minors' hearing procedure, when this is required, as well as the legal sanctioning provisions. It is also paramount to ensure the necessary logistics, namely spaces specifically intended for the discussions with minors, in order to create the proper setting for a reliable testimony. Moreover, it is mandatory for the state to invest in the specialization of professionals who come into contact with minor victims of crimes, namely social workers, probation counselors, psychologists, police officers and magistrates, as working with minors involves certain specific skills, which can be obtained only through specific training.

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LEGAL RELATION. SPECIAL POINT OF VIEW ON THE CITIZEN'S SUBORDINATION RELATION WITH PUBLIC AUTHORITIES

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Abstract

The scope of this study is to highlight the features of certain particular types of legal relations derived from the administrative law, namely subordination relations. The study starts from the general idea of legal relation, by analyzing its importance in building legal relations given that there would be no legal order and legal reality without legal relations. Further on, the study brings into discussion the administrative law relations, representing a category of the legal relations. Of all the types of administrative law relations, we specifically focused on the subordination relation and not just any subordination relation, but the one between public authorities and citizens. In relation to current realities that each of us experience, we consider that this subtype of administrative law relation deserves to be analyzed separately. In this way, the relation between public authorities and citizens acquires particular values, starting from the subordination of the citizen to the authority, but without the citizen being deprived of means of defense in case the authority violates his/her rights, legitimate interests or fundamental freedoms.

Key words: *legal relation; administrative law relation; subordination; public authority; citizen;*

INTRODUCTION

Since ancient times, societies were developed based on the legal relations in which their members were involved, the fact that "legal relations are first of all social relations, which people enter in order to satisfy their various needs, relations of cooperation and coexistence" *(N. Popa (coord.), E. Anghel, C. Ene-Dinu, L.C. Spătaru-Negură, 2017, p. 215)* being undeniable. That is precisely why the General Theory of Law assigns a fundamental function to legal relations.

Depending on the two main branches of law, public law and private law, the legal relations were divided according to the two dimensions of the law, which are significantly different.

Furthermore, nowadays legal experts are also paying attention to the European *(see A. Fuerea, 2016, p. 228 and the following; R.M. Popescu, 2014, p. 328-334; L.C. Spătaru-Negură 2016, p. 84 and the following)* and international legal order, including European and international legal relations, no longer being able to afford the luxury of a strictly local approach.

1. LEGAL RELATION FROM THE PERSPECTIVE OF THE GENERAL THEORY OF LAW

Law is social, by interfering in the daily interaction of people in society, with the purpose of disciplining their conduct, the law guaranteeing order, social stability, legal security *(see N. Popa, 2020, p. 235).*

Legal relations are understood as social relations that have fallen under the scope of the legal norms (regulated by the legal norms). By studying legal relations from the perspective of the general theory of law, we note that legal relations are, "first of all, social relations which people enter in order to satisfy their various needs, relations of cooperation and coexistence" *(see N. Popa, 2020, p. 235).*

Legal relation is defined in the doctrine as "the social connection, regulated by the legal norm, by containing a system of mutual interaction between determined participants, a connection likely to be defined through state coercion" *(N. Popa (coord.), E. Anghel, C. Ene-Dinu, L.C. Spătaru-Negură, 2017, p. 216).*

According to the doctrine of the general theory of law *(N. Popa (coord.), E. Anghel, C. Ene-Dinu, L.C. Spătaru-Negură, 2017, p. 215)*, in order to be in the presence of a legal relation, the following premises need to be fulfilled: legal norms, subjects of law and legal facts. The first premises are general, abstract, while the third premise is special, specific.

Furthermore, the premise of the legal norms is the very essential premise of the emergence of the legal relation, *sine qua non* premise without which we would not be in the presence of a legal relation. However, we consider that there are legal norms that are also accomplished outside legal relations – this is the case of prohibitive legal norms which defend and influence social relations by ordering abstentions from committing acts that endanger social order. In such cases, legal relation appears as a consequence of the non-compliance with the legal norm, which was not the intention of the legislator. What the legislator wants is the compliance with the conduct prescribed by the law, namely the refraining from any prohibited action. Precisely from this point of view, in what concerns administrative law and criminal law, we speak of legal relations of conflict and legal relations of compliance.

At the same time, we point out that the theory of law highlights the fact that there may be determined situations where legal relations may appear even in the absence of an express legal norm – when analogy (*analogia juris*) is used *(N.*

Popa, 2020, p. 237), more precisely when a judge resolves a case based on the principles of law and not on a specific legal rule.

From the point of view of the theory of law, in the analysis of the concept of legal relation, we distinguish between substantive approach – law accomplishment form and technical legal approach – construction of theoretical thinking.

Therefore, the proximate gender (the legal relation is a social relation) and specific difference (a social relation regulated by a legal norm, capable of being defended by the state, through coercion) results from the definition of the legal relation mentioned above.

The legal relation is thus the cornerstone of law due to the fact social relations will be built on it, by being distinguished as a social legal relation, a superstructure relation, a volitional relation, a relation of values and a historical category *(N. Popa, 2020, p. 238-243).*

2. ADMINISTRATIVE LAW RELATIONS

The result of the actions of the norms of administrative law in social relations is the result of the administrative law relations, which therefore emerge as a distinct category of legal relations.

The issue of the administrative law relations must be viewed with the utmost particularity, precisely from the perspective of the branch of law to which administrative law belongs, respectively public law.

According to professor Antonie Iorgovan, the administrative law relations are the social relations that have been regulated, directly or indirectly, i.e. by means of the intervention of certain legal facts, by the norms of administrative law *(A. Iorgovan, 2005, p.150).*

The administrative law doctrine has constantly classified administrative law relations into subordination relation and collaboration relations *(D. Apostol Tofan, 2020, p. 63),* those of subordination representing the rule and those of collaboration being the exception. Furthermore, we can also find coordination relations and public guardianship relations in the field of the administrative law relations.

The subordination and collaboration relation are especially noticeable, this is why we will be focused on them hereafter.

As in case of any legal relation, the administrative law relation consists of the following: subject, content and object *(E. E. Stefan, 2019, p. 56).*

Without going into a detailed analysis of these elements, they will be taken over from the features of the two types of relations, as these features will be detailed hereafter, precisely to emphasize the particularities that lead to the individualization of the administrative law relations by referring to all social relations regulated by different branches of law.

Both categories of relations carry the following general features that distinguish them from other legal relations *(A. Iorgovan, 2005, p.153):*

 one of the subjects is necessarily a holder of public authority; as a rule, it is a public administration body, but it can also be a non-state body vested with public power prerogatives, such as a private university that will provide one of the most important public services, the education. This feature seeks to separate administrative law relations from private law relations, a very important aspect due to the fact, as we have already shown, we find ourselves into a relation of power, which is fundamentally different from private relation;

 they are relations of power, which appear in the field of the social relations regulated by the administrative law norms. This feature separates administrative law relations from the other public law relations. This is also extremely important due to the fact that administrative law is not the only branch of public law, constitutional law or public international law can be found alongside it, but these branches of law target social relations that occur between other parties, compared to the classical relation between authority and citizen specific to the administrative law.

By identifying the common features of administrative law relations, scientific strictness goes further, towards identifying the specific features of each type of relation.

Therefore, the specific features of subordination relations are the following *(A. Iorgovan, 1994, p. 143 and 144):*

a) relations of subordination of one subject to the other; more precisely, the subject bearing a public authority has a superordinate position.

b) their emergence and fulfillment are determined either by the will of the legislator or by the unilateral will of the superior subject,

c) their fulfillment represents a legal obligation of the superior body.

Specific features of collaboration relations are individualized as follows *(A. Iorgovan, 1994, p.144):*

a) they are relations in which the subject bearing the public authority collaborates from an equal position with the other subject of the administrative relation (which may or may not be the bearer of the public authority);

b) their emergence and actual fulfillment is determined by the will of both subjects;

c) the conditions for the manifestation of both subjects' will are expressly provided by the law.

3. SUBORDINATION OF THE CITIZEN TO PUBLIC AUTHORITIES. THE SUBORDINATION RELATION GENERATING LEGAL EFFECTS AND THE OTHER SIDE OF THE COIN

Given the two types of relations, as we have mentioned them previously, this study will deal in particular with the relation of subordination of the citizen to

public authorities. Notwithstanding, subordination relations do not emerge only between the authority and the administered subject, but can also occur between different authorities that are obviously not on an equal footing *(i.e. the Ministry of Health – superordinate subject, County Department of Public Health – subordinate subject)*. These relations are specific to the administrative system which assumes that subordination is the essence.

Subordination relations usually arise between a public administration authority and another law subject that can be the citizen, in most of the cases. The subjects have an unequal position in these relations. The public administration authority is the active, superordinate subject, the other participant being the passive, subordinate subject *(for example, the relation between the police and an offender, in case of committing an offence).*

By virtue of its superordinate position, public administration authority can, by its simple unilateral will, establish the conduct of the passive subject in the respective relation, such conduct being incumbent on the latter. This specificity is explained by the fact that public administration body participates in these legal relations as bearer of state power, therefore as a public authority.

Mainly, public administration authorities demonstrate their will by administrative acts. These administrative acts issued within the relations with the citizens shall be individualized primarily by the fact that they are unilateral acts. A report of subordination will be primarily effected by individual administrative act addressed to the citizen by which a certain prescription is enforced on him, his/her rights and obligations being established, the execution of which being held until the act comes into force, is revoked or cancelled. First of all, the citizen will have to execute the administrative act issued by the public authority, which enjoys the ex officio execution rule. The consequence of this particularity is that, in case of violation by the passive subject of the obligations incumbent on it within the respective legal relation, the public administration authority can resort to forced execution, ex officio, by using state coercion, in order to oblige the person in question to fulfill the obligations incumbent on him within the respective legal relation.

Although subordinate, passive subject does not fully lack of rights. If the public administration body trespasses on the prerogatives granted by the law, thus violating the rights of passive subject, it can resort to the competent body, according to the law, in order to oblige public administration body within the respective relation to comply with the law. Therefore, according to art. 52 of the Constitution, any person aggrieved in his/her legitimate rights or interests by a public authority, by means of an administrative act or by the failure of a public authority to solve his/her petition within the lawful time limit, is entitled to the acknowledgement of his/her claimed right or legitimate interest, the annulment of the act and reparation for the damage.

Starting from this point, the whole theory of the contentious administrative will be developed, which will allow us to analyze concepts based on which the citizen is no longer powerless, but benefits from a set of legal norms by virtue of which he will be able to defend himself against the abuses arising from subordination relations.

The institution of the contentious administrative includes the set of legal norms that regulate the settlement of disputes in which at least one of the parties is a public authority, disputes the object of which is the violation of a right or legitimate interest of a person, by means of an administrative act or by the failure to settle a petition within the legal deadline *(C. S. Sararu, 2022, p. 26).*

In the light of the above, it appears obvious that one of the plaintiffs in contentious administrative is the citizen, provided that his/her rights and legitimate interests are damaged by unilateral administrative acts or by the failure to settle a petition within the legal deadline.

We are thus witnessing a tipping of scales, meaning that the public authority will have a superordinate position within the initial legal relation. Once the alleged violation of a right or legitimate interest is committed, the citizen shall be entitled to resort to the legal procedures provided by the Constitution and Law no. 554 of 2004 on the contentious administrative. According to these provisions, public authority shall become the defendant of the dispute, by moving into a defensing position, by trying to demonstrate through procedural documents at its disposal that it has not violated the law and has complied in full with the principle of legality governing its activity.

CONCLUSIONS

Despite the fact of being one of the most important legal relations, the relation of subordination of the citizen to public authorities is not the only administrative law report which gives rise to discussions and analyses. However, of all the types of administrative law relations, it is the only one that each of us faces, as citizens. And not infrequently, the citizen becomes a plaintiff in contentious administrative because of the illegal way in which the authority manifested within the respective legal relation.

This is precisely why this study presented both sides of this subtype of subordination relation, in an attempt to open to the citizen the perspective of his/her protection against the abuses that public authorities can commit.

Last but not least, we wanted to point out that the subordination relation of the citizen to public authorities is the connection between the non-contentious administration (where the relation occur between the authority and the citizen, the citizen being in a subordinate position) and the contentious administration (where the citizen sues the authority), ensuring that an independent power (the judiciary power) decides whether the authority has acted illegally and sanctions it if necessary.

All these aspects represent dimensions of democracy, of the rule of law and are meant to ensure an effective legal system where the Constitution, the letter of the law, the protection of fundamental rights and freedoms work effectively.

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CONSIDERATIONS REGARDING THE SCOPE OF NOTIONS OF "EXCEPTIONAL SITUATIONS"

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Abstract

From the beginning of the existence of state entities, measures were necessary to maintain and defend them against internal and external dangers. At the beginning, these measures were taken exclusively in military terms, later taking shape also in law and evolving simultaneously with state development. This evolution has outlined other risk factors, which can threaten the existence of the rule of law or the normal development of social, economic and political life. In order to combat these dangers, which can intervene unexpectedly, and to establish the state of normalcy as quickly as possible, the power factors in the state must take energetic and immediate measures.

The content of exceptional states derives from those situations that are beyond the normal state of the rule of law, situations accompanied by serious dangers that may threaten its very existence or the normal development of social, economic and political life.

Key words: *exceptional situation, very serious dangers, extent of measures, legal effect,*
JEL classification K150;

INTRODUCTION

By declaring them, exceptional states are substituted for ordinary states of law, adapting to the needs of the moment and the abnormal circumstances that caused them, or forcibly brought them about, and which undoubtedly justify themselves.

The exceptional states are instituted in those cases determined by the emergence of moments of crisis for the rule of law, moments that can be triggered

by either internal or external factors. The dangers can be so serious that they can target *supreme state institutions and values*[1] such as:

- defense of the country and national security,
- constitutional democracy,
- the life of citizens, their rights and freedoms,
- public health and morals,
- public or private property, etc.

Very serious dangers such as armed aggression directed against the country, actions or inactions aimed at sovereignty, independence, the unity of the state or its territorial integrity, complex social adversities, disturbances and demonstrations that tend to overturn the constitutional order and security of the state and may degenerate into civil war, the serious violation of legality, the occurrence or imminent occurrence of disasters are clear elements that require the establishment of exceptional states.

Usually, in such situations, order, tranquility and civil peace can only be imposed through resistance and coercion measures that the civil authorities, with the help of the police and judicial bodies, cannot guarantee, and then the armed forces are called upon.

There may also be situations which, discovered by intelligence and counter-intelligence structures, raise the issue of the security of state structures ("underground" movements, occult interests), which due to their scale become very dangerous for the constitutional order, for the government and the stability of the state entity and which, through by definition given their occult character, they sound difficult if not impossible for public opinion to perceive. Based on this information, exceptional states can also be established.

The state of emergency is mandatory for a certain period of time, when all interests must be absorbed in the need for common defense.

Thus, necessity conditions the imposition of exceptional states, justifies their exercise and limits their duration. Only necessity, not opportunity, can justify the establishment of an exceptional state.

The necessity arises from the fact that states of emergency represent the public's right to self-defense when civil authorities are unable to prevent or resist a public danger by resorting to additional forces. They are justified by the pre-existence of a disastrous enemy attack, by a special internal situation that requires the control of the armed forces over the civilian population, not only to restore order and law, but also to ensure the relief of the population, the resumption of production, the restoration of the economy, the protection of life and properties, evacuation and traffic control, as well as prevention of diversionary actions or other illegalities.

[1] The Romanian Constitution of 1991 amended and supplemented by the Law on the revision of the Romanian Constitution no. 429 of 2003

The fact that states of emergency must be dictated by necessity, and their extension depends on circumstances, reinforces their value as an object of a country's legislative process.

The need dictated by the realities of a critical situation calls for immediate measures, the importance of the need being determined by the measures that must be taken in the interest of common defense. If it is required that the civilian population be placed under the control of the armed forces, so that military operations can be carried out unhindered, this not only falls within the constitutional powers of the President, the Parliament and the Government, but it also becomes an undoubted constitutional obligation for these state bodies .

The extent of the measures taken and the military forces used within the states of emergency depends on the extent and complexity of the disturbances that affect the normality of the state. Of course, in the conditions of an enemy invasion or attack, or of a major natural calamity, the forces and means to be used will be proportionally greater than in the case of small-scale local disturbances.

Dangers to the community do not only come from outside, they can also have internal causes. Disturbances, violent demonstrations, insurrections, etc. they can sometimes take a large scale, reaching the point of denying the constitutional order, of disregarding the principles and institutions of the rule of law, and may even turn into a civil war.

The constitutional order can only be restored through an energetic intervention, through measures of resistance and coercion, which as a rule cannot be applied by the civil authorities, requiring the call to the armed forces.

The need to establish states of emergency, followed by the extent of the measures that need to be taken and the military forces used, determined in turn by the extent of the dangers that must be faced and overcome, demand a hierarchy at the level of the anti-crisis actions of the rule of law. For greater dangers the measures and actions are wider and deeper, for lesser dangers they will be reduced.

In such a situation, the complex mechanism of the power of the rule of law is set in motion, various levers act, competence transfers from one power to another take place, the organized military force of the state comes into action, the support given to local administrative authorities increases and increase their skills.

1. BRIEF LEGISLATIVE EVOLUTION

In Romania, starting from 1864, through the State of Siege Law and then through the Constitution of 1923, the name state of siege is consecrated and used. The name, consecration and legislation of the state of siege, like almost the entire Romanian legislation of that period, are of French inspiration. Later, in the post-war period, the constitutions of 1948, 1952 and 1965 enshrine the state of emergency that could be instituted throughout Romania or in certain areas.

CONSIDERATIONS REGARDING THE SCOPE OF NOTIONS OF "EXCEPTIONAL SITUATIONS"

In the new conditions of democratic development of Romania after 1989, inspiration continues from French doctrine and legislation and from the Romanian experience acquired based on the application of the 1923 Constitution, so that currently, based on the 1991 Constitution, exceptional situations in our country are analyzed on the two levels: *state of siege and state of emergency*[2]. Cases of extreme urgency require the immediate declaration of a state of siege.

The character of necessity, specific to the state of siege, translates into the urgent need to apply military force to suppress or counteract the force of belligerents or insurgents. The state of siege, being a measure of public safety, has the effect of suspending the actions of the civil laws and replacing them with the military regime. This measure can be general, for the entire country, or only partial, for a certain territory or locality.

Like the extent of the measures to be taken, its territorial extent is determined by the nature, the character of the disturbances and movements, and the proportions of the danger to which the country is exposed.

In the area under its control, the temporary military government *(temporary dictatorship)*[3] becomes the supreme governmental authority over the civilian population, to the extent provided in the normative act declaring the state of emergency. The rules and regulations imposing controls and restrictions on such situations will be published immediately in the form of orders of the military authority. Police functions will be provided by the military command. Security restrictions will be imposed that involve limiting the exercise of some fundamental civil rights and freedoms:

- prohibition of movement at certain times and camouflage;
- restrictions on population movement;
- occupation by military forces of some places considered important from a strategic point of view;
- temporary detention of suspicious persons, etc.

The purpose of imposing the state of siege is to restore order, so that the normal functioning of civil authorities can be restored as quickly as possible. Beyond this goal, a state of siege has no justification. Except where it is necessary to ensure the continuation of a necessary function, the state of siege is not intended to replace civil administration. Within the limits of this purpose, the subordination of the civil authority to the military authorities is inherent.

The real (effective) state of siege, which can only occur in time of war, consists in the situation of a locality or portion of territory surrounded by the besieging enemy, a situation that justifies the military authority to take any

[2] GEO no. 1 of 1999 regarding the regime of the state of siege and the regime of the state of emergency amended and supplemented by Law no. 164 of 2019,

[3] In the French Constitution of 1958 we find the expression "temporary dictatorship" which refers to the measures taken in the event of a serious crisis that would endanger democracy, as a last resort to block a threat to public power.

restriction regarding the rights of the civilian inhabitants of the besieged area them, provided that those restrictions are taken for the purpose of ensuring a complete resistance, or for the purpose of exiting the besieged area *(V. Pantelimonescu, 1940,.citat de C. Sava şi C. Monac, 2000, p.5).*

So, in a classic sense, the state of siege is justified by the siege of a territory or localities, by the enemy troops, territory or locality that must be governed according to exceptional provisions, established by laws that pass on the military authority a good part of public powers. The application of the state of siege must be justified by public necessity, by the existence of a real threat to public order and safety.

The fictitious (political) state of siege can occur both in wartime (for unsieged territories) and in peacetime and consists in the situation of a country, locality or portion of territory, whose inhabitants are subject to certain restrictive measures regarding the rights them, in order to remove imminent dangers.

These restrictions based on the proclamation of the state of siege are taken by the Government, through the military authority, within the limits provided by the act by which the state of siege was established *(V. Pantelimonescu, 1940, p.5. citat de C. Sava şi C. Monac, 2000, p.5-6).*

The state of siege in peacetime is therefore a fiction of the real state of war and borrowed from the latter with all the rigors determined by the conditions and requirements commanded by the reason of the state.

Looking at the state of emergency (OUG nr. 1/1999), we usually refer to periods of low intensity but which still require the declaration of an exceptional state. It can only occur in peacetime and usually refers to the existence of threats to national security or Constitutional democracy, which makes it necessary to defend the institutions of the rule of law and maintain or restore the state of legality. This can also refer to the occurrence or imminent occurrence of disasters (OUG nr. 21 din 2004), which requires organized military action to prevent, limit and eliminate their effects.

The need to institute one or another of the exceptional states derives from a thorough analysis of the seriousness of the dangers, an approach that constitutes an attribute of the responsible power factors in the state and is based on constitutional provisions and other laws in the field, relevant assessment criteria but also truthful information and complete provided by specialized bodies.

The analysis of the seriousness of the dangers to the rule of law calls for the appropriate, gradual establishment of the exceptional state that is imposed: the state of siege and the state of emergency, as, in relation to the evolution of the danger situations, in compliance with the constitutional provisions, it is possible to move from state of emergency to state of siege or vice versa.

2. GENERAL CONSIDERATIONS REGARDING THE STATE OF SIEGE

CONSIDERATIONS REGARDING THE SCOPE OF NOTIONS OF "EXCEPTIONAL SITUATIONS"

Cases of extreme urgency require the immediate declaration of a state of siege. The character of necessity, specific to the state of siege, translates into the urgent need to apply military force to suppress or counteract the force of belligerents or insurgents. The state of siege, being a measure of public safety, has the effect of suspending the actions of the civil laws and replacing them with the military regime. This measure can be general, for the entire country, or only partial, for a certain territory or locality.

In the area under its control, the temporary military government *(temporary dictatorship)*[4] becomes the supreme governmental authority over the civilian population, to the extent provided in the normative act declaring the state of emergency. The rules and regulations imposing controls and restrictions on such situations will be published immediately in the form of orders of the military authority. Security restrictions will be imposed that involve limiting the exercise of some fundamental civil rights and freedoms:

- prohibition of movement at certain times and camouflage;
- restrictions on population movement;
- occupation by military forces of some places considered important from a strategic point of view;
- temporary detention of suspicious persons, etc.

The purpose of imposing the state of siege is to restore order so that the normal functioning of civil authorities can be restored as quickly as possible. Beyond this goal, a state of siege has no justification. Except where the continuation of a necessary function is to be ensured, the state of siege is not intended to replace civil administration. Within the limits of this purpose, the subordination of the civil authority to the military authorities is inherent.

3. GENERAL CONSIDERATIONS REGARDING THE STATE OF EMERGENCY

Regarding the state of emergency (OUG 21 din 2004), we usually refer to periods of low intensity but which still require the declaration of an exceptional state. It can only occur in peacetime and usually refers to the existence of threats to national security or Constitutional democracy, which makes it necessary to defend the institutions of the rule of law and maintain or restore the state of legality. This can also refer to the occurrence or imminent occurrence of disasters[5], which requires organized military action to prevent, limit and eliminate their effects.

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[4] In the French Constitution of 1958 we find the expression "temporary dictatorship" which refers to the measures taken in the event of a serious crisis that would endanger democracy, as a last resort to block a threat to public power;

[5] GEO 21 of 2004 regarding the National Emergency Management System, published in M. Of. no. 361/ April 26, 2004 and republished in M. Of no. 190/March 7, 2005;

The military lexicon *(1980, pp.628-629)* defines this state as "a situation in which, due to the strained relations between states, some measures of a political, military, economic and social nature are taken to raise the state of readiness for the fight of the troops and the population in order to be able to enter to war in a very short time."

The state of emergency also represents, in comparison with the state of siege, a regime of restriction of public liberties, which is characterized by the extension of the ordinary police powers of the public authorities, in case of extraordinary events (Lexique de termes juridiques, 1998, 8 eme ed., 1990, p.222).

CONCLUSIONS

The need to establish one or the other of the exceptional states arises from a thorough analysis of the seriousness of the dangers, an approach that constitutes an attribute of the responsible power factors in the state and is based on constitutional provisions and other laws in the field, relevant assessment criteria but also truthful information and complete provided by specialized bodies.

The analysis of the seriousness of the dangers to the rule of law calls for the appropriate, gradual establishment of the exceptional state that is imposed: the state of siege and the state of emergency, as, in relation to the evolution of the danger situations, in compliance with the constitutional provisions, it is possible to move from state of emergency to state of siege or vice versa.

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EXCESSIVE DEFICIT PROCEDURE: PAST, PRESENT, PERFECT?

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Abstract

The Economic and Monetary Union combines a single monetary policy with decentralised economic, especially fiscal policies under the responsibility of Member States. From the Treaty of Maastricht the EU is trying to optimise the specific institutions of one-armed European economic governance – with more or less success. The excessive deficit procedure is an elementary part of the system. The study focuses on the changes and criticism of the procedure paying particular attention to public debt and the sanctions that may be imposed.

Key words: *excessive deficit procedure, European economic governance, debt reduction benchmark, European Court of Auditors*

INTRODUCTION

The excessive deficit procedure (EDP) is an almost 30-year-old legal institution in EU law. This action can be launched by the decision of Council (recommended by the European Commission) against any EU Member State (MS) that exceeds the budgetary deficit and /or debt ceiling regulated in the Treaty on the Functioning of the European Union Article 126, Protocol No 12 annexed to TFEU and in the EU's Stability and Growth Pact *(1997).*[1] The study is based on the research of rules of the procedure, their changes, the related jurisprudence and some literature (including by reviews of the European Court of Auditors and the State Audit Office of Hungary). The scope of our studies does not provide full coverage of them. It focuses on the problems raised by the procedure, trying to systematise them. Even its rules have been changed several times, the Commission has relaunched a public debate on the review of EU economic

[1] The main provisions of EDP are laid down in Article 126 TFEU (thus Articles 119 and 120 TFEU are also linked to the procedure theoretically – as general rules of economic policy cooperation). Besides, Protocols 12, 13, 15 and 16 and Declaration 30 are related to the procedure at the level of primary law. The secondary legal framework for the EDP are the provisions of Regulation (EC) 1467/96, Regulation (EC) 479/2009 on reporting obligations of Member States. In addition, the sanctions for euro area MSs are governed by Regulation (EU) 1173/2011 and the correction of their excessive deficits is governed by Regulation (EU) 472/2013.

governance in 2021 October raising many questions to answer until 2023. This shows not only the timeliness of the study, but also the still existing contradictions in the procedure. The results of research are based on the use of legal historical method, comparative law and case law analysis.

1. RIGHT TO EXIST? REASONS OF REGULATION

The emerging internal market has amplified externalities between Member States' economies. Furthermore, the Treaty of Maastricht set the *objective of economic and monetary union*. From the Treaty of Maastricht monetary policy became an exclusive competence of the EU in the eurozone. Besides, other segments of economic policy, especially fiscal policy remained the competence of Member States. This led to *one-armed economic governance* at both EU and national level, which carries financial risks. If a euro-area Member State does not pursue a discipline fiscal policy, national overspending is no longer constrained by the risk of devaluation of the national currency. Why? The risks of increasing debt would spill over, spread across euro area Member States mitigating its negative economic effects (like increasing interest rate, devaluation of currency). Beside the overspending and "*moral hazardous*" behaviour of Member States, the so-called asymmetric economic shocks cannot be satisfactorily managed, either. *Asymmetric economic shocks* have different effects in Member States, countries can react and want respond to such shocks in different way (regarding budgetary resources and economic stabilization tools). Furthermore, the growing interdependence of Member States may increase the *spillover effect* of economic shocks on other Member States. All these economic contexts, and the legal principles of subsidiarity and proportionality also underpin the need for intervention at EU level. But how?!

2. MAJOR CHANGES, BASIC REASONS

A basic premise of the research is that, the changes in regulation have been driven by the macroeconomic challenges faced by Member States and the European economy. Nevertheless, this was also influenced by conflicts of interest, political bargaining and the different capacity of Member States to act. This unit of the study focuses only on the main changes.

The Treaty of Maastricht (accepted in 1991, entered into force in 1994) *re-regulated*[2] the rules of the multilateral surveillance of national budget (as a preventive arm) and laid down the rules of excessive deficit procedure (corrective

[2] The secondary legislation on multilateral surveillance was laid down in Council Decision 90/141/EEC. It was supplemented and incorporated into primary law by the Treaty of Maastricht. The Commission's examination under this procedure also covered the budgetary situation of the Member States, as a precursor to the excessive deficit procedure.

arm) in the primary law. The Council regulations of Stability and *Growth Pact*[3] accepted in 1997 regulated detailed rules for budgetary surveillance and the EDP. In the framework of excessive deficit procedure, the Commission shall examine compliance with budgetary discipline in the Member States on the basis of the following *criteria*:

- ratio of the planned or actual government deficit to gross domestic product (GDP) exceeds 3%, unless either the ratio has declined substantially and continuously and reached a level that comes close to the reference value, or alternatively, the excess over the reference value is only exceptional and temporary and the ratio remains close to the reference value;
- the ratio of government debt to GDP exceeds 60%, unless the ratio is sufficiently diminishing and approaching this reference *value at a satisfactory pace.*[4]

The fiscal element of the convergence criteria, set at the initiative of Germany, aimed to ensure the sustainability of fiscal policy, which remained the competence of Member States. The reference values were based on the average of the Member States' budgetary statistics at the time (1991) with the aim of maintaining them. However, there were more countries with high ratio of debt (e.g. 129.4% of GDP in Belgium, 101.4% of GDP in Italy in 1991) and their deficit was also above reference values (6.5% and 10.1% of GDP).

The euro was introduced in 1999 not on the basis of the reference values set out in the Treaty's protocol, but on the basis of whether a Member State was subject to EDP. When the decision was taken in May 1998 on which Member States could introduce the euro (01.01.1999), two countries were allowed to enter the final stage of economic and monetary union where gross public debt exceeded 100% of GDP: Belgium and Italy. When Greece (in 2001) became eligible to enter the eurozone, the Greek debt ratio was also above 100% *of GDP*.[5] At least in the case of the Greeks, a political compromise has been reached to expand the euro area.

Although a fiscal consolidation process took place in the European economies in the second half of the 1990s, an economic downturn began in 2000, which has left its mark on government deficits and debts. In 2005, the amendment of the Pact officially aimed at improving the implementation of the Pact, actually weakened the fiscal rules allowing to slow down the fiscal correction, avoiding the imposition of sanctions (by widening the scope of exceptions). The 2005 reform of the SGP introduced the structural balance as one of the targets that

[3] Council Regulation (EC) 1466/97; Council Regulation (EC) 1467/97; Resolution of the European Council of 17 June 1997 on the Stability and Growth Pact. OJ C 236, 2.8.1997. p. 1.
[4] The Treaty text has not changed since then. See: Article 126 (1) TFEU. The reference values are specified in the Protocol on the excessive deficit procedure annexed to the Treaties.
[5] http://publikaciotar.repozitorium.uni-bge.hu/1048/1/Ferkelt-B..pdf (16.11.2022.)

Member States under the EDP must achieve in order to correct an excessive deficit situation.

There were *political and economic reasons beyond the amendments*. By 2003, the Council had already made recommendations to several Member States (like Ireland, Portugal) to correct their budgets, but in the case of Germany and France, despite the existence of excessive deficits, the Commission's proposal was not voted by the Council, and the procedure was closed for these two Member States. Politically, the Council decision is partly due to the strong German and French lobby, but also to the forced and discriminatory solidarity of other Member States, as the debate on the EU budget was taking place in parallel. The economic reason of the laxation of rules is that fiscal convergence criteria are difficult to fulfil – especially in a recession. Government measures to stimulate economic growth have a negative impact on the government deficit and debt. The Commission successfully brought an action before the *Court of Justice of the European Union,*[6] which led to continuing EDP against Germany and France. When sanctions could have been imposed against these countries, the rules of the procedure were instead weakened by the 2005 amendments.

What were the consequences of the 2005 amendments? The more the fiscal rules are relaxed the less relief they provide. As a result, the relevant actors and the central banks of the Eurosystem face greater demands and challenges. Furthermore, the Commission and the Council got considerably more scope for discretion and flexibility in the interpretation *of regulation than earlier.*[7]

The second – bigger – wave of EDP reforms was triggered by the financial and then economic crisis that escalated in 2008. The crisis had highlighted the weaknesses of financial policy at the time: lax financial market regulation, uncontrolled and irresponsible lending policies by the banking sector and rising indebtedness in both the private and public sectors. The stimulus measures necessitated by the crisis were putting additional strains on public finances, jeopardising their medium and long-term sustainability. This has called for a rethinking of the budgetary framework and structural reforms – not just at national, but also at European governmental level.

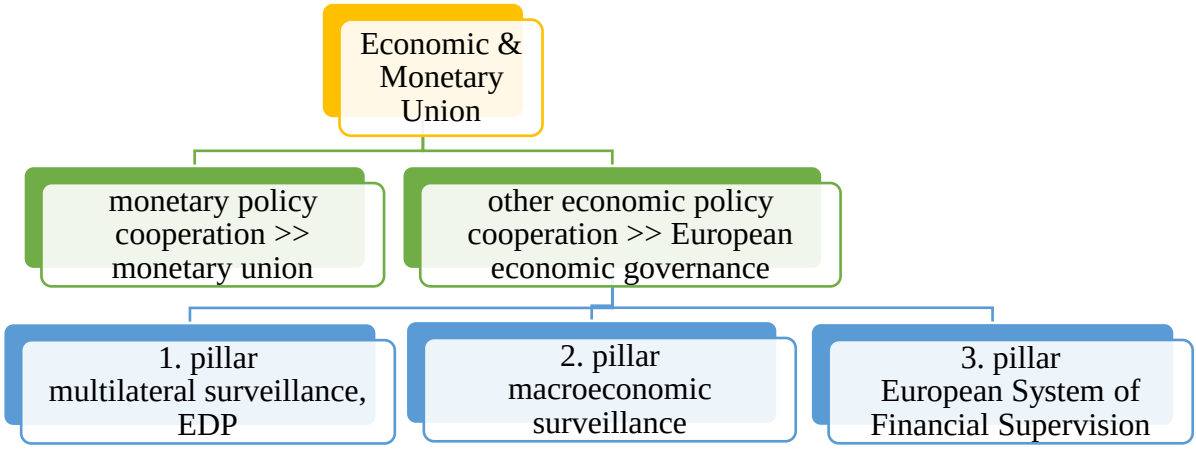
The need to strengthen the economic union has led to the creation of a multi-pillar surveillance system in 2010-2011 bringing together the different segments of economic policy coordination in the European Union. The first, reformed pillar is the European economic and budgetary policy coordination

[6] Case C-27/04 Commission of the European Communities v Council of the European Union. About the case: Angyal, Zoltán: Európai ítélet. A túlzott hiány esetén követendő eljárás menete a közösségi jogban: az Európai Bíróság ítélete a Bizottság kontra Tanács ügyben. Európai Tükör, 2004/8. p. 76–92.

[7] Franz-Christoph Zeitler: What remains of the Stability and Growth Pact? Speech of the Member of the Executive Board of the Deutsche Bundesbank, Salzburg, 2005. https://www.bis.org/review/r050901j.pdf (10.11.2022.)

based on the rules of Stability and Growth Pact. The second new pillar is macroeconomic surveillance, and the third is the European System of Financial Supervision *(see Figure 1).*[8]

Figure 1.
Segments of economic policy cooperation in the EU



Source: own compillation

What has been changed by the reform relating to the EDP? The *European Semester* interlinks the annual mechanisms of economic governance related to the first two pillars from 2011. Under the EDP, euro area Member States are required to prepare stability programmes, other Member States are required to prepare convergence programmes by 1 April each year and to report deficit and debt data twice a year (before 01.04. and 01.10.). The programmes, data and corrective actions taken by Member States under the procedure are now assessed in the framework of the European Semester.

To facilitate a more disciplined fiscal policy, the possible cases in which *financial sanctions* (like non-interest-bearing deposit, fine) can be imposed on a euro area MS have been broadened and the rules for imposing them have been *tightened.*[9] The introduction of the reverse decision-making mechanism could facilitate the entry into force of the Commission's proposal to impose sanctions, as a qualified majority in the Council is required not to impose sanction (supporting the proposal) but to reject it.

[8] For further detailes see Kálmán, János: Az Európai Unió pénzügyi felügyeleti rendszere. In Kálmán, János (szerk.): A pénzügyi jog alapintézményei, 2022, HVG-ORAC, Budapest, 635–661. and Kálmán, János: Pénzügyi szolgáltatások igazgatása, in Lapsánszky, András (szerk.): Szakigazgatásaink, 2020, Wolters Kluwer, Budapest, 576–596.

[9] Sanctions for euro area Member States are governed by Regulation (EU) 1173/2011 of the European Parliament and of the Council.

Specific problems have also arisen: the *falsification of statistical data*. The shortcomings of the Stability and Growth Pact so far have been caused not only by weaknesses in the rules but also by inconsistencies in the application of the existing rules. Not the only example, but a typical one, is Greece's misreporting of public finances, which was already untrue before introduction of the euro (2001) and during the economic crisis (in 2009, the 3.7% budget deficit reported by the Greek government was actually 15.4% *of GDP).*[10] This is why from 2012 the Council, acting on a recommendation by the Commission, may decide to impose a fine on a euro area MS that intentionally or by serious negligence misrepresents deficit and debt data relevant for the application of (multilateral surveillance and) excessive deficit procedure.

Due to the crisis, more attention has been paid to public debt. The concept of debt diminishing at a satisfactory pace (when the state debt is higher than 60% of GDP) was operationalised through the *debt-reduction benchmark.*

The *Fiscal Compact*, signed in 2012 by 25 *Member States*[11] (as an international treaty!), sets out additional provisions on budget balances and debt above the reference value for participating Member States (see the regulation relating to mandatory balanced budget rule, benchmark for government debt reduction, reporting public debt issuance plan). A commitment by the euro area countries directly linked to the EDP to support proposals or recommendations from the European Commission to the ECOFIN Council if a euro area country breaches the deficit criterion, unless this is opposed by a qualified majority of the other euro area countries. This provision is expected to increase the automaticity of the excessive deficit procedure related to breaches of the *deficit criterion.*[12] The treaty has also had the effect of transposition of the balanced budget rule (and public debt limit) into national law, preferably at *constitutional level.*[13] Finally, it is important to note that the Pactum does not set any obligations for participating Member States outside the euro area (e.g. Romania, Hungary). The Pact highlights the limited and divergent willingness of Member States to cooperate, leading to multi-speed integration.

The so-called '*Two-Pack*', adopted in 2013, aimed to further strengthen the reformed economic governance framework for euro area Member States (!). Regulation (EU) 473/2013 of the European Parliament and of the Council incorporates into the European Semester a system of ex-ante monitoring and assessment of the annual budgetary plans of euro area Member States on the basis of the so-called common budgetary roadmap, and sets out additional rules for euro

[10] Szűcs Tamás: Politikai dimenziók. Gazdasági kormányzás az Európai Bizottság nézőpontjából. Európai Tükör, 2011/2. 23.

[11] The United Kingdom and the Czech Republic did not sign the treaty.

[12] https://www.ecb.europa.eu/pub/pdf/other/mb201203_focus12.en.pdf (04.11.2022.)

[13] The European Court of Justice has been empowered to impose financial sanctions of up to 0,1% of GDP to ensure compliance with the obligation of transposition.

area countries under the excessive deficit procedure. If the Council decides that an excessive deficit exists, the euro-area MS is required to prepare an *economic partnership programme* in addition to *reporting* on the measures taken under the Council recommendation. The *Commission* is empowered to make a *recommendation* directly to the MS if it considers that the compliance with the deadline to correct the *excessive deficit*[14] is at risk. Regulation (EU) 472/2013 of the European Parliament and of the Council introduces rules for *enhanced surveillance*, macroeconomic adjustment programme and post-programme surveillance. If a MS is placed under enhanced surveillance because requests financial assistance (credit) from one or several other Member States, third countries, the ESM or the IMF, it shall prepare a *macroeconomic adjustment programme*, which exempts the country from the obligation to prepare stability programme, macroeconomic adjustment programme and to report on correction measures, it remains outside the European Semester. If the EU was also involved in providing the loan, after the disbursement period, the MS will be subject to *post-programme surveillance* until at least 75% of the *loan has been repaid.*[15] Under post-programme surveillance the general rules come back into force. To sum up, the Commission's power have been strengthened, as it got the right to give an ex-ante opinion on draft budgets (in the European Semester) for euro area Member States and to make recommendations in the EDP. However, the extension of reporting and programming obligations for euro area Member States reduces transparency and increases the administrative burden on them.

3. CRITICS AND RECOMMENDATIONS

The comments on the excessive deficit procedure are organised thematically, according to subjectively chosen criteria, sometimes with a view to possible changes.

3.1. Assessment procedure

The European Court of Auditors (ECA) examined the Commission's implementation of the excessive deficit procedure between 2008 and 2015, focusing on six Member States and defined conclusions and a number of specific recommendations addressed to the Commission. The ECA found that, although detailed procedures and guidelines exist for most areas of the Commission's data collection and analysis and its assessment of compliance with the rules on budgetary discipline, there are problems with the implementation of these tasks. What has been lacking is consistency and transparency in the application of those rules. The ECA recommended to the Commission to enhance its quality assessment procedures and better document its work, maximise transparency and

[14] Article 126 (7), (9) TFEU.
[15] Regulation (EU) 472/2013 of the European Parliament and of the Council.

promote the involvement of national fiscal councils to confirm the national data used in the Commission's analyses.

The country-specific recommendations addressed to Member States are often regrouped, making it difficult to compare progress over the years and implementation of recommendations. The criteria and rationale for selecting recommendations are not clearly documented, prioritisation is not clearly *explained*[16] *(e.g. corruption).*[17]

3.2. Control of Public Debt

According to the European *Court of Auditors*[18] the excessive deficit procedure continues to over-emphasise the criterion of deficit rather than debt. Why does it carry risks? A high debt level impairs the stabilising role of fiscal policy even in respect of short-term growth stimuli. This is because an expansionary fiscal policy has less impact in an environment of high deficit and debt levels than in an economy with structurally sound public finances. Low government debt has a positive correlation *to growth*[19] because of the resultant boost in confidence, lower tax burden, possibly greater involvement and efficiency of the private *sector.*[20] Period of low interest rates until 2021 have significantly reduced the interest burden on general government.

The drivers behind debt dynamics are the *primary balance,*[21] *the snowball effect*[22] and the stock-flow *adjustment.*[23] The evolution of the debt-to-GDP ratio can therefore be broken down by the respective impact of those three drivers. In 2022, the challenge is a significant snowball effect resulting from a combination of a large initial stock of debt, low or negative nominal GDP growth and episodes of

[16] European Court of Auditors: Special Report 16/2020, p. 48–52.

[17] Állami Számvevőszék: Elemzés az Európai Bizottság 2004–2020. között a tagállamokról készített értékeléseiről 2. rész: Összehasonlító elemzés. 2020. október. (*State Audit Office of Hungary)* *https://www.asz.hu/storage/files/files/elemzesek/2020/elemzes_20042020_2_20201002.pdf?download=true (30.09.2022).*

[18] European Court of Auditors: Special Report 10/2016, p. 12.

[19] European Central Bank: Public Finances and Long-Term Growth in Europe – Evidence from a Panel Data Analysis. ECB Working Paper 246/2003. https://www.ecb.europa.eu/pub/pdf/scpwps/ecbwp246.pdf?9fc3689ef8dd20d85867f8b601f0e035 (30.10.2022.)

[20] Franz-Christoph Zeitler: What remains of the Stability and Growth Pact? Speech of the Member of the Executive Board of the Deutsche Bundesbank, Salzburg, 2005. https://www.bis.org/review/r050901j.pdf (10.11.2022)

[21] The primary balance is the budget balance net of interest payments on general government debt, so it indicates the amount of new debt created by the government.

[22] The snowball effect is the effect on public debt accumulation arising from the differential between the interest paid on public debt and the nominal GDP growth rate.

[23] The stock-flow adjustment groups all changes in public debt that cannot be explained by the deficit (e.g. changes in the value of debt denominated in foreign currency).

high interest rates. Medium- and long-term challenge is that high public debt also places a burden on future generations in ageing societies.

The analysis of the European Court of Auditors suggests that the EDP is potentially effective at keeping debt within limits, although a high initial level of debt may hamper the effectiveness of the procedure in keeping the debt-to-GDP ratio *under control.*[24]

The study stresses that it would be necessary to differentiate between Member States according to their level of public debt (e.g. between less, moderately or heavily indebted Member States) and to adjust the debt reduction benchmark accordingly, but strictly. Our conclusion is confirmed by the Commission's experience that in some heavily indebted countries, the debt reduction benchmark has required a particularly significant *fiscal effort.*[25] It is interesting to note that the debt levels of euro area Member States are higher than those of non-euro area Member States (see Figure 1., 2.) although they are subject to closer budgetary surveillance.

Figure 1.

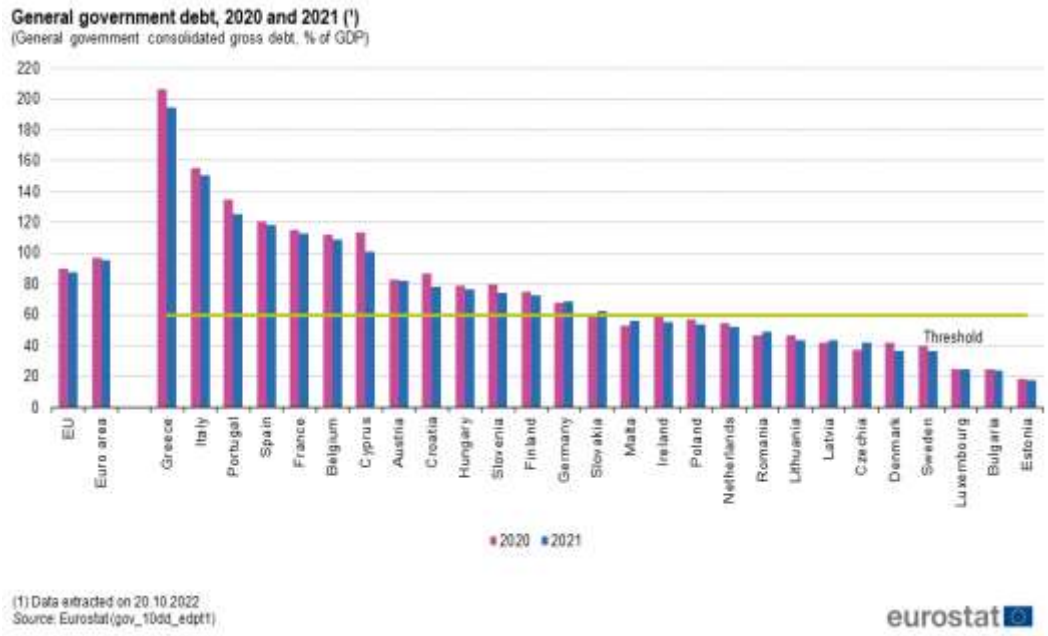
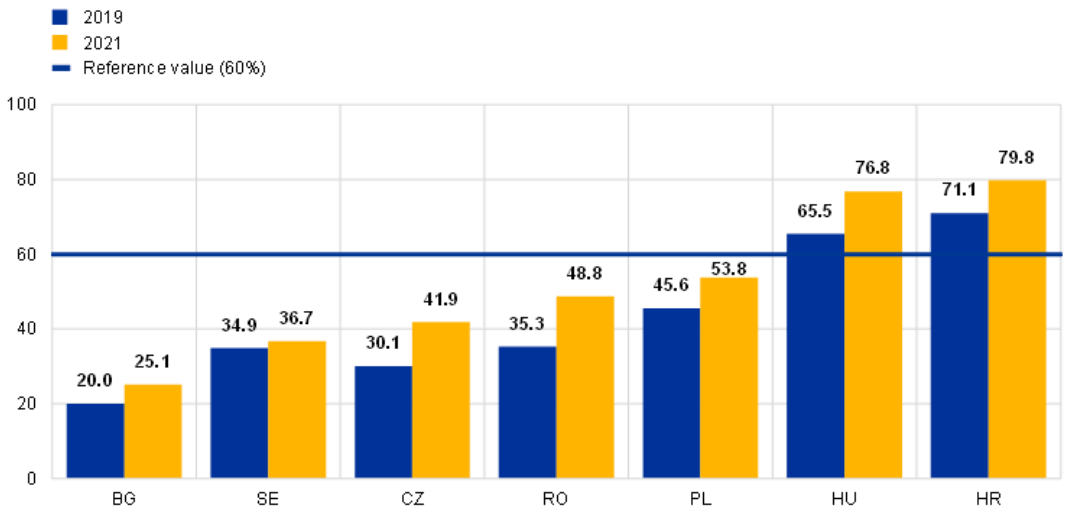


Figure 2.
General government gross debt

[24] European Court of Auditors: Special Report 10/2016, p. 72.
[25] COM(2020) 55 final, p. 7.



Source: *Eurostat*[26]

At the end of the first quarter of 2022, the highest ratios of government debt to GDP were recorded in Greece (189.3%). In six other euro area Member States government debt was above 100% of GDP: Italy (152.6%), Portugal (127.0%), Spain (117.7%), France (114.4%), Belgium (107.9%) and Cyprus (104.9%). The lowest government debt rate was in Estonia (17.6%), Luxembourg (22.3%) and Bulgaria *(22.9%).*[27]

3.2.1. Case of Romania

At the time of publication of this study, only Romania is subject to an excessive deficit procedure *(Cîrmaciu Diana, 2021, p. 68)*, even the government debt rate is under the reference value. What was the background?

Romania has been under consecutive Significant Deviation Procedures (SDP) under the preventive arm of the Stability and Growth Pact since spring 2017 as a consequence of the significant deviation by Romania from its medium-term budgetary objective (MTO) in 2016. In 2018 Romania registered a general government deficit of 2.9% of GDP, while debt stood at 35.0% *of GDP*.[28] Based on the Fiscal Strategy, Romania's general government deficit is planned to have increased to 3.8% of GDP in 2019. The Commission considered that this was well above and not close to the Treaty reference value of 3% of GDP and is also not exceptional, as it neither results from an unusual event nor from a severe

[26] https://www.ecb.europa.eu/pub/convergence/html/ecb.cr202206~e0fe4e1874.en.html (10.11.2022).

[27] https://ec.europa.eu/eurostat/documents/2995521/14644644/2-21072022-AP-EN.pdf/ce72169d-1c4a-076c-d9da-4e87577a18dd?t=1658388869931 (10.11.2022).

[28] About the Romanian fiscal system see detailed: Ramona Ciobanu–Zoltán Varga: Romanian and Hungarian Fiscal Systems. Regulations and Fiscal Apparatus. Transilvania University of Brasov. Bulletin. Series VII: Social Sciences, Law 2020. 13 (62) pp. 307–317.

economic downturn. The excess over the reference value was not temporary, as the Commission 2020 winter forecast, extended for fiscal variables, projects a general government deficit of 4.0% of GDP in 2019, 4.9% in 2020 and 6.9% in 2021. According to the Commission report 2020, Romania faced high fiscal sustainability risks in the medium and long term, driven by high fiscal deficits and costs of aging. Assuming no-policy change, it was projected to breach the 60% *debit rule in 2025.*[29] Overall, on 3 April 2020, the Council decided that an excessive deficit existed in Romania because of a budget deficit above the reference value planned for 2019. The Commission considered in 2021 that the excessive deficit procedure should be kept in abeyance at this stage on the basis of the projected achievement of the required headline deficit *target in 2021.*[30]

The general escape clause of the Stability and Growth Pact has been active since March 2020. According to the general escape clause, a deviation from the medium-term budgetary objective or from the appropriate adjustment path towards may be allowed for Member States, during both the assessment and the implementation of Stability or Convergence Programmes. In the corrective arm of the Pact (EDP), the clause will allow an extension of the deadline for the Member States to correct their excessive deficits under the excessive deficit procedure, provided those Member States take effective action as recommended by the Council.

In its communication of 3 March 2021 entitled 'One year since the outbreak of COVID-19: fiscal policy response', the Commission set out its view that the decision on the deactivation or continued application of the general escape clause should be taken as an overall assessment of the state of the economy, with the level of economic activity in the Union or euro area compared to pre-crisis levels (end of 2019) as a key quantitative criterion. Heightened uncertainty and strong downside risks to the economic outlook in the context of war in Europe, unprecedented energy price hikes and continued supply-chain disturbances warrant the extension of the general escape clause of the Stability and Growth *Pact through 2023.*[31]

[29] COM(2020) 68 final, p. 8.
[30] COM(2021) 915 final, p. 7.
[31] Council Recommendation of 12 July 2022 on the 2022 national reform Programme of Hungary and delivering a Council opinion on the 2022 Convergence programme of Hungary. OJ C 334, 1.9.2022, p. 136–145.

In 2022 the deficit criterion is not fulfilled by 17 Member States (exceeded the deficit reference value in 2021 or plan to exceed it *in 2022),*[32] *and 5 MSs*[33] have not met the debt criterion *in 2021.* [34] The Commission announced in its Communication of 2 *March 2022,*[35] that that it would not propose the opening of new excessive deficit procedures in spring 2022 as the COVID-19 pandemic continued to have an extraordinary macroeconomic and fiscal impact that, together with the invasion of Ukraine by Russia, created exceptional uncertainty, including for designing a detailed fiscal adjustment path.

The question may arise: should the existence of a budget deficit of more than 3% of GDP be taken into account with the same rigour in countries with low public debt?

The *State Audit Office of Hungary considers* that the Commission has not given sufficient weight to the compliance with the debt benchmark in case of Romania and Czech Republic when compared with the assessment of Portugal, which had a debt ratio above 120%, twice the benchmark, and has not been able to reduce it significantly over the period 2011–2020, but has also made limited progress in fiscal policy according to the *Commission's assessment.*[36]

3.3. Legal actions relating to EDP

The Treaty requires Member States to avoid excessive government deficits. It is important to stress that according to Article 126 (10) TFEU, the excessive deficit procedure under primary law does not include infringement proceedings against Member States (Articles 258 and 259 TFEU). In case of breach, the Council can apply negative legal consequences under a specific (excessive deficit) procedure. The question arises whether Member States obligations regulated under secondary law (e.g. reporting) can be enforced under the *infringement procedure* or whether they are also covered by the prohibition of the Treaty.

The European Court of Auditors is clearly of the opinion that in the latter cases an infringement procedure can be launched. In its Special Report No 10/2016, it recommends that the Commission should more strictly enforce the rules on Member States' reporting and should always make clear in the assessments whether the Member States have fulfilled their reporting obligation. According to the ECA, Commission should make use of the possibility to launch

[32] Belgium, Bulgaria, Czechia, Germany, Estonia, Greece, Spain, France, Italy, Latvia, Lithuania, Hungary, Malta, Austria, Poland, Slovenia and Slovakia.
[33] Belgium, France, Italy, Hungary and Finland.
[34] COM(2022) 630 final.
[35] COM(2022) 85 final.
[36] Állami Számvevőszék: Elemzés az Európai Bizottság 2004–2020. között a tagállamokról készített értékeléseiről 2. rész: Összehasonlító elemzés. 2020. október. (*State Audit Office of Hungary)* *https://www.asz.hu/storage/files/files/elemzesek/2020/elemzes_20042020_2_20201002.pdf?download=true (30.09.2022).*

infringement procedures when Member States do not comply with their reporting *obligations.*[37]

It is clear from the text of the Treaty that *annulment proceedings* in respect of EU acts and *judicial review of an infringement by omission* may be initiated in the framework of the excessive deficit procedure.

However, the Council's country-specific recommendations, which encourage Member States to undertake structural reforms among other things, are not binding and cannot be enforced by legal acts. The following proposal by the Court of Auditors was therefore rightly disputed by the Commission: "the Commission shall strengthen the monitoring of the implementation of agreed structural reforms, including making full use of its powers to ensure Member States meet *their commitments."*[38] In its response, the Commission pointed out that structural reforms are neither binding nor enforceable, thus the Commission is unable to influence or boost their implementation.

3.4. Sanctions

In the framework of EDP the Council may decide to apply one or more of the following measures:

- to require the Member State concerned to publish additional information, to be specified by the Council, before issuing bonds and securities,
- to invite the European Investment Bank to reconsider its lending policy towards the Member State concerned,
- to require the Member State concerned to make a non-interest-bearing deposit of an appropriate size with the Union until the excessive deficit has, in the view of the Council, been corrected,
- to impose fines.

As mentioned above, the 2011 reforms have strengthened sanctions against Member States that do not comply with recommendations, and have eased the conditions for imposing them. The introduction of the reverse decision-making mechanism could facilitate the entry into force of the Commission's proposal to impose sanctions.

Due to the 2011 reform (called "Six Pack"), the Council is entitled to impose a non-interest-bearing deposit if it decides that an excessive deficit exists in a MS, acting under Article 126 (6) TFEU. It is therefore entitled to impose sanction from the start of the procedure (!) in two cases. If the excessive deficit exists in a MS which has lodged an interest-bearing deposit with the Commission in the framework of the multilateral surveillance before the EDP, and when the Commission has identified particularly serious non-compliance with the budgetary policy obligations laid down *in the SGP*.[39]

[37] European Court of Auditors, Special Report 10/2016, p. 82.
[38] European Court of Auditors, Special Report 10/2016, p. 13.
[39] Article 5 of Regulation (EU) 1173/2011 of the European Parliament and of the Council.

Until the reforms of 2011, whenever the Council decided to apply sanctions to a participating MS (having failed to take appropriate action on several times) in accordance with Article 126 (11) TFEU, a non-interest-bearing deposit shall, as a rule, be required. From 2011 a fine shall be applied (not a non-interest-bearing *deposit).*[40] The amount of the fine shall comprise a fixed component equal to 0,2% of GDP, and a variable *component.*[41] The fine cannot exceed 0,5% of GDP. It may be noted that Article 1(11) of Regulation 1177/2011/EU is contradictory to Article 6 of the Regulation *1176/2011/EU,*[42] which sets the amount of the fine at 0,2% of GDP ignoring the variable element rule.

Despite the tighter regulation, since the EDP's inception, no sanctions have *been applied.*[43] According to the ECA, "*while sanctions are also useful as a deterrent, not applying them when Member States fail to fulfil their commitment to budgetary discipline brings the risk that they will be perceived as a tool unlikely to be used. This would undermine their credibility and effectiveness, and hence that of the EDP as a whole. Indeed, although the imposition of sanctions is not the real aim, a system devoid of sanctions is one that relies on nothing more than moral suasion, in which case, unless the Commission can win the Member States' cooperation, the EDP is bound to be ineffective.*"[44] For this reason, the ECA recommends that the Commission should recommend that the Council step up the procedure and apply sanctions when there is evidence that a Member State has not complied with EDP recommendations and therefore has failed to fulfil its commitment to budgetary discipline under the Treaty. The The Commission did not accept the recommendation as the stepping-up of the EDP and the imposition of sanctions are governed by clear legal rules and processes which the Commission is bound to follow. The Commission will continue to recommend the Council to impose sanctions where appropriate in line with the *legislation.*[45]

The application of sanctions is controversial. Many stress its ultima ratio nature. However, it is sometimes even argued that an incentive-based system

[40] Article 1(11) of Regulation (EU) 1177/2011 of the Council.

[41] The variable component shall amount to one tenth of the absolute value of the difference between the balance as a percentage of GDP in the preceding year and either the reference value for government balance or, if non-compliance with budgetary discipline includes the debt criterion, the government balance as a percentage of GDP that should have been achieved in the same year according to the notice issued under Article 126(9) TFEU.

[42] Regulation (EU) 1176/2011 of the European Parliament and of the Council.

[43] The EDP can be stepped up, it occured only once, for Belgium. Hungary was already subject to proceedings in the year of its accession to the EU (2004) and the partial suspension of the Fund was provided for in Council Decision 2012/156/EU with effect from 1 January 2013. However, as the Hungarian government had taken the necessary corrective measures in 2012, the suspension was lifted in 2012 and was not effectively applied from 2013. The excessive deficit procedure was lifted for Hungary in 2013. See: Csűrös, Gabriella: Uniós pénzügyek. Az európai integráció fejlődésének pénzügyi jogi vizsgálata. HVG-ORAC, Budapest, 2015.

[44] European Court of Auditors, Special Report 10/2016, p. 73,83.

[45] European Court of Auditors, Special Report 10/2016, p. 106.

should be introduced instead, as the use of financial sanctions against a Member State in a difficult budgetary situation is not a rational course of action.

3.4.1. Conditionality of sanctions

There is a tendency to attach conditions to EU funding. The roots of this go back to 1994, when the Regulation (EC) 1164/94 establishing the Cohesion Fund not only obliged Member States to prepare stability or convergence programmes, but also made it possible to suspend financial assistance from the Fund if a Member State failed to take the necessary measures to correct its excessive deficit within the deadline.

By 2014, the rules had been significantly extended to cover more funds, more Member States and more procedures, with more complex criteria. The conditions (ex ante, ex post and macroeconomic) for ESB funds[46] under the 2014-2020 EU budget[47] are now set for all Member States and have become broader and more complex, reinforcing the mechanisms of the multilateral surveillance, excessive deficit procedure and macroeconomic imbalance procedure. It is also covers Member States that benefit from EU-related lending.

From 2021 European Recovery and Reconstruction Instrument funding has also been linked to the European economic governance measures, so the Council is empowered to decide to suspend a total of €1,040,873 million in EU supports, reinforcing compliance with non-binding recommendations in the context of economic governance. Interestingly, although not directly related to the EDP, Regulation (EU, Euratom) 2020/2092 of the European Parliament and the Council links every (!) EU funding and EU-related lendings to the rule of law (all budgetary support and EU-related loans may be suspended).

Consequently, in areas where the EU cannot accept binding legislation, but only recommendations (economic policy, e.g. tax policy and employment policy, and protection the rule of law), the EU uses the withdrawal of its support as a negative incentive. Earlier it was mentioned that the Commission is unable to influence or boost the implementation of country specific recommendations. They have therefore effectively turned the system upside down and made it a fundamental objective to enforce non-binding EU economic policy recommendations. This was done not by classical regulatory measures, but by the

[46] The European Structural Investment Funds are the funds for cohesion policy (European Regional Development Fund, European Social Fund and Cohesion Fund) and, within agricultural policy, the rural development fund (European Agricultural Fund for Rural Development) and the European Maritime and Fisheries Fund. These account for around 44% of the EU budget for 2014-2020.

[47] About the budgetary regulation of the European Union see detailed: Fábián, Klaudia–Varga, Zoltán: Az Európai Unió költségvetési szabályozásáról. PUBLICATIONES UNIVERSITATIS MISKOLCINENSIS SECTIO JURIDICA ET POLITICA Sectio juridica et Politica, Tomus 1/2021. pp. 81-115.; Halász, Zsolt: Az Európai Unió költségvetésének szabályozása. Budapest, Pázmány Press, 2018.

governance method of financing, using the possibility of suspending aid as a negative financial incentive.

CONCLUSIONS

Recent reforms to the EU fiscal framework (the 'Six-pack' in 2011 and 'Two-pack' in 2013) were made with the aim of achieving and maintaining the soundness of public finances. Relating to EDP, the reforms introduced complementary rules, an early-warning mechanism and a range of new monitoring and surveillance tools; they also strengthened sanctions and eased the conditions for imposing them. Detailed regulation has become complicated, hampering the transparency of the regime and making it difficult to apply.

The budget balance and debt-to-GDP ratio are the two Treaty indicators to assess the budgetary position of a Member State. However, under the procedure, the Commission puts more emphasis on the evolution of the government deficit, without taking due account of the different levels of government debt in Member States.

In connection with the procedure, the EU has several instruments to enforce the application of the legislation by Member States. Since the introduction of the procedure, no sanctions have actually been applied (once with the prospect of sanctions). It shows the ultiam ratio nature of sanctions.

While in 2010 all but three Member States (Luxembourg, Norway, Estonia) were subject to an excessive deficit procedure (EDP), from mid-2019 to April 2020 no Member State was subject to such a procedure. It may justify the dissuasive effect of the restrictions adopted from 2011. Though, the European Court of Auditors oppinion is that, the EDP has not proved fully effective as a corrective mechanism.

Events in recent years (Covid 19 pandemic, war in Ukraine) have had a significant negative impact on the European economy and the budgets of Member States. How has the process respond to all this? From 23 March 2020 the general escape clause of the Stability and Growth Pact has been activated until the end of 2023. The challenge for the future will therefore be how Member States in budgetary difficulties can return to a disciplined fiscal policy, also with regard to the rules of excessive deficit procedure.

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LEGAL PROTECTION OF VICTIMS OF CRIME IN THE EUROPEAN UNION

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Abstract

European law and the national law of the Member States contain provisions for the legal protection of victims of crime. These sources aim to grant victims the fundamental right of access to justice.

However, the application of victim rights regulations varies from one Member State to another. These differences lead to different approaches to victim support. In this context, it is necessary to standardize the methods of supporting victims of crime at the European level, as well as to improve the institutional system for their application.

Key words: *victim; criminal offence; international crime; human trafficking; domestic violence.*

INTRODUCTION

1. INTRODUCTORY ASPECTS REGARDING THE NOTION OF "VICTIM"

The free movement of persons is a basic element of the Internal Market of the European Union [1] and a fundamental right recognized by the European citizens. art. 45 of the Charter of Fundamental Human Rights.

Given the fact that more and more people travel, live or study in another EU country, they can become potential victims of crime.

Every year, around 15% of Europeans, 75 million people in the European Union are victims of crime[2].

The concept of "victim of crime" is interpreted differently from one legal system to another. Some Member States define the term "victim" narrowly in their

[1] Regulated in principle by the provision. Art. 45 et seq. TFEU and developed by Directive 38/2004.
[2] The notion of crime refers to all crimes committed in a certain territory in a certain period (https://dexonline.net/definitie-criminalitate)

legislation, excluding "indirect" victims such as family members. Other Member States do not define this notion at all.

The term "victim" is interpreted differently depending on the branch of law or legal science considered. Thus, the notion has different interpretations in criminology, criminology, criminal law or criminal procedural law.

The findings of the European Agency for Human Rights suggest that the legislation of some European Union member states may require changes in this regard to be consistent with the EU Victims Directive[3].

In a broad sense, you are considered a "victim of a crime" if you have suffered physical, moral or material damage as a result of an incident considered a crime according to the national legislation in force. Victims of a crime are also family members of a person who died as a result of a crime and who suffered damages as a result of that person's death.

According to Article 2 letter (a) of Directive 2012/29/EU, the notion of victim means

- a natural person who has suffered damage, including damage to his physical, mental or emotional integrity, or economic damage, directly caused by a crime;

- family members of a person whose death was directly caused by a crime and who have suffered damages as a result of the death of that person;

Article 3 describes, in a general way, how the interests of victims must be taken into account: "Member States shall take appropriate measures to assist victims so that they understand and can make themselves understood from the first contact and during any subsequent interaction necessary that they have with a competent authority in criminal proceedings, including if the information is provided by that authority.

Member States shall ensure that communications to victims are made in plain and accessible language, verbally or in writing. Such communications take into account the personal characteristics of the victim, including any disability that may affect the ability to understand or be understood.

Unless it is contrary to the interests of the victim or would adversely affect the conduct of the proceedings, Member States shall allow victims to be accompanied by a person of their choice on the occasion of the first contact with a competent authority, when, due to the impact of the crime, the victim requests assistance to understand or to be understood."

The Victims Directive requires that family members of the victim are included in the definition of the victim (in relation to victims whose death is a direct cause of a crime) so that they too have access to support services in accordance with their needs and the severity of the damage suffered as a result of the crimes committed against the victim. Therefore, the term "family members" as

[3] Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012.

well as other key terms such as "particularly vulnerable" should be interpreted broadly[4].

Romanian legislation does not contain a legal interpretation of the notion of "victim of crimes". The Criminal Procedure Code uses the notion of a person injured by a crime. According to art. 79 of the Civil Code - "the person who suffered a physical, material or moral injury through the criminal act is called an injured person".

Law no. 211/2004 regarding some measures to ensure the information, support and protection of victims of crime[5] offers a potential definition of the notion of a victim. Thus, according to the provisions of art. 34 lit. a) – a victim of crime is a natural person who has suffered damage of any kind, including damage to his physical, mental or emotional integrity or economic damage, directly caused by a crime, as well as family members of a deceased person as a result of a crime and who suffered damages following the death of the person in question.

Comparatively analysing the two legal texts, the following conclusions emerge[6]:

- The special law refers only to natural persons, while the organic law has a wider interpretation, including also legal persons;

- The approach of the code seems broader, as it refers to any person, not only to natural persons, like the special law, but it is less precise in relation to the special law, which also includes family members of the natural person in the notion of the victim.

- The special law refers to damage/injury resulting from the crime, while the criminal procedure code refers to the criminal act.

- The special law conditions the status of a victim of a direct causal link between the offence (the act provided for by the criminal law) and the injury/damage. The same condition does not appear as clearly from the text of the criminal procedure code, which only speaks of an injury caused by a criminal act.

2. CONCERNS OF THE EUROPEAN UNION CONCERNING THE PROTECTION OF VICTIMS OF CRIME

2.1. Protection of victims through legal instruments

From a legislative point of view, EU primary law and Member States' national law provide guarantees for the protection of victims' rights in different areas and at different levels.

Article 47 of the Charter of Fundamental Rights of the European Union guarantees all persons in the EU the right to an effective remedy.

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[4] https://fra.europa.eu/sites/default/files/fra_uploads/fra-2015-victims-crime-eu-support_summary_ro_0.pdf

[5] Published in the Official Monitor of Romania, Part I, no. 505 of June 4, 2004.

[6] Flaviu Ciopec, flaviu.ciopec@e-uvt.ro. -"The victim, the injured person and the civil party in the criminal process", https://drept.uvt.ro/administrare/files/1634397557-articol-flaviu-ciopec.pdf

Although the European Union has created a legislative and institutional system that allows for the respect of victims' rights, some reports[7] show that victims of crime are still unable to fully exercise their rights in the European Union, due to the difficulties they face in accessing justice, lack of information and lack of appropriate support.

The content of these reports shows that the legal instruments have not yet achieved their objective, due to their incomplete transposition or incorrect implementation in the national legal systems.

The complexity of the judicial systems in the member states of the European Union and the differences between them, as well as the costs incurred due to the cross-border character of the disputes, should not prevent access to justice for European citizens.

Judicial cooperation between the member states must be carried out in such a way that litigants are informed about this assistance system and are encouraged to use the benefits of legal assistance, the role of cooperation being highlighted to simplify and speed up the transmission of requests for assistance between member states.[8]

European Union regulations aim to protect victims who have suffered because of committing a variety of crimes, such as:

- attempted murder and aggravated murder;
- a crime of bodily injury;
- an intentional crime that resulted in bodily harm to the victim;
- a crime of rape, a sexual act with a minor or sexual assault;
- a crime of human trafficking or trafficking of minors;
- a crime of terrorism;
- any other intentional crime committed with violence.

The European legal framework for the protection of victims of crime comprises a robust set of regulations setting out victims' rights.

A. Directive 2012/29/EU establishing minimum standards on the rights, support and protection of victims of crime[9].

The Victims Directive is, to date, the most important legislative development regarding victims' rights at EU level[10].

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[7] Report on the implementation of the Victims' Rights Directive - COM(2020) 188 final; Report on the implementation of the European Protection Order Directive. COM(2020) 188 final, Brussels, 11.5.2020 -COM(2020) 187 final

[8] Cristinel Ioan Murzea, "Free access to justice in the light of Directive 2003/8/EC on improving access to justice in cross-border disputes", Vol. "Public safety and the need for high social capital", Publishing House Pro Universitaria 2020, p.36.

[9] Published in JOUE - L'315/57 14.11.2012 RO J L315/57. In Romania, harmonization with Union law was achieved through Law no. 97/2018.

[10] https://fra.europa.eu/sites/default/files/fra_uploads/fra-2015-victims-crime-eu-support_summary_ro_0.pdf

The main objectives of the directive are to ensure that victims of crime receive the appropriate information, support and protection and that they can participate in criminal proceedings regardless of where the harm occurred in the EU.

The Directive sets minimum standards for victims of all types of crime, regardless of the victim's nationality or residence status. According to the directive, family members of deceased victims are considered victims.

The directive establishes the following rights[11]:

- to hear their case before the court;
- to review the decision of a court not to initiate criminal prosecution;
- to reimburse their expenses;
- to receive legal assistance;
- to recover stolen goods.

B. Directive 2011/99/EU on the European Protection Order (EPO) in criminal matters[12].

The directive allows victims of violence, especially domestic violence and harassment, to continue to benefit from protection against perpetrators when they move to another EU country. In order to issue a European protection order, there must be a national protection measure in force in that EU country that imposes one or more of the following prohibitions or restrictions on the person who poses a danger[13]:

- prohibition to move to certain places or defined areas where the protected person resides or visits;
- a prohibition or regulation of contact, in any form, with the protected person, including by telephone, by electronic means or by regular mail, by fax or any other means; or
- a prohibition or regulation of approaching the protected person at a distance smaller than that provided for.

C. Regulation (EU) no. 606/2013 of June 12, 2013, on the mutual recognition of protection measures in civil matters, (consolidating the Directive on the European protection order)[14]*;*

The regulation ensures that civil protection measures are recognized throughout the EU.

The objective is to guarantee that, without going through lengthy procedures, victims of acts of violence (domestic) whose physical and/or mental integrity is threatened and who benefit from a protection measure ordered in an

[11] https://eur-lex.europa.eu/RO/legal-content/summary/better-protection-for-victims-in-criminal-proceedings.html

[12] JO- L 338, 21.12.2011, p. 2–18.

[13] https://eur-lex.europa.eu/RO/legal-content/summary/european-protection-order-supporting-crime-victims-eu-wide.html

[14] JO- Nr. L 181, 29.06.2013, P. 4 – 12.

EU country benefit from the same level of protection in other EU countries if they settle or travel there.

D. Directive 2004/80/EC on compensation for victims of crime[15]

The directive requires all EU countries to have compensation systems for victims of premeditated international criminality committed through violence on their territories. The organization and application of such systems are left to the discretion of each EU country. Based on these national systems, a system of cooperation at the EU level is established.

E. Directive 2011/36/EU of the European Parliament and of the Council of April 5, 2011, on preventing and combating human trafficking and protecting its victims, as well as replacing Framework Decision 2002/629/JHA of the Council[16]

The Directive establishes minimum rules on the definition of offences and criminal sanctions in the field of human trafficking. The directive also introduces common provisions, taking into account the gender perspective, to ensure better prevention of this category of crimes and better protection of their victims. The Directive mentions that human trafficking is a gender-differentiated phenomenon, with men and women often being trafficked for different purposes. For this reason, assistance and support measures should also be gender-differentiated where appropriate. Triggers may differ depending on the sectors involved, such as human trafficking in the sex industry or labour exploitation, such as construction work, agriculture or domestic servitude[17].

F. The European Union has also signed the Council of Europe Convention on preventing and combating violence against women and domestic violence (*Istanbul Convention*[18]*)*

The Istanbul Convention aims to prevent violence, protect victims and bring perpetrators to justice. The convention establishes that the tolerance and non-punishment of acts of violence against women such as rape, domestic violence, sexual harassment, forced marriage or forced sterilization constitute violations of human rights and forms of gender discrimination. Women have the right to live safely in both public and private spaces, on the street or at work, as well as at home.

2.2. The role of the European Union institutions regarding the protection of victims

A. The role of the European Parliament

[15] JO L 261, 6.8.2004, pp. 15-18

[16] JO- L 101, 15.4.2011, p. 1–11

[17] https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:101:0001:0011:RO:PDF

[18] Adopted by the Council of Europe on May 11, 2011. The Istanbul Convention was signed by the EU in 2017. It represents the benchmark for international standards in the field. At the moment, all member states of the European Union have signed the convention, and 21 have ratified it.

LEGAL PROTECTION OF VICTIMS OF CRIME IN THE EUROPEAN UNION

The European Parliament is fully committed to the respect of fundamental rights in the Union and the protection of victims of international crime.

The human rights protection mechanisms are:

- The ordinary legislative procedure, through which the Parliament together with the Council adopts normative acts having as its central element the protection of fundamental human rights in general and the protection of the rights of victims of crime, in particular.

- The petitions

Through the Maastricht Treaty, two new rights are recognized for citizens of the Union, those being the right to petition and the right to address a mediator.

Any citizen of the Union has the right to petition the European Parliament. Any citizen of the Union, as well as any natural or legal person residing or having its registered office in a member state, has the right to present, individually or in association with other citizens or persons, a petition to the European Parliament on a subject related to the domains of activity of the Union and which concern him or her directly.

- The mediator

The institution of the mediator is an innovation brought by the Maastricht Treaty.

The European Parliament elects a mediator, empowered to receive complaints emanating from any citizen of the Union or any natural or legal person with residence or statutory seat in a member state and related to cases of bad administration in the action of community institutions or bodies, with the exception The Court of Justice and the Court of First Instance in the exercise of their jurisdictional functions. If the mediator found a case of bad administration, he notifies the respective institution, which has a period of three months to take measures. The mediator will draw up a report that he will submit to the Parliament and the concerned institution, the author of the complaint being informed of the result of the investigation.

The Ombudsman presents an annual report to the Parliament on the results of the investigations carried out. The appointment of the mediator is made after each election of the European Parliament for a period corresponding to its legislature, his mandate can be renewed.

- The temporary commission of inquiry

Another possibility to highlight the Parliament's control attributions is the establishment of a temporary Commission of Inquiry.

The Commission investigates individual cases, strictly determined regarding accusations of crime and bad administration of the application in Community law, its existence ending by submitting its report with the conclusions of the investigation carried out.

The legal provision does not make any reference to the quality of the active subject, so it can be considered that these accusations can be made by any

citizen of the Union, by individuals or legal entities, by community institutions or by member states.

B. European Union Agency for Fundamental Rights (FRA)

Created in 2007[19], the Agency replaces the European Observatory of Racist and Xenophobic Phenomena, which had the role of assessing the proportions and evolution of racist, xenophobic and anti-Semitic phenomena at the level of the European Union, in order to establish measures and actions against them.

The headquarters is in Vienna, Austria. The agency provides the competent institutions and authorities of the EU and its member states with assistance in the field of fundamental rights in the context of the application of Community law.

However, the agency does not deal with individual complaints or make normative decisions.

The agency advises EU institutions and national governments on fundamental rights, in particular in the following areas:

- discrimination
- access to justice
- racism/xenophobia
- data protection
- the rights of victims of international crimes
- children's rights.

C. The role of the judicial bodies of the European Union

The administration of justice in the EU is carried out by the Court of Justice of the EU, in collaboration with national courts.

The Court of Justice of the EU is a jurisdictional system comprising the Court of Justice and the General Court. The Court of Justice of the EU ensures that EU law is interpreted and applied uniformly in all EU countries.

The Court of Justice holds assignment powers. Common law courts are national courts. The Court renders judgments in the cases assigned to it according to the jurisdiction established by the text of the treaties regarding:

- interpretation of legislation (preliminary rulings) - the national courts of EU countries are obliged to guarantee the proper application of European legislation, but there is a risk that the courts of different countries interpret the legislation differently. If a national court has doubts about the interpretation or validity of an EU law, it can ask the Court of Justice for an opinion. The same mechanism can also be used to determine whether a national law or practice is compatible with EU law.

- compliance with the law (actions for non-fulfilment of obligations or infringement procedures) - these are actions brought against a national

[19] By Regulation (EC) no. 168/2007 of the Council of 15 February 2007 (OJ L 53/2 22.2.2007).

government that does not fulfil its obligations under European legislation. These actions can be initiated by the European Commission or another EU country. If the targeted country is found to be at fault, it has an obligation to remedy the situation immediately. Otherwise, a second action can be brought against her, which can lead to a fine.

- actions to annul some EU legislative acts) - if a member state, the EU Council, the Commission or (under certain conditions) the European Parliament considers that a certain EU legislative act violates the fundamental rights or the treaties of the Union, it can ask the Court of Justice to cancel that act. Individuals can also ask the Court to annul an EU act that directly concerns them, and which infringes their rights recognized by European legal instruments.

- actions in determining the failure to act - the Parliament, the Council and the Commission have the obligation to adopt certain decisions in certain situations. If they do not do so, member state governments, the other EU institutions and (under certain conditions) individuals or businesses can lodge a complaint with the Court.

- sanctioning the EU institutions (actions for contractual or tortious damages) - any person or company that has suffered as a result of an action or lack of action on the part of the EU institutions or their employees can bring an action against them through the Court.

D. The role of Europol

On the European level, the states of the European Union have established the Europol structure, in order to improve police cooperation in the fields of international organized crime.

The objectives of Europol aim to improve the effectiveness of the competent services of the Member States and cooperation in terms of preventing and fighting terrorism, drug trafficking and other serious forms of international crime, for which some indications reveal the existence of a criminal structure or organization and if two or more member states are affected by these forms of crime in a way that, due to the scale, gravity and consequences of the crimes, requires joint action by the member states[20].

CONCLUSIONS

Although legislative and institutional progress has been made in the field, victims of crime still cannot fully exercise their rights in the European Union. Victims' difficulties in accessing justice are caused by a lack of information and because they do not benefit from sufficient assistance and protection. Also, most

[20] Petru Tărchilă, "Cross-border organized crime, criminal activity with a potential danger for the security of the person", Vol. "Public safety and the need for high social capital", Editura Pro Universitaria 2020, p. 210.

Member States have not yet fully transposed the minimum standards agreed in EU rules on victims' rights.[21]

In this context, the European Commission elaborated to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions - the Communication "EU Strategy regarding the rights of victims (2020-2025)"[22]*;*

The Commission renews its commitment and establishes a robust policy framework to protect vulnerable people, empower victims, bring offenders to justice and compensate victims.

The Commission calls on Member States and civil society to get involved to prevent and combat violence and to provide assistance and protection to victims of cross-border crime.

The EU Strategy on Victims' Rights (2020-2025) identifies key priorities to concretely support victims of crime. The strategy proposes concrete actions, which will be developed with full respect for fundamental rights, to bring criminals to justice, protect victims and help them rebuild their lives.

Through this strategy, the key actions to be carried out by the European Commission, the Member States and civil society within each of the five priorities are presented, as follows:

1. Strengthening the capacity to act of victims of crime, consisting of the following key actions:

- the launch of an EU and national campaign to ensure a greater level of awareness regarding victims' rights and promote the provision of specialized assistance and protection to victims with specific needs;

- promoting training activities for judicial and law enforcement authorities;

- providing EU funding for national victim support organizations and relevant community-based organizations to provide information and provide assistance and protection to victims, as well as promote restorative justice services.

2. Improving the assistance and protection given to the most vulnerable victims, with the following expected actions:

[21] Conclusions from the reports on the implementation of the Child Sexual Abuse Directive (COM/2016/0871 and COM/2016/0872) and the Trafficking in Human Beings Directive [COM(2016) 722 final]. The Commission launched 21 infringement actions for incomplete transposition of the Victims' Rights Directive against the following countries: Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Estonia, France, Germany, Hungary, Italy, Latvia, Lithuania, Luxembourg, Malta, Poland, Portugal, Romania, Slovakia, Slovenia and Sweden.

[22] http://www.cdep.ro/afaceri_europene/afeur/2020/fi_2975.pdf

- promoting the provision of integrated and specific assistance to victims with special needs, such as children, victims of gender-based violence or domestic violence, and victims of racist and xenophobic hate crimes;

- evaluation of the introduction of minimum standards regarding the physical protection of victims, including minimum conditions regarding the adoption of protective measures and the modalities of their application;

- evaluation of tools at the EU level to allow the reporting of crimes by victims who are migrants, regardless of their residence situation, as well as by victims in detention.

3. Facilitating victims' access to compensation, aiming at:

- assessment of national compensation systems and, if necessary, removal of existing procedural obstacles;

- ensuring that compensation from the state for premeditated crimes committed through violence, including for victims of terrorism, are reflected in national budgets;

- taking measures so that the victims are not subject to secondary victimization during the compensation procedure;

- ensuring cooperation with other member states in cross-border cases within the relevant EU structures.

4. Strengthen cooperation and coordination between relevant stakeholders, aiming at:

- the establishment of the Platform for victims' rights to bring together the relevant actors from the EU level in the field of victims' rights;

- the creation of national strategies on victims' rights that have a comprehensive approach to victims' rights and involve all those who are likely to come into contact with victims;

- the undertaking of actions to create a more resilient society by promoting greater involvement of civil society in actions at the national level.

5. Strengthening the international dimension of victims' rights, with the following actions:

- strengthening cooperation with international and regional partners, such as the United Nations and the Council of Europe, to promote high international standards for victims' rights;

- using EU funds and political dialogue to promote, support and protect victims' rights and ensure access to justice for victims in partner countries;

- promoting cooperation to improve assistance and protection for EU citizens who are victims of crimes in third countries.

At the EU level, the Commission has launched a Platform on Victims' Rights, which will bring together all relevant actors. At the national level, Member States should establish national strategies for victims' rights. The Commission will appoint a coordinator for victims' rights to ensure the coherence and effectiveness of the various actions related to the victims' rights policy.

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EURO-ATLANTIC SECURITY AND THE ECONOMIC-FINANCIAL IMPLICATIONS OF THE CONFLICT IN UKRAINE

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Abstract

Euro-Atlantic security has always been a priority in the international security environment, especially at the beginning of the 21st century, when mankind is facing a complex, dynamic and unpredictable security environment, one of profound economic and social imbalances. The conflict in Ukraine is, and will remain, a hot topic and the maximum interest because of its global political, social and economic-financial implications.

Key words: *security, military conflict, economic-financial, reconstruction.*

INTRODUCTION

Security has always been an essential prerequisite in the development process. Conflicts, whatever their nature, not only lead to loss of life, but also damage and destroy infrastructure of all kinds, including social infrastructure, they encourage crime and public disorder, damage investment, good governance and make normal economic and social activity impossible.

Euro-Atlantic security has been and will remain of great topicality and of real interest to all major international players, not just those in Europe and North America. In this context, the Black Sea region and the Western Balkans, which in recent decades have been areas of politico-military instability and economic and social uncertainty, real sources of conflict, h**a**ve a special place.

1. EURO-ATLANTIC SECURITY AND THE CHALLENGES OF THE BEGINNING OF THE 21ST CENTURY

The end of the Cold War, marked by the fall of the Berlin Wall in November 1989, brought remarkable changes in Central and Eastern Europe that

would confront the North Atlantic Alliance[1] with a new and very different set of security threats. NATO's extensive enlargement and the challenges posed by the new realities of the international security environment required the Alliance to undergo a rapid and continuous process of transformation and adaptation.

At the beginning of the 21st century, we found ourselves faced with a complex and dynamic security environment that was fluid, uncertain and highly unpredictable, characteristics that were to persist and even increase in places, while leaving room for a Euro-Atlantic area of competitive democracies, peace and prosperity.

The most significant risks and threats specific to these decades are political, military, economic and social. By far the most significant are the economic ones, because of their scale, speed and scope. They are the implicit result of political decisions and political-military threats, and have immediate and long-lasting implications for our social life.

However, Russia's recent illegal, brutal, unprovoked and unjustified military aggression against sovereign and independent Ukraine has shaken the peace in Europe and fundamentally changed the vision of Euro-Atlantic security, demonstrating once again that the unpredictable never ceases to surprise us.

The free movement of persons is a basic element of the Internal Market of the European Union [2] and a fundamental right recognized by the European citizens. art. 45 of the Charter of Fundamental Human Rights.

Given the fact that more and more people travel, live or study in another EU country, they can become potential victims of crime.

Every year, around 15% of Europeans, 75 million people in the European Union are victims of crime[3].

The concept of "victim of crime" is interpreted differently from one legal system to another. Some Member States define the term "victim" narrowly in their legislation, excluding "indirect" victims such as family members. Other Member States do not define this notion at all.

The term "victim" is interpreted differently depending on the branch of law or legal science considered. Thus, the notion has different interpretations in criminology, criminology, criminal law or criminal procedural law.

The findings of the European Agency for Human Rights suggest that the legislation of some European Union member states may require changes in this regard to be consistent with the EU Victims Directive[4].

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[1] The North Atlantic Treaty Organization (NATO), also known as the North Atlantic Alliance, is a political-military alliance of 30 countries in Europe and North America, founded on April 4, 1949, in Washington, D.C. in the United States..

[2] Regulated in principle by the provision. Art. 45 et seq. TFEU and developed by Directive 38/2004.

[3] The notion of crime refers to all crimes committed in a certain territory in a certain period (https://dexonline.net/definitie-criminalitate)

In a broad sense, you are considered a "victim of a crime" if you have suffered physical, moral or material damage as a result of an incident considered a crime according to the national legislation in force. Victims of a crime are also family members of a person who died as a result of a crime and who suffered damages as a result of that person's death.

According to Article 2 letter (a) of Directive 2012/29/EU, the notion of victim means

- a natural person who has suffered damage, including damage to his physical, mental or emotional integrity, or economic damage, directly caused by a crime;

- family members of a person whose death was directly caused by a crime and who have suffered damages as a result of the death of that person;

Article 3 describes, in a general way, how the interests of victims must be taken into account: "Member States shall take appropriate measures to assist victims so that they understand and can make themselves understood from the first contact and during any subsequent interaction necessary that they have with a competent authority in criminal proceedings, including if the information is provided by that authority.

Member States shall ensure that communications to victims are made in plain and accessible language, verbally or in writing. Such communications take into account the personal characteristics of the victim, including any disability that may affect the ability to understand or be understood.

Unless it is contrary to the interests of the victim or would adversely affect the conduct of the proceedings, Member States shall allow victims to be accompanied by a person of their choice on the occasion of the first contact with a competent authority, when, due to the impact of the crime, the victim requests assistance to understand or to be understood."

The Victims Directive requires that family members of the victim are included in the definition of the victim (in relation to victims whose death is a direct cause of a crime) so that they too have access to support services in accordance with their needs and the severity of the damage suffered as a result of the crimes committed against the victim. Therefore, the term "family members" as well as other key terms such as "particularly vulnerable" should be interpreted broadly[5].

Romanian legislation does not contain a legal interpretation of the notion of "victim of crimes". The Criminal Procedure Code uses the notion of a person injured by a crime. According to art. 79 of the Civil Code - "the person who

[4] Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012.

[5] https://fra.europa.eu/sites/default/files/fra_uploads/fra-2015-victims-crime-eu-support_summary_ro_0.pdf

suffered a physical, material or moral injury through the criminal act is called an injured person".

Law no. 211/2004 regarding some measures to ensure the information, support and protection of victims of crime[6] offers a potential definition of the notion of a victim. Thus, according to the provisions of art. 34 lit. a) – a victim of crime is a natural person who has suffered damage of any kind, including damage to his physical, mental or emotional integrity or economic damage, directly caused by a crime, as well as family members of a deceased person as a result of a crime and who suffered damages following the death of the person in question.

Comparatively analysing the two legal texts, the following conclusions emerge[7]:

- The special law refers only to natural persons, while the organic law has a wider interpretation, including also legal persons;

- The approach of the code seems broader, as it refers to any person, not only to natural persons, like the special law, but it is less precise in relation to the special law, which also includes family members of the natural person in the notion of the victim.

- The special law refers to damage/injury resulting from the crime, while the criminal procedure code refers to the criminal act.

- The special law conditions the status of a victim of a direct causal link between the offence (the act provided for by the criminal law) and the injury/damage. The same condition does not appear as clearly from the text of the criminal procedure code, which only speaks of an injury caused by a criminal act.

2. THE WIDER BLACK SEA AREA - EUROPE'S NEW POWDER KEG

The Black Sea region, whether we refer to the riparian countries or to the wider area, has a long and rich history of conflicts and diverging interests, becoming in recent years an area where three major players are vying for influence: NATO, the EU and Russia (Dincă, 2012, p.95). In addition to the six riparian states, Russia, Ukraine, Romania, Bulgaria, Turkey and Georgia, the Wider Black Sea Area also includes Armenia and Azerbaijan.

At present, the Black Sea is a border area between the European Union and NATO on the one hand and the Caucasus region on the other. As a geopolitical area, the Black Sea basin is characterised by frozen conflicts, prolonged by the persistence in the region of Soviet remnants of a cultural, social and politico-military nature, by the rivalry between Turkey and the Russian Federation for naval supremacy, and by attempts by the littoral states, as well as the European Union, to develop economic cooperation and strengthen democracy.

[6] Published in the Official Monitor of Romania, Part I, no. 505 of June 4, 2004.

[7] Flaviu Ciopec, flaviu.ciopec@e-uvt.ro. -"The victim, the injured person and the civil party in the criminal process", https://drept.uvt.ro/administrare/files/1634397557-articol-flaviu-ciopec.pdf

The Black Sea region has been and will remain a conflict zone, an area of permanent disputes and systemic tensions between the Russian Federation and the West.

3. ECONOMIC AND FINANCIAL IMPLICATIONS OF THE CONFLICT IN UKRAINE

Wars have always brought destruction, sometimes irreversible, and significant costs at all levels, and even more so in modern conflicts such as the one in Ukraine, which is notable for its negative effects in key areas of daily life such as energy, transport and communications, food, education and health. Thus, in addition to the purely military costs and direct destruction in conflict zones, the economic and social effects are spreading almost in real time, like a tsunami through international social life and all financial markets, which are increasingly interconnected at global level.

The sanctions imposed on the Russian Federation[8] by the Western world, and the dependence, in some cases acute, of European countries on its energy resources, are striking in all directions, including against those who proposed them. Moreover, Ukraine[9], a major supplier of raw materials and agricultural products to the EU, has suddenly found itself, following the invasion of Russian troops, facing economic and financial blockages and unable to honour its export commitments.

Ukraine is a major world agricultural producer and exporter, but it also plays an important role in other industries. The war in the country has disrupted both supply chains and economic activity in the region, with the seismic waves being felt around the world.

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[8] Russia, officially the Russian Federation, is the world's largest country, covering more than one-eighth of the Earth's inhabited area, and the ninth largest in terms of population, with more than 144 million people as of December 2017. The Russian economy is the twelfth largest by nominal GDP and the sixth largest by purchasing power parity in 2015. Russia's rich mineral and energy resources are the largest in the world and the country is one of the world's leading producers of crude oil and natural gas.

[9] Ukraine is an Eastern European country with an economy based on a large industrial and agricultural component, a significant part of which is exported, especially to countries in the European Union and the Commonwealth of Independent States. Ukraine produces almost all types of transport vehicles and spacecraft. Ukraine is also an important producer and exporter of cereals. Last year Ukraine ranked fourth on the list of the world's largest wheat exporters, with an export volume of 33.5 million tonnes. The total amount of maize produced in Ukraine was 42 million tonnes. Ukraine is the world's largest producer of sunflower (17.5 million tonnes in 2021) and sunflower oil (7 million tonnes in 2021). According to the USDA, the country was the largest exporter of sunflower oil last year, with a world market share of nearly 61 percent. The 6 million tonnes of barley exported in 2021 made Ukraine the world's third largest supplier in this market. In rye, 40 percent of global trade is conducted by Ukraine, which put it in first place - as with sunflower oil. (source: https://agroexpert.md/rus/articole/)

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The ongoing military conflict has already affected this year's agricultural season, with Ukrainian farmers cultivating less land and fertilising less, which will lead to lower yields. However, farming continued in Ukraine, but the main blow was the blockade of Ukrainian ports on the Black Sea and Sea of Azov, the main export routes for grain.

Along with Russia, Ukraine is one of the 10 largest producers of staple grains in the world, ranking 1st in sunflower, 6th in maize and 7th in wheat, according to data from the last two agricultural years. So that, Ukraine accounts for 2.7% of world maize production, 3.3% of world wheat production and 28.6% of world sunflower production.

In terms of exports, Ukraine is the world's fifth largest exporter of wheat, accounting on average for over 8% of world exports, the world's fourth largest exporter of maize, accounting for over 12% of total exports, and the largest exporter of sunflower, accounting for over 50% of the value of exports[10].

After long and difficult negotiations, with the support of UN representatives, Turkey achieves some progress in late August. However, even so, commercial activity is much more difficult and costly, given the uncertain situation in the area, the vast minefields in the port area, the control of loading, the need for permanent escort of convoys in the Black Sea and the checking of cargoes when passing through the Bosphorus Strait (Figure 1).

Figure 1 The route of Ukrainian merchant ships in the Black Sea

[10] Data taken from https://agrobiznes.ro/analitica/, accessed on 10.10.2022

The situation deteriorated again at the end of October following Ukrainian shelling in the Sevastopol area, with Russia suspending the agreement indefinitely. But after only a few days, under pressure from Turkey, commercial activity across the Black Sea resumed.

The economic-financial dimension of this conflict was doubled by the social implications, in particular for neighbouring countries such as Romania and Poland, which had to manage, at least during the first months of the invasion, a massive and continuous influx of refugees, including many children (Figure 2).

Figure 2 Ukrainian refugees at the borders of the European Union

At the European Economic and Social Committee summit on 24 March 2022, President Christa Schweng stated: *" This invasion has endangered our security and values, and the EU stands legitimately and firmly with Ukraine, responding with unity and solidarity," and added: "Organised civil society in the EU is one of the building blocks of our democracy: first by addressing the humanitarian, economic and social consequences of the war, but also by demonstrating its determination to help the Ukrainian people uphold European values. We are turning our solidarity into action by giving our support to Ukraine without hesitation."*[11]

In this context, it is worth noting the unprecedented solidarity shown by civil society organisations, authorities and citizens alike towards people fleeing the war in Ukraine.

Another aspect worthy of note is the information environment, which in the current conflict in Ukraine has proved to be a veritable amalgam of more or less real data and information, with an extremely strong and immediate psycho-social and economic-financial influence, given that the war was experienced almost in real time by the whole of humanity, at least in the first few days, both through TV broadcasts and the most popular social networks.

[11] https://www.eesc.europa.eu/ro/news-media/press-releases/razboiul-din-ucraina-si-impactul-sau-economic-social-si-ecologic, sofficial EU website, accessed on 03.10.2022.

In this respect, in addition to the humanitarian dramas and the panic induced in the social environment, most economies and international financial markets reacted accordingly, with fluctuations in line with the actions (destruction of infrastructure, announcement of sanctions, nuclear threat, etc.), as a real interconnection to the situation in the conflict zone.

But by far the biggest economic and financial challenge will be the post-conflict reconstruction of Ukraine. Regardless of when and how the hostilities end, one thing is certain, the destruction is significant both in the industrial and transport infrastructure, in the administrative area, and in housing and many other basic goods and services (Figure 3).

Figure 3 Destruction in Ukraine. Photo: Profimedia and Twitter

Commenting on the destruction caused by the Russian invasion and Ukraine's reconstruction efforts, European Commission President Ursula von der Leyen said: „*Russia's unprovoked and unjustified invasion of Ukraine has caused appalling human suffering and massive destruction across the country, forcing millions of innocent Ukrainians to flee their homes. Ukraine can count on the EU's full support. The EU will continue to provide Ukraine with short-term financial support to meet its needs and to enable it to maintain the functioning of basic services. We are also ready to take a leading role in international reconstruction efforts to help rebuild a democratic and prosperous Ukraine. This means that investments will be linked to reforms that will support Ukraine in pursuing its European path.. ”*[12]

[12] https://ec.europa.eu/commission/presscorner/detail/ro, accessed on 09.10.2022.

The amount of damage is already estimated by experts to be in the hundreds of billions of dollars, with more than $100 billion in the first two months alone, and the reconstruction effort will be a major, long-term effort with global implications.

Figure 4 Berlin Conference on the reconstruction of Ukraine

Ukraine's reconstruction is ” *the mission of a generation, which must begin now*”, German Chancellor Olaf Scholz stressed on Tuesday 25 October at the opening of a conference in Berlin on long-term support for the country invaded by Russia on 24 February[13]. It is ” *no more and no less than a new Marshall Plan of the 21st century*”, the German leader underlined in the presence of European Commission President Ursula von der Leyen.

CONCLUSIONS

The economic, financial and social implications of the conflict in Ukraine are wide-ranging, impressive and growing, and reconstruction will be difficult and long-lasting, and will require a major global effort.

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GEORGE ANTONIU, OUTSTANDING PERSONALITY OF THE ROMANIAN CRIMINAL SCIENCES

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Abstract

First, the author reviews the main biographical milestones of his former professor, as well as his main works and scientific activities.

Then, the author analyzes in detail the main ideas of University Professor Ph.D. George Antoniu that contributed to the development of the science of criminal law in Romania, stressing the ones that turned into positive criminal law rules.

In this regard, the work of University Professor Ph.D. George Antoniu represented, in numerous cases, soursces of inspiration for the Romanian criminal legislator, his thesis being largely recognized as such by the authors of criminal law from our country.

Key words: *penal reform, penal code, criminal norm, crime, punishment.*

INTRODUCTION

1. The idea of such a communication (the personality being chosen by ourselves) was suggested to us by the founding president of this Conference, which has already reached its fourth edition, university professor Elena-Ana Iancu, a close friend of our late magister, university professor doctor habilitate multi honoris causa GEORGE ANTONIU, honorary scientific director of the

Legal Research Institute "Acad. Andrei Rădulescu" of the Romanian Academy, who passed away on August 10, 2014.

The present study thus represents a perpetuation of our desire to pay, in this way also, a tribute to the one who guided our scientific activity and the deepening of criminal sciences for over 15 years and as such our gratitude to the maestro is boundless, and the feelings we experience when writing these lines are very difficult to describe in words.

Also, another reason was that the work of the professor was as vast as it was dispersed in various legal publications, from the country and abroad, and in this way, until an eventual gathering of his studies in a single work, we want to put into circulation its main ideas, theses that have influenced both the scientific world here, but also our criminal legislator, so that they are known also by our younger criminalists, as otherwise by all those involved in the vast process of interpretation and application of the criminal law.

Last but not least, we took into account what the professor said, on the occasion of the launch of our criminal law treatise (the special part), in 2009, when the master welcomed the idea of a professor's disciples continuing and developing his work.

2. Born on March 30, 1929 in the town of Brăila, in the county of Brăila, where he attended primary school (1935-1939), the teacher graduated from high school in Bucharest (1939-1947), after which he enrolled and attended The Faculty of Law of the University of Bucharest (1947-1951), which he graduated with an average of 10 (diploma no. 143045/1952), proving from that early age an obvious concern for study and improvement. Due to his training, from the third year he was co-opted as a trainer in the Department of Civil Law, where he worked until he graduated from the faculty.

After completing his military internship (1951-1952), Professor George Antoniu opted to join the active ranks of the army, becoming a major lieutenant and professor at the Bucharest Military Academy.

At his request, from 1954, he was transferred as a military judge, first to the Territorial Military Court in Bucharest, and later, due to his exceptional professional results, he was promoted to the Supreme Court (1962-1971), with the mention that in period 1961-1962 he was chief legal adviser at the Ministry of Justice.

3. Professor George Antoniu began his scientific activity in the 1950s, from an early age, by publishing very interesting articles, commentaries on judicial practice, but also genuine studies that already announced the beginnings of an exceptional scientific career *(for example, The new regulation of the appeal in the criminal legislation, Popular legality no. 1/1958, p. 13 et seq.; In relation to the unity and plurality of crimes, Romanian Law Journal no. 9/1967, p. 6 et*

seq.; The Code criminal and the improvement of legislation, in the compilation "State, democracy, legality", Political Ed., Bucharest, 1968, p. 36 et seq.; Regarding the regulation of the causes of aggravation and mitigation of punishments, Romanian Law Review No. 4/ 1970, p. 13 et seq.).

During this period, the work "The guidelines given by the Plenary of the Supreme Court and the new criminal legislation", produced together with his colleagues Vasile Papadopol, Mihai Popovici and Bogdan Ștefănescu and published by the Scientific Publishing House in Bucharest in 1971, stands out. In this work, the authors have selected and commented, under a high scientific attitude, those guiding decisions of the supreme court pronounced in the period 1952-1968 which maintained their validity also in relation to the provisions of the Criminal Code from 1968 and the Criminal Procedure Code from the same year. As such, the selected decisions are accompanied by extensive comments by the aforementioned authors, led by Professor George Antoniu.

4. In the meantime, under the guidance of university professor Dr. Grigore Rîpeanu, the judge at that time, George Antoniu, elaborates an exceptional doctoral thesis, entitled "Causality report in criminal law", work for which he is awarded the title of doctor of law *(diploma no. 1656 of November 8, 1967)* and which saw the light of day in 1968.

The doctorate thesis would also reveal the researcher vocation of the judge at that time, who later became, through the care of the university professor Vintilă Dongoroz, a researcher of the Institute of Legal Research of the Romanian Academy. After this moment, his work knows a true evervescence in the 1970s when the idea of creating the annotated Penal Code was born, as a replica of several famous practitioners, in the work Theoretical Explanations of the Romanian Penal Code.

Therefore, after a prodigious career as a magistrate, for almost 20 years, Professor George Antoniu has in 1971, when he fills the position of principal scientific researcher gr. II at the Institute of Legal Research of the Romanian Academy, the chance to work directly with his master, the late Vintilă Dongoroz, at that time the head of the public law sector of the Institute and the one who would influence the work of our dear professor in a substantial and irreversible way.

Starting from this moment, Professor George Antoniu dedicated the rest of his life to the activity of a researcher, a quality he honored with a rare passion and competence for over 40 years (1971 - 2014). Due to the exceptional professional qualities he had, starting in 1975, George Antoniu was appointed head of sector, and in 1990 he became deputy scientific director and promoted to first degree principal scientific researcher, being retired in 2009.

From 1973, the researcher George Antoniu became the editor-in-chief of the Institute magazine (Studies of Romanian Law), a position he held until 2009.

5. During the 70s, the professor made a significant contribution to the publication of the commented and annotated Penal Code (3 volumes), published at the Scientific Publishing House in Bucharest, commenting on no less than 79 articles of the Penal Code that entered into force on January 1 1969.

Thanks to these qualities, the master was co-opted by the late Vintilă Dongoroz to complete the work Theoretical Explanations of the Romanian Code of Criminal Procedure (2 volumes).

At the same time, he elaborates the monograph *Offenses provided for in special laws* (1976), a first in Romanian criminal law since that date, as well as the first edition of the *Criminal Law Dictionary* (1976) and the *Criminal Procedure Dictionary* (1988), the last two in collaboration.

6. But the indisputable value of the professor was to be revealed once more through the coordination and editing, together with the late Professor Costică Bulai, of the 5 volumes of the work *Criminal Judicial Practice* (1989-1998), as well as the monographs *Criminal Guilt* (1995) and *Attempt* (1996).

Analyzing the controversial solutions pronounced by the courts under the rule of the Criminal Code and the Code of Criminal Procedure from 1968, Professor George Antoniu highlighted both the positive and constructive directions, but also the shortcomings of many of these solutions, which he commented on in a nuanced way, with notes approving or critical, as the case may be.

The results of these researches were to be used by Professor George Antoniu to substantiate his reforming ideas regarding criminal law, as well as on the occasion of the creation of the *Preliminary Draft Penal Code - the general part*, in 2002, a document to which we will return.

7. His most fruitful work can be found in the pages of the *Penal Law Review*, which, at the initiative of the "Alexandru Ioan Cuza" Police Academy specialists, he founded on January 22, 1994 together with other great criminal lawyers of the time, as a continuation of the similar publication published in the period 1922-1943 *("Criminal Law and Penitentiary Science Magazine").*

As such, in the period 1994-2014, in the pages of the *Penal Law Review*, of which he was the editor-in-chief since its inception and until 2009, when he became its director and did us the honor, on the warm recommendation of the university professor doctor multi honoris causa Ovidiu Predescu, to appoint us first deputy editor-in-chief and then editor-in-chief of our prestigious magazine, after I had been an editor for six years, saw the light of day, from the 197 studies, articles, comments on some decisions of cases carried out by the professor in the period 1956-2014, no less than 86 studies dedicated to the criminal sciences, true landmarks in the matter and sources of inspiration for the post-December Romanian criminal legislator (we recall, for example, *Criminal Law Error, the*

System of Cases that removes the guilt, Mediated author or improper participation, Error of fact, Reflections on the future criminal reform, Criminal reform at the first step, Reflections on organized crime te, Typicality and anti-juridicality, Contributions to the study of the essence, purpose and functions of punishment, Reflections on the structure of the criminalization norm, New contributions to the research of criminal causation, Crime unit, Reflections on the plurality of crimes, Criminal participation. Comparative law study, Crime and punishment between appearance and reality, Criminal law and European integration, the New Criminal Code and the previous Criminal Code) totaling over 10,000 pages.

Of course, ***the 29 treatises, annotated codes, monographs, collections of judicial practice or studies*** redacted by Professor George Antoniu, during his more than 60 years of scientific activity, should not be omitted, among which we highlight the following works: *Criminal Code commented and annotated (three volumes) , The guidelines given by the Plenary of the Supreme Court and the new criminal legislation, Theoretical explanations of the Criminal Procedure Code (two volumes), Offenses provided for in special laws, Criminal judicial practice (five volumes), Attempt, Criminal guilt, Reform of the criminal legislation*, redacted as the author or in co-authorship, and in some also coordinator, together with the late Costică Bulai.

Full of ideas and arguments, the works of Professor George Antoniu are highlighted by the depth of the author's thinking, the exegetical but also critical study of positive criminal law norms, the style used and the rich references to criminal law systems, doctrine and jurisprudence from other countries, circumstances that led professor Costică Bulai to state, in connection with the monograph *Criminal guilt*, that it represents "*the first complete and high-level scientific research of the institution of guilt*" and that he is "*in front of one of the greatest achievements of legal science Romanian*".

Among his many works, the ones devoted to the commentary on the *crimes provided for in special laws*, a field that is quite slightly researched in our criminal science, draw attention in particular, due to the large number of incrimination norms provided in these normative acts and their very high mobility, such as and the five volumes dedicated to *the analysis of criminal and procedural criminal judicial practice*.

Analysing the controversial solutions pronounced by the courts under the empire of the previous Criminal Code, Professor George Antoniu revealed both the positive and constructive directions, but also the shortcomings of many of these solutions, which he commented on in a nuanced way, with approving or critical notes, as the case may be.

The reforming ideas of Professor George Antoniu began to appear, in a meaningful way, and to see the light of print immediately after 1990, when, against the background of the socio-political and economic changes in our

country, he is aware, more than ever, that the system must also be reformed our criminal law, in accordance with the new realities and transformations that Romania was going through, so that the criminal legislation corresponds to the needs of social life.

7.1. In this context, the professor elaborates in the pages of the magazine several studies devoted to the reform of science and penal legislation alike (*Penal reform and the constitution*, RDP no. 1/1996, p. 17-24; *Penal reform and the protection of the fundamental values of society*, RDP no. 2/1996, p. 9-17; *Criminal reform and the fundamental principles of Romanian criminal law*, RDP no. 3/1996, p. 9-18; *Criminal reform at the first step (I)*, RDP no. 4/1996, p 9-18; *Criminal reform at the first step (II)*, RDP no. 1/1997, p. 9-18; *Criminal reform at the first step (III)*, RDP no. 2/1997, p. 7-18; *Reform criminal law and systematization of criminal provisions (I*), RDP No. 3/1997, pp. 9-17; *Criminal reform and systematization of criminal provisions (II)*, RDP No. 4/1997, pp. 9-14; *Systematization of criminal matters in courses university*, RDP no. 1/1998, p. 9-23), many of the ideas presented on these occasions were to influence both the later criminal legislator and the doctrinaires of the time in the drafting of university courses and not May.

7.2. These issues are taken up and developed in the work Reform of penal legislation (2003), published by the Romanian Academy Publishing House, coordinated and carried out to a large extent by the professor.

First, Professor George Antoniu identifies the difficulties of this long reform process that are less related to the *drafting technique* than to the configuration of regulatory solutions, the stabilization and clarification of the *substance*, of the social issue that must be regulated.

The obstacles to the faster development of the reform activity can be represented by: the conservative force of the legislation and jurisprudence (eg. art. 51 last paragraph of the previous C. pen., the existence of few critical observations in the doctrine regarding the criminal law in force); the excess of legal technicism (methodological inversion, breaking criminal law from the social realities from which it derives its essence), as well as the insufficient prior clarifications on the fundamental principles of the future criminal legislation (for example, who is given priority? the protection of individual interests or those of society).

In the work of penal reform, in the teacher's view, the legislator should take into account the following realities:

a) *internal processes*: those related to the evolution of legal thinking and judicial practice; those determined by the need to re-evaluate some of the current regulatory solutions.

b) *external processes*: those related to the transition to the market economy, to the organization of the entire society based on the principles of the

rule of law and the corresponding democratic institutions; realities arising from the provisions of the new Constitution; Romania's international commitments.

Suggestions for systematization and regulation formulated by the professor: renouncing the provision regarding the purpose of the criminal law; waiver of the provisions of the previous art. 181 C. pen.; the introduction of a distinct title regarding the offender; waiver of art. 14 and 15 C. pen. from 1968 because it violates the principle of separation of powers in the state; abandoning the idea of social danger as an essential feature of the crime and the institution of substitution of criminal liability; giving up the relatively inappropriate attempt; limiting the existence of improper participation only to the cases when it is not possible to operate with the legal figure of the mediated author (own crimes and in persona propria), redefining the notion of author, which also includes that of the mediated author; reformulation of the institution of instigation followed by execution (removal of participation documents from the content of art. 29 C. pen. previous); the introduction of a regulation on invincible legal error; redefining punishment by removing its character as a means of re-education; expanding the scope of criminal sanctions; the introduction, in the system of the main punishments of the Romanian criminal law, of work in the general interest (removing the execution of the punishment at the workplace, as a means of judicial individualization of the punishment); the transition to the system of fine days that allows a better individualization of the fine sanction, according to the general and special criteria for individualizing the sanction and the economic situation of the convicted.

Also, he considered, rightfully so, that the regulation of the application of the criminal law in time before that in space would be more appropriate because: these provisions are more closely related to the previous chapter and especially to the way of formulating the principle of legality; this is the traditional solution of our criminal legislation *(C. pen. from 1864 and from 1936).*

As it is easy to observe by comparing these suggestions to the regulation in force, the Romanian legislator from 2009 has largely appropriated them.

8. All the creative efforts of the professor were put to good use, firstly, on the occasion of his drafting of the Preliminary Draft Penal Code (General Part - our addition), published Penal Law Review no. 3/2002, p. 127-156, document accompanied by the professor's explanations materialized in the study *A new step on the path of penal reform,* published in the same issue of our magazine from p. 9 to 21.

Among the new elements introduced in the draft and taken over by the 2009 legislator in the new Penal Code[1], which entered into force on February 1, 2014, we reproduce by way of example those relating to:

[1] "Last but not least, a number of elements in accordance with the current trends of European criminal legislation (renunciation of the institution of social danger, consent of the victim, etc.) were taken from the preliminary project drawn up by the Legal Research Institute" - Explanation of the project of the new Criminal Code, p. 3, available at

- abandoning the definition of the purpose of the criminal law;

- the first regulation of the application of the criminal law in time and then in space;

- the extension of the more favourable criminal law also in the case of emergency ordinances not approved or approved with amendments and additions by the Parliament;

- renouncing the optional application of the more favourable criminal law in the case of final punishments;

- redefinition of the temporary criminal law;

- the placement of provisions through the notion of territory and deed committed on the territory of the country, including the principle of ubiquity within the principle of territoriality;

- the removal from the definition of the offense of the requirement that the act provided for by the criminal law presents a social danger (this being implied);

- the introduction of the rule according to which the facts consisting of an action or inaction constitute a crime only when they are committed with intent. These acts constitute crimes when they are committed out of fault only if the law expressly provides for this;

- praeterintention is defined for the first time;

- the distinct regulation of justifying causes (along with self-defense and the state of necessity, the order of the law and the command of the legitimate authority and the victim's consent were added) from those that remove the criminal character (guilt) of the deed;

- the discipline of invincible and vincible legal errors, as well as their effects;

- redefining the attempt (by referring to the intention to commit the crime instead of the decision to commit the crime) and giving up the distinct regulation of the relatively inappropriate attempt;

- removing the instigation not followed by execution;

- the reconceptualization of punishment (by abandoning its "educational" component), the introduction of the system of fine days and work for the benefit of the community;

- the introduction (for the first time) of the criminal liability of private legal entities (art. 48 of the draft); exemption from punishment (art. 91 of the preliminary draft) and postponement of the application of the penalty (art. 92 of the preliminary draft);

- the removal of the institution of execution at the workplace and that of substitution of criminal liability.

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http://www.just.ro/MeniuStanga/Normativepapers/Proiectedeactenormativeaflate%C3%AEndezbatere/tabid/93/Default.aspx, posted on the website of the Ministry of Justice on January 24, 2008 ..

- the introduction of an explanatory rule distinct from that of the civil servant relative to the person who performs a service of public necessity, in order to put an end to the controversy regarding the position of public notaries, lawyers, etc.

In this context, we must specify that, in relation to the object of the present study, we only took from the teacher's treasury of ideas those that, directly or indirectly, turned into positive law norms in the new criminal legislation.

9. As a recognition of his scientific value, in 2001, Professor George Antoniu was appointed president of the drafting committee of the first new Penal Code, adopted by Law no. 301/2004, activity for which he ***was decorated by the President of Romania with the National Order of the Star of Romania in the rank of Knight*** *(Decree no. 575/2004).*

On this occasion, many of the professor's innovative ideas take shape in the content of the first new Criminal Code.

Thus, under the aspect of systematizing the general part, the application of the criminal law in time is regulated before that in space; the causes that make the concrete act not constitute a crime are disciplined in two distinct chapters, in relation to the effects they produce, in justifying cases and cases that remove the criminal character of the act; a separate chapter is devoted to the criminal liability of the legal person; the regulation in a distinct division of work for the benefit of the community; the distinct regulation of the regime of execution of the penalties applied to the legal person; for the first time, the waiver of the penalty and the postponement of the application of the penalty are consecrated; the cases that remove the vocation to punishment or that remove its consequences are divided into three titles, one relative to the cases that remove the criminal liability, another regarding the cases that remove or modify the execution of the punishment and the last one related to the cases that remove the consequences of the conviction.

The special part bravely starts with the crimes against the person, followed by those against the patrimony and then those against the national security, the teacher understanding to give preeminence to the protection of the individual against the society. A distinct title is assigned to acts against the administration of justice, and many of the crimes in the special laws with criminal provisions are codified (trafficking in persons and minors, money laundering, acts of terrorism, acts against the exercise of political and civil rights, fraudulent border crossing of the state, migrant trafficking, organized crime, illicit drug trafficking, acts against: the environment, national cultural heritage, national archival heritage, intellectual property, data and IT systems, financial interests of the European Union, etc.).

In the content of the Code, for the first time, the order of the law and the command of the legitimate authority, as well as the consent of the victim, were disciplined as justifying causes. At the same time, the conditions of criminal liability of legal entities and the penalties applicable to them are provided.

The categories of punishments are diversified, and with regard to the criminal sanction of the fine, according to the French model, the days-fine system is introduced.

The content of authentic contextual interpretive norms was supplemented with the definition of the person who performs a service of public interest and that of the family member.

Also, in addition to taking over criminalization rules from the special laws with criminal provisions, the special part of the Criminal Code has been enriched with new criminalizations such as: altering the genotype; the dangerous use of genetic engineering; illegal creation of human embryos and cloning; violation by any means of interception of the right to private life; making or using devices to intercept communications; the destruction and appropriation of material values of interest to humanity; the destruction and appropriation of cultural values of the peoples; unfair remuneration; profit by mistake; preventing competition in public tenders; obstructing the activity of justice; manifestations of racism or chauvinistic nationalism; speculate with products that cannot be the object of private trade and usury; facts against the fiscal regime, etc.

All these new elements compared to the regulation in force at that time, as well as some changes made to the previous criminal law, were excellently explained by Professor Antoniu, following the model established by Professor Vintilă Dongoroz in 1969, in the work The New Penal Code. The previous criminal code. Comparative study, published by All Beck Publishing House in 2004. The president of the codification commission of the new criminal legislation also noted the fact that the legislative solutions did not always coincide with those proposed by the preliminary draft, thus explaining the non-regulation of some of the professor's ideas previously presented, the force tradition being sometimes stronger than some of its innovative ideas (for example: maintaining the definition of the purpose of the criminal law; maintaining the more favourable application of the criminal law in the case of definitive punishments; maintaining the essential feature of social danger, etc.).

These explanations were repeated and developed by the master in his studies from the pages of our penal law review: The New Criminal Code and the Previous Criminal Code, a comparative view. The general part *(RDP no. 4/2004, p. 9-34)*; The new Criminal Code and the previous Criminal Code, a comparative view. Special part (I) – RDP no. 1/2005, p. 9-36; The new Criminal Code and the previous Criminal Code, a comparative view. Special part (II) – RDP no. 2/2005, p. 9-61.

Although the first new Penal Code never entered into force, despite the criticism brought to this first new Penal Code by the preliminary theses of the second new Penal Code, adopted by HG no. 1183/2008, many of the teacher's ideas, transformed into criminal law norms by Law no. 301/2004, were appropriated by the drafting commission of the second new Criminal Code of

2009, adopted by Law no. 286/2009 regarding the Criminal Code and entered into force on February 1, 2014.

Thus, in the new criminal legislation, Law no. 301/2004, but especially from the preliminary draft drawn up by Professor George Antoniu which was the basis for the elaboration of the draft of the respective law, a series of elements in accordance with the current trends of European criminal legislation (completion of the principle of the legality of incrimination and of criminal law sanctions with the rule the precedence of the legal provision in relation to the concrete act and the punishment or the educational measure or the safety measure that would be applied for the commission of the concrete act, the abandonment of the institution of social danger, the distinct regulation of justifying causes from those that remove guilt, the introduction of new justifying reasons, the consent of the victim, etc.).

In relation to the new socio-political conditions established in Romania, after 1989, the works of Professor George Antoniu represented a firm and scientifically based answer for a profound reform of criminal legislation and criminal procedure, completed by the two new codes entered into force on 1 February 2014, in which many of the ferenda law suggestions formulated by the teacher can be found.

9. The publication of the *Preliminary Draft of the New Criminal Code* in the prestigious magazine Penal Law Notebook no. 2-3/2007, p. 175-366 allowed Professor George Antoniu as in the pages of the Penal Law Review (Observations regarding the draft of a second new Criminal Code (I) - RDP no. 4/2007, p. 9- 34; Observations regarding the preliminary draft of a second new Criminal Code (II) - RDP No. 1/2008, p. 9-34) to formulate several observations and suggestions for improving the texts formulated by the commission and later appropriated by the legislator from 2009 (without neglecting of course the merits of the code commission, with many of the commission's options the professor also expressing his agreement in the pages of the same magazine) from the desire to improve the new criminal legislation.

For example, relative to the general part of the preliminary draft of the new Criminal Code, the following proposals for improvement (other than those strictly terminological) of the texts formulated by the commission and which were later taken over by the legislator were formulated, in essence: the reformulation of art. 17 para. (1) regarding guilt; the reintroduction of the fortuitous case; sweetening the treatment applicable to the continued crime - art. 35; increasing the limit of criminal liability of minors, set by the commission at 13 years - art. 114 etc.

Next, the professor pointed out the shortcomings of some formulations in the special part of the preliminary draft of the new Criminal Code, but also those of the draft of the new Code of Criminal Procedure *(Observations on the draft of*

the new Code of Criminal Procedure (I) - RDP no. 4/2008, p. 9-28; Observations on the draft of the new Criminal Procedure Code (II) - RDP No. 1/2009, p. 9-23).

10. Parallel to the research, didactic, practice or publishing activity, Professor George Antoniu, in his capacity as president of the Romanian Association of Penal Sciences and of the Romanian National Group affiliated to the International Penal Law Association, *maintained intense international relations* with doctrinaires or practitioners from other states, participating in almost all the events of the last 30 years of the International Association of Penal Law in France, Spain, Italy, Germany, Turkey, Hungary and others, as well as those of the International Society of Comparative Law.

He was a founding member (April 22, 1994) and president of the Romanian Association of Penal Sciences, founder and director of the Penal Law Review, reputed specialist in criminal law and criminal procedure, outstanding jurist who dominated the criminal sciences in our country for approx. 40 years in his capacity as a successor to the work of his late teacher Vintilă Dongoroz, a man of high professional standing, loved by all who knew him for his professional vigor and verticality and for his special spiritual qualities.

Since 1990, the first degree principal scientific researcher George Antoniu has been certified as scientific supervisor of a doctorate in the specialty of penal law and penal procedural law and re-certified by Order of the Ministry of Education no. 4794 of April 16, 1993, and since 1994 he is certified as a university professor in the disciplines of penal law and criminology, we ourselves benefiting from his teachings and vast knowledge in the beginning, as a student, even this year, in the discipline of criminal law - the general part.

In this capacity of doctoral supervisor, the professor instructed with the utmost rigor (the tests of his lordship reaching notoriety) no less than 38 doctoral theses forming around his lordship a real school of criminal law, in which we are also proud (after a 9-year doctoral internship), anchored to the post-December socio-economic-political realities here, but also with a great openness to other models of criminal law from countries with rich experience in the matter, such as Germany, Italy, France, Spain or the United States of America, which the master asked us to get to know out of the desire to offer us other solutions than those promoted by the Romanian penal law.

Also, ***the late George Antoniu*** contributed significantly to the professional training and not only of several young academics and tens of thousands of students or master's students of the Faculties of Law at the University of Bucharest, the Romanian-American University of Bucharest, the Police Academy "Alexandru Ioan Cuza" from Bucharest and from Spiru Haret University from Bucharest, during the 20 years of university activity.

11. On August 10, 2014, passed away university **professor doctor multi honoris causa GEORGE ANTONIU**, honorary scientific director of the Legal Research Institute "Acad. Andrei Rădulescu" of the Romanian Academy.

Unfortunately, death led the professor to leave two fundamental works unfinished: The preliminary explanations of the new Penal Code (a work awarded by the Romanian Jurists' Union, in 2010, with the Vintilă Dongoroz prize), of which three volumes had appeared and more were to appear two and a Criminal Law Treaty. The general part, which, at our suggestion, the professor has been working on for over 10 years based on the studies he published in the pages of the Penal Law Journal, works that would see the light of day in 2015-2016.

12. In the preceding, we have tried, on the one hand, to reveal the main biographical milestones and achievements of the professor, and on the other hand, to identify and highlight, from the treasury of thought of Professor George Antoniu, only the ideas that have an impact on the Romanian criminal legislator , because many of these, which did not find their place in the present pages (because they were not accepted as such by the legislator), we are convinced that they will continue to serve as a source of inspiration for those called to regulate in criminal matters , as well as for those who contribute to the uniform interpretation and application of the criminal law.

This is why, we affirmed since his death, in 2014, without fear of making a mistake, that through his work Professor George Antoniu rose to the height of his predecessors Ion Tanoviceanu and Vintilă Dongoroz (whose theses he largely shared, being some from which he distanced himself or with respect to which he expressed some reservations), which he sometimes surpassed by the value of the ideas presented and the argumentation used in support of the ferenda law solutions promoted, contributing decisively to the development of criminal sciences in Romania and to a better drafting of criminal law norms, so that they are correctly applied in practical activity.

As such, we continue to believe that for many years there will be talk of three major milestones in the science of domestic criminal law: Ion Tanoviceanu, Vintilă Dongoroz and George Antoniu, even if to the development of our penal sciences also contributed other prominent criminalists *(Traian Pop, Vespasian Pella, Nicolae Buzea et al.).*

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SOCIALIZATION – WAY OF PREVENTING OR GENERATING DEVIANT BEHAVIOR

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Abstract

The human being is born, lives and develops, generally, in a social setting, more or less favorable and sometimes even hostile; the individual forms of a social personality following the socialization process goes through, a social personality that will be the expression of a status, he will hold and a role he will exercise; of course, there is the possibility that the person will manifest behavioral deviance or even delinquency throughout along his life; also, most often, the person can be a respectable person all his life, through attitude, behavior and conformity to moral and social norms; we thus outline, at a theoretical level, a human behavior according to social norms, that is, which will comply with the promoted and desired social order, and another, which will violate the norms and prescriptions, will deviate from them, producing social disturbances through the manifested deviance.

The classic concept of socialization of the person unfolds in its temporal stages and in the appropriate social environments institutionally, but also through modern means, offered by the media and the presence of the Internet with the virtual space that offers numerous possibilities for communication and exposure of life experiences.

Key words: *socialization, deviance, social media.*

INTRODUCTION

The life of individuals takes place in society, the relationship between them and society as a whole being one of determination and dependence by virtue of the existence of numerous social ties both between individuals and between them and society; if we accept, as in Durkheim's vision that "society is external to individuals and that it has an unquestionable moral power over them" *(Chipea, 1996, p. 97)*, ..., that society "is not an illogical or analogical, incoherent being and fantastic - as it has often been considered - and that it stands outside and above individual and local contingencies, it looks at things only under their aspects

concretized in communicable ideas ... Society sees further and better than individuals" *(Durkheim, 1922, p. 28 apud Chipea, 1996, p. 97)* we can appreciate the force with which society acts on individuals, having at the same time a shaping, training and defining role on their personality.

According to the American sociologist Talcott Parsons "the explanation of the genesis of the individual's sociability, as well as the consciousness of conformity lies in the process of socialization" *(Parsons, 1937 apud Chipea, 1996, p. 122);* therefore, socialization is an essential factor of the person's life and a long process that continues continuously, forming his personality, integrating him socially and finally developing the bonds between people; on the other hand, for a society to be functional and to offer its members a framework conducive to personal/individual or collective development and achievement, it is necessary to ensure a certain social order, a certain predictability and, of course, stability; therefore, one can observe a relationship of functional interdependence between the individual and society, i.e. a conformity of individuals to social norms conditioned and at the same time conditioning the good functioning, as a whole, of society, an expression of what Durkheim called positive solidarity (*apud Chipea, 1996).* When socialization fails, when the individual deviates from the unanimously accepted norms, rejecting or violating them, there is social deviance and even delinquency.

1. SOCIALIZATION AS A METHOD OF REALIZING THE MAIN REPRESENTATIONS AND ATTITUDES ABOUT LIFE AND SOCIETY

Socialization consists in "the transmission and appropriation of cultural-normative models through which individuals acquire socially desirable behaviors and acquire the necessary procedures and rules to be able to develop expected, <normal>, predictable actions for the expectations of the collective" *(Rădulescu, 1994 apud Chipea, 1996, p. 120).*

Socialization - in itself - is a broad social process that "assumes the process of social learning as a fundamental mechanism for achievement, for the formation of the individual's personality, ending in the assimilation of individuals into groups" *(Chipea, 1996, p. 122)*; the result of socialization is the social personality which is based on the concept of sociotype - this in turn meaning what is common to the average members of a society from a psycho-socio-cultural point of view, common from which each individual develops later, although considered unique; and how the social being will join a group, a profession, a community acquiring a role, position or status, implicitly the person acquires what was called a status personality *(Linton, 1968, p. 156 apud Chipea, 1996).*

Socialization, related to the person's age stages, is considered in the specialized literature as primary, secondary and continuous; primary socialization takes place during childhood when the influences of the basic family or close people around the individual are felt; generally, the family offers "the first

experiences of collective life, which will make him able to behave in relation to the social standards and unanimously accepted norms and to respond adequately to the various social situations in which he will be involved; to be integrated into society, he must first be socialized" *(Banciu, Rădulescu & Voicu, 1987, p. 70)*. To the extent that the family is itself a social system, the child raised within it participates in social phenomena "learning to evaluate the importance of belonging to a group of mutual protection, the hierarchy of authority and the relationship between authority and responsibility, rewards and sanctions, of the need to give up personal desires in favor of collective ideals *(Banciu, Rădulescu & Voicu, p. 70)*. From the perspective of childhood, in the life of every human being, generally, positive educational moments should be spent and capable of creating beautiful and pleasant memories for the adult, at this stage the child acquires physical and mental capacities towards growth and development. On the other hand, considering that "in any family organization there is an implicit affirmation of values" *(Vianu, 1982, p. 272 apud Banciu, Rădulescu & Voicu, 1987, p. 73)* at this stage the child may experience feelings of disapproval or of the prohibition of his own intentions and actions, confronting the family authority precisely to order his actions towards what is desirable and permissible.

Secondary socialization "takes place through the acquisition of the norms that regulate the child's relations with his peers (brothers, sisters, friends, colleagues, relatives, etc.)" *(Chipea, 1996, p. 123)* throughout the school years, being specific relationships different from those developed within the family, such as those of affective neutrality or often encountering hostility in the case of manifestations that do not comply with social requirements and expectations. In this stage, in addition to social learning, social influence, social control, social pressure but also social creativity are felt, which as a whole aim at the assimilation of group behaviors *(Mureşan, 1981)*. In this stage of socialization, we note the age of adolescence "as the moment dominated by the requirements of social integration, the earlier intellectual and social maturation of young people in modern society, the desire for self-affirmation, the imposition of one's own opinions and self-definition" *(Banciu, Rădulescu & Voicu, p. 95)* but we also signal it as a difficult stage of development, recognized as a <crisis of conscience> *(Banciu, Rădulescu & Voicu, p. 70)*, in which the adolescent is no longer a child, but is not an adult either, some psychologists considering that the status of adolescence is characterized by the absence of any status *(Zazzo, 1965 apud Banciu, Rădulescu & Voicu, 1987)*. A difficult stage of development, adolescence is often the period of experiencing the first effects of breaking the rules and contact with the sphere of deviance, punishable delinquency and subjecting the young person to re-education. At this stage we appreciate that teenagers can develop deviant behaviors, the influence of groups of friends, overt bullying, online environments and mass media can negatively influence the personality in formation.

Adult socialization is carried out throughout life, is continuous and can oscillate in relation to the observance of social norms and values, between accepting or rejecting them, depending on the social pressures felt but also on the internal resistance that the individual has *(Reackless, 1970 apud Chipea, 1996).*

2. NEGATIVE SOCIALIZATION – CREATORS OF SOCIAL DEVIANCE

The numerous theories elaborated on deviant behavior, over time, have managed to explain, from different approaches, the causality of the violation of the norms of social coexistence or, on the contrary, the motivation of their observance; along the process of forming the human personality, normative cultural models - which can be considered instances of social control - can be opposed to those that are positively valued by society, and positioning the individual in agreement or disagreement with them can lead to positive socialization - denoting their internalization or, on the contrary, towards negative socialization by assimilating values, opposite to those predominantly socially desirable *(Chipea, 1996).*

As a way of adapting the individual to the social environment, to the groups he belongs to or with which he is connected, the theory of the development of delinquent behavior appreciates "the period of adolescence as a period with maximum risk of manifesting delinquent behavior, after which the tendency towards delinquency diminishes as following the maturation of the individual and the multiplication of legal possibilities to satisfy desires" *(Matt DeLisi, 2005 apud Balica, 2011, p. 67).* The adolescent's attitude and his compliance with social norms is indeed a difficult process given his age and stage of development; once beyond this stage, the young adult and the mature person adapt their behavior to social values and norms with greater power of self-determination.

In today's society, including the Romanian one, we appreciate the relevant and advanced ways of adapting the individual to socially valued norms and goals, as noted by Robert King Merton in the assessment of the state of social anomie (a concept originating in the papers of Èmile Durkheim) in relation to the human behavior specific to American society. Thus, as a result of socialization or in the course of its realization, individuals can show conformity, respectively the adaptation of their own conduct to the goals proposed by society and the means of achieving them, mainly institutional, innovation as a way of accepting cultural goals but rejecting the proposed means and the creation of new ones, which - if they do not contravene the rules, have a reforming role, and if they violate or contravene the rules, they constitute deviant and delinquent acts, the ritualism through which, attitudinally, individuals realize the impossibility of achieving socially desirable goals, but still respect and conforms to the institutionalized means, the evasion which, as a way of adaptation, rejects both the goals proposed by society and the institutionalized means of achieving them, the person often adopting amoral behaviors; rebellion reflects the conduct determined by the

rejection of the goals offered by society but also the available means, replacing them with new ones, with the intention of producing changes in the social order.

However, social deviance is considered a normal phenomenon in society, within certain limits, which if exceeded can cause serious disturbances in its functions, therefore, social deviance exists in any society, as stated, even in a "society of saints" *(Durkheim apud Vandici, 2001, p. 134).*

As a current social reality, related to the socialization process of the person, we cannot ignore the phenomenon created by the so-called social networks, a name more or less appropriate to the classic concept, but which has become part of people's lives, since the early years of childhood and later, throughout life; due to the use of the Internet and the numerous applications that it offers to consumers; however, the internet is also a means of transmitting knowledge, information, life experiences or conceptions of social values;

Compared to the last years of humanity, affected by the COVID 19 pandemic - a period in which direct human contacts were more or less restricted, individuals satisfied their need for communication and implicit socialization, including with the institutional environment, by using networks and the media.

Of course, we appreciate the role of these facilities that digitization offers in the social life of individuals, with benefits in areas such as economic, artistic, educational, communication, etc., but on the other hand, we cannot ignore the many deviant acts and facts that have place through media networks called in common language - socialization - with negative repercussions.

Through social networks, in the online and social media environment, numerous deceptions, blackmails, threats, rounding up of people with a view to later committing crimes can take place, acts of illicit trade can take place, materials with pornographic content can be exposed, actions can be promoted that lead to misinformation and social destabilization etc.; We believe that the online environment, through its negative influences on people's will, can contribute to the negative socialization of the person and we appreciate that cyber security measures are necessary both at the macro-social level and at the individual level.

CONCLUSIONS

We appreciate that the opportunities offered by the media can have a decisive role in child personality formation, the young person, respectively the future adult, and their potential and role should not be ignored, including in the socialization process; however, we point out the inopportune possibility of negative socialization, the harmful potential that social media has, being able to contribute to negative socialization; in this sense, we believe that more attention should be paid to the processes of the person's maturation, especially since we are surrounded by means of communication facilitated by the use of the Internet.

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THE NECESSITY OF A HIERARCHY OF THE SYSTEM OF NORMATIVE ACTS AND PRINCIPLE OF THE SUPREMACY OF THE CONSTITUTION

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Abstract

In the approach and substantiating the hierarchy of the system of normative acts and the principle of the supremacy of the Constitution, we started from the idea that the relationship of legal norms, which gives substance to any system of law, must be characterized by unity, functionality and, last but not least, by hierarchy.

My study is mainly about the Romanian law system, but it also includes some generality observations, applicable to all national law systems.

Key words: *hierarchy; system; normative acts; supremacy; Constitution.*

INTRODUCTION

Like most contemporary national law systems and even regional law systems, as is the case with European Union law, in the Romanian legal system, the normative act is the main formal source of law, being created by the state legislative bodies, which includes "legal norms of general and binding nature, applied, applied, enforced, enforced, enforced, enforced, enforced, and enforced. if necessary, through the coercion of the state." *(N. Popa, 2008, p. 194; M.-I. Grigore-Rădulescu, 2019, p. 131; C. Voicu, 2008, p. 168).*

The arguments supporting the placing of the normative act before other formal sources of law *(S. Cristea, 2022, p. 42)* are related to the external form it takes, regulated by the norms of legislative technique, contained in Law no. 24/2000, republished, with subsequent amendments and completions, to their elaboration and application (where appropriate) by state bodies with legal powers and competences in the matter, the publicity provided to these categories of acts and their binding nature.

Given the complexity of the extension of the analysis to the level of the entire system of law, I limited my research only to the hierarchy established within the system of normative acts and to the interpretation of the supremacy of

the Constitution in relation to this category of formal sources of law, leaving open the perspective to a future approach to the other sources of law, from the same point of view and with similar reporting.

1. HIERARCHY OF THE SYSTEM OF NORMATVE ACTS

In justifying the title of this study and the substantiation of the need for hierarchy of the system of normative acts we start from one of the principles of regulation, respectively from the principle of correlation of the system of normative acts, according to which, between the normative acts components of this system there must be both an internal correlation, that is, a functional and pyramidal hierarchical relationship, as well as an external correlation, respectively a harmonization of the system of internal normative acts with those of European Union law and public international law *(S. Cristea, 2022, p. 76; M.-I. Grigore-Rădulescu, 2019, p. 148; I. Boghirnea, 2013, p. 123).*

Therefore, the normative acts fall into a system, correlate and, at the same time, subordinate to its purpose, which explains and argues the idea of the system.

The majority opinion of law theorists *(N. Popa, 2008, p. 195; I. Muraru, E.S. Tănăsescu, 2088, pp. 81-82; I. Vida, I. C. Vida, 2016, p. 76; C. Voicu, 2008, p. 169; M.-I. Grigore-Rădulescu, 2019, p. 132; for an opinion to the contrary, see, F. Făinişi, V. Al. Făinişi, 2018, p. 16-20)* is in the sense that the system of normative acts, starting from those with superior legal force to those with lower legal force, includes:

a) the Constitution.

b) constitutional, organic and ordinary laws *(Article 73 of the Constitution)* and other normative acts elaborated by the Parliament, such as decisions on the regulations of the Chambers *(Article 76 of the Constitution)*;

c) presidential decrees with normative character *(Article 100 paragraph (1) of the Constitution)*;

d) Government ordinances and decisions *(Article 108 of the Constitution);*

e) other normative acts belonging to the central and local bodies of the state public administration, which may bear different names, depending on the issuer, namely orders, decisions, decisions, provisions, regulations, instructions, methodological norms.

The hierarchy of normative acts is a legal requirement, resulting from the analysis and interposition of Article 4(1) of Law no. 24/2000, republished, according to which "*normative acts are elaborated according to their hierarchy, their category and the public authority competent to adopt them*", and the categories of normative acts and the legal regulations regarding the competence of the state bodies in their adoption are established by the Constitution, republished, and by laws.

THE NECESSITY OF A HIERARCHY OF THE SYSTEM OF NORMATIVE ACTS AND PRINCIPLE OF THE SUPREMACY OF THE CONSTITUTION

In the final paragraph of Article 4, the principle of legal subordination of normative acts by which laws, ordinances or Government decisions are implemented to them is established.

In ensuring the purpose of the system of normative acts and its functionality, the provisions of Article 4 shall be corroborated with the provisions of Article 13 of the same law, which establishes the need for the organic integration of the normative act in the whole legislation, purpose in which it also establishes the rules to give practical effectiveness to the mentioned legal provisions, as well as article 14, which establishes the rule on the uniqueness of the relevant regulation, article 15 on the adoption of special and derogatory regulations and article 16 on the avoidance of parallelisms *(M.-I. Grigore-Rădulescu, 2019, pp. 148-149).*

In the same sense, we also note the provisions of Article 81 of Law no. 24/2000, republished, which establishes the rule of subordination of normative acts of lower level to higher level acts, so that, at the time of drafting, decisions, orders or provisions, In the project phase, to subordinate, through their normative content, to the laws, ordinances and decisions of the Government and other higher normative acts.

Also, pursuant to Article 81, paragraph (2), the compliance rule is mandatory, that is, the need for the mentioned normative acts, namely the decisions of the county councils, the decisions of the local councils, the orders of the prefects and the provisions of the mayors to comply with the Constitution of Romania and all the legal norms contained in normative acts superior to them.

Another relevant normative act for demonstrating the need for ranking the system of normative acts is GD no. 561/2009, through which a regulation establishing specific governmental procedures aimed at ensuring compliance with the rules of subordination, compliance and correlation of normative acts was approved, as well as the normative acts with the public policies *(M. Niță, 2022, pp. 183-189).*

In addition to the internal correlation of the system of normative acts, there is also a need to ensure the external correlation, regulated in Article 22, called marginal the Report with Community legislation and international treaties, of Law no. 24/2000, republished, from the interpretation of which it follows that the new national legal regulations must be compatible, In terms of the normative content, with the existing regulations in the respective field in the European Union, with the international treaties assumed by Romania and with the jurisprudence of the European Court of Human Rights.

By paragraph (3) of Article 22, mentioned above, the legal solution for the existence of inconsistencies or contradictions between internal provisions with those of Union law, international treaties or the judicial practice of the European Court of Human Rights is also regulated, by the possibility recognized to the legislator to supplement, modify or intervene with other legislative events on internal normative acts.

The obligation to submit to the Parliament the draft amendment, completion or repeal, in whole or in part, of the internal normative act that is contrary to the European Convention on Human Rights, to the additional protocols to the Convention, ratified by the Romanian State or to the decisions of the Court, lies with the Government, which has a maximum of 3 months from the date of communication of the Court's judgment to draw up and present it to Parliament.

2. THE PRINCIPLES APPLICABLE TO THE HIERARCHY OF THE SYSTEM OF NORMATIVE ACTS

From the interpretation of Article 1 paragraph (5) of the Romanian Constitution, which provides that: "In Romania, the observance of the Constitution, its supremacy and laws is mandatory", the two essential principles that govern the hierarchy of the system of normative acts, respectively:

- The principle of the supremacy of the Constitution;
- The principle of legality.

Art. 5 is corroborated by Article 16 paragraph (2) of the Romanian Constitution, which provides that: "No one is above the law", with the provisions of Article 23 paragraph (12), applicable in criminal matters, according to which: "No punishment may be established or enforced except under the conditions and under the law" *(T. Avrigeanu, 2017, pp. 7-32)*, as well as other constitutional provisions, which place the Constitution at the top of the hierarchy of the normative acts, as a fundamental source of constitutional law *(S. G. Barbu, V. Coman, 2018).*

The principle of the supremacy of the Constitution requires that all legal regulations strictly comply with the constitutional provisions, and the guarantor of the supremacy of the fundamental law is the Constitutional Court, as follows from the provisions of Article 142 paragraph (1) of the Constitution of Romania, republished, which, based on Article 146 also of the Constitution, exercises control of the constitutionality of laws *(S. Mihăilescu, 2021, p. 43 and then).*

Based on the principle of legality, the activity of state bodies must be carried out according to their legal powers and duties, and the exercise of rights and the fulfillment of obligations by legal subjects must be carried out in accordance with legal norms *(M.-I. Grigore-Rădulescu, 2019, p. 68; C. Voicu, 2008, p. 98).*

Therefore, all judicial, jurisdictional and measures restricting the exercise of certain fundamental rights and freedoms must be expressly regulated by law, as a legal act of the Parliament, or by Government Ordinance depending on the regulatory field and respecting the constitutional provisions in the regulated matter *(S. G. Barbu, V. Coman, 2018; N. Diaconu, 2020, pp. 61-68).*

The Constitution and its observance are the foundations of the rule of law, which in turn ensures the supremacy of the Constitution, the correlation of

normative acts with it, the realization of the principle of separation, balance, coordination, and mutual control of powers within the state, within the limits of the law and giving expression to the general will.

As a natural consequence of the mutual conditioning between the Constitution and the rule of law, the latter has the obligation, by virtue of its prerogative to elaborate and enforce law, to establish judicial and non-jurisdictional guarantees for respect for fundamental human rights and freedoms.

In the field of human rights, international rules create rights for individuals, who may become holders of legal rights and obligations and may be parties to judicial and non-jurisdictional proceedings in the matter *(E.-N. Vâlcu, 2016, p. 332-337; A. Rîpeanu, 2017, pp. 33-48).* All these benefits recognized to individuals at national level and only in the field of human rights, however, stem from the will of the states, which create international norms in the field of human rights. Thus, the possibility of action of the natural person "is regarded as an exception and is subordinated to the will of the state". *(C. F. Popescu, M.-I. Grigore-Rădulescu, 2014, p. 41).*

In this regard, we consider that the provisions of Article 20 paragraph (2) must be interpreted according to which "if there are any inconsistencies between the agreements and treaties on fundamental human rights, to which Romania is a party, and the domestic laws, international regulations have priority, Unless the Constitution or domestic laws contain more favorable provisions", taking into account also the regulation of paragraph 1, which establishes the rule for the interpretation and application of constitutional provisions concerning the rights and freedoms of citizens in accordance with the Universal Declaration of Human Rights, With the treaties and other treaties to which Romania is a party.

The relationship between national law and international law is regulated in Article 11 of the Constitution, which enshrines, in paragraph (1), the principle of the fulfillment in good faith by the Romanian State of the obligations assumed by the treaties to which it is a party *(C. F. Popescu, M.-I. Grigore-Rădulescu, 2017, p.. 18),* specifying that only treaties ratified by Parliament are part of national law.

Precisely on the basis of the principle of supremacy of the Constitution, by the rule contained in paragraph (3) of Article 11, it is stipulated that in the event of the existence of some in a treaty to which Romania is to become part of provisions contrary to the Constitution, its ratification may take place only after the revision of the Constitution.

We consider that an interpretation similar to that of Article 20 must also benefit Article 148(2), according to which: "As a result of accession (to the European Union – n.n.), the provisions of the constituent treaties of the European Union, as well as other Community regulations of a binding nature, shall take precedence over the contrary provisions of national laws, in compliance with the provisions of the Act of Accession." In this case too, the priority application of

Union regulations is subordinated to the will of the State, expressed in constitutional norms.

CONCLUSIONS

From the analysis and interpretation of the two principles enunciated, integrated into the general principles of law, the principles of legislation and the legislative policy of the state, the conclusions of my study are drawn.

Thus, it is not possible for normative acts with lower legal force to lead to the modification or completion of normative acts with higher legal force, an opinion based also on the analysis of the doctrine of constitutional law and the case law of the Constitutional Court.

At the same time, it is also relevant that the principle of hierarchy of the system of normative acts is established by the constitutional and legal mechanisms established for this purpose, including with regard to international human rights rules and those of Union law, which may have a major influence on national law pursuant to Article 11, Article 20 and Article 148 of the Constitution.

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THE NON-RETROACTIVITY OF NEW LEGAL NORMS - FUNDAMENTAL PRINCIPLE OF LAW. EXCEPTIONS

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Abstract

The legal norm represents the internal structure of the law as a whole. The rule of law contains in its content the prescriptions to be followed, the rights and obligations of the subjects of law. All the social actions of our peers are placed in a normative framework, whether we are talking about law, morality, religion etc. The legal norm requires the acceptance and observance of the prescribed conduct. In this article, we have proposed to make a short analysis of the exceptions to the principle of non-retroactivity of legal norms, in particular the decriminalizing criminal norms and the criminal and contravention norms more favorable to the offender, respectively the contravenor; of interpretative legal norms; and express retroactivity.

Key words: *legal rule, principle, exceptions, non-retroactivity, interpretability, express retroactivity.*

INTRODUCTION

The legal norm is a general measure that applies to all cases that will arise under its rule, for a specific time or in the time interval provided in its content, in a certain space and to some subjects that participate in the legal circuit in this space. Therefore, the action of the legal norm has three necessary coordinates: time, space and people *(Vonica, 2000, p. 263).*

With regard to the action of the rule over time, in order to be able to determine exactly the action of the rule of law over time, it is necessary to establish exactly the moment of entry and exit of the legal rule into and out of force *(Vâlcu, 2012, p. 43).* Regarding the application of the legal rule over time, it is essential to determine whether the rule applies only to the future or also to the past.

THE NON-RETROACTIVITY OF NEW LEGAL NORMS - FUNDAMENTAL PRINCIPLE OF LAW. EXCEPTIONS

This issue considers the duration or resistance of the rule of law over time. There are examples of laws that have had a long existence of over 1000 years (the Law of the XII Tables) due to the heavy pace of economic-social transformations and because, in ancient times, the process of drafting laws was very slow *(Boghirnea, 2013, p. 77).* With the passage of time, these legal norms cease to respond to the needs of modern society and precisely for this reason it is necessary for the laws to be adapted or replaced, otherwise they no longer find their application.

As a constitutive element of law, its "basic cell", the legal norm can be roughly defined as a rule of conduct, instituted by the public power or recognized by it, whose compliance is ensured, if necessary, by the coercive force of the state. This traditional definition, although correct, is susceptible to amendments in the sense that, not necessarily, the legal norm must refer to human behaviors, it being in a broader sense a directive susceptible to public coercion related to human behaviors, but also to defining some legal concepts, establishing some competences or duties. *(Craiovan 2007, p. 352).*

In the specialized literature, the legal norm has been defined as a general and impersonal rule of conduct, established or recognized by the state, which expresses the will of the state and whose mandatory compliance is guaranteed by the coercive force of the state. *(Rădulescu, 2016, p. 84).*

The purpose of the legal norm corresponds to the finality of the law, namely ensuring social coexistence that guides people's behavior in the direction of a promotion and consolidation of social relations according to the ideals and values that govern society.

The fundamental principle of the action of the legal norm is represented by the *non-retroactivity of the law.* It derives from the natural circumstance according to which the law regulates for the future. It applies to conduct and social relations from the date of its entry into force. The state cannot ask citizens to obey a law whose regulations are unknown because it does not exist.

The Constitution of Romania[1] provides in art. 15 para. (2) that *"The Law disposes only for the future, with the exception of the more favorable Criminal or Contraventional Law".* The exception listed in the above-mentioned provisions concerns only substantive criminal laws, not procedural ones.

The Criminal Code provides in art. 3 that *"The criminal law applies to crimes committed while it is in force".*

EXCEPTIONS

[1] As amended and supplemented by the Law on the revision of the Romanian Constitution no. 429 of October 23, 2003, republished by the Legislative Council, updating the names and giving the texts a new numbering.

For humanitarian reasons, but also for some practical needs, it nevertheless determines the admission of some exceptions to the principle of non-retroactivity of the law.

Such exceptions that admit the retroactive application of the law are, in principle, the following:

- The decriminalizing criminal rules and the criminal and contraventional rules more favorable to the criminal, respectively the contravenor (the more favorable criminal law);
- Interpretive legal norms;
- Express retroactivity, when the normative act expressly states that it also applies to previous situations or establishes a date prior to the date of its adoption when it will enter into force.

1. DECRIMINALIZING CRIMINAL RULES

The application of the Criminal Law on decriminalization is provided for in art. 4 of the Romanian Criminal Code: *"The criminal law does not apply to acts committed under the old law, if they are no longer provided for by the new law. In this case, the execution of punishments, educational measures and safety measures, pronounced on the basis of the old law, as well as all the criminal consequences of the court rulings regarding these facts cease with the entry into force of the new law."* From these provisions follows the rule that the new decriminalizing law applies to those acts committed even before it enters into force.

Decriminalization - *abolitio criminis,* was defined as an exclusion of a concrete fact from the scope of crimes by repealing or modifying the norm of criminalization *(Hotca, 2017, p. 95).*

Considered as a more favorable type of criminal law, the incidence of the retroactivity of the decriminalization criminal law is limited in relation to the stage at which the resolution of the legal relationship of the conflict has reached, and in order to produce its effects, it must enter into force until the intervention of the convict's rehabilitation *(Duvac, Neagu, Gament and Băiculescu, 2019, p. 243).* Otherwise, it will no longer produce any effect, except for safety measures *(Hotca, 2017, p. 96).*

The criminal law more favorable

The mitior lex Principle - of the more favorable criminal law is provided for in Article 15 para. (2) of the Romanian Constitution. The principle is also reflected in art. 5 and art. 6 of the Romanian Criminal Code.

The Criminal Law Principle of the application of the more favorable law expresses a humanitarian conception. Thus, it allows the person who committed the crime in the past, under the action of the old law, replaced by a new one, to apply, of the two regulations, the one that establishes a less severe punishment for

the deeds committed. When the new law is more favorable it will apply retroactively, even if the act was committed before the entry into force of this law.

The Romanian Criminal Code distinguishes between the application of the more favorable criminal law until the final trial of the case - art. 5 and the application of the more favorable criminal law after the final trial of the case - art. 6.

The first situation, provided for in the Criminal Code at art. 5, gives satisfaction to the constitutional principle of the application of the more favorable criminal law in the case of the succession of criminal laws, even if they were in force for a short period of time. The same is the solution in the case of normative acts declared unconstitutional by the Constitutional Court.

The second situation, respectively the one stipulated by art. 6 of the above-mentioned Code, assumes that when, after the conviction remains final and until the full execution of the prison sentence or the fine, a law has intervened in the content of which there is a lighter punishment, the sanction applied, if it exceeds the special maximum provided by the new law for the crime committed, must be reduced to this maximum.

In justifying the title of this study and the substantiation of the need for hierarchy of the system of normative acts we start from one of the principles of regulation, respectively from the principle of correlation of the system of normative acts, according to which, between the normative acts components of this system there must be both an internal correlation, that is, a functional and pyramidal hierarchical relationship, as well as an external correlation, respectively a harmonization of the system of internal normative acts with those of European Union law and public international law *(S. Cristea, 2022, p. 76; M.-I. Grigore-Rădulescu, 2019, p. 148; I. Boghirnea, 2013, p. 123).*

Therefore, the normative acts fall into a system, correlate and, at the same time, subordinate to its purpose, which explains and argues the idea of the system.

The majority opinion of law theorists *(N. Popa, 2008, p. 195; I. Muraru, E.S. Tănăsescu, 2088, pp. 81-82; I. Vida, I. C. Vida, 2016, p. 76; C. Voicu, 2008, p. 169; M.-I. Grigore-Rădulescu, 2019, p. 132; for an opinion to the contrary, see, F. Făinişi, V. Al. Făinişi, 2018, p. 16-20)* is in the sense that the system of normative acts, starting from those with superior legal force to those with lower legal force, includes:

a) the Constitution.

b) constitutional, organic and ordinary laws *(Article 73 of the Constitution)* and other normative acts elaborated by the Parliament, such as decisions on the regulations of the Chambers *(Article 76 of the Constitution)*;

c) presidential decrees with normative character *(Article 100 paragraph (1) of the Constitution)*;

d) Government ordinances and decisions *(Article 108 of the Constitution);*

e) other normative acts belonging to the central and local bodies of the state public administration, which may bear different names, depending on the issuer, namely orders, decisions, decisions, provisions, regulations, instructions, methodological norms.

The hierarchy of normative acts is a legal requirement, resulting from the analysis and interposition of Article 4(1) of Law no. 24/2000, republished, according to which "*normative acts are elaborated according to their hierarchy, their category and the public authority competent to adopt them*", and the categories of normative acts and the legal regulations regarding the competence of the state bodies in their adoption are established by the Constitution, republished, and by laws.

In the final paragraph of Article 4, the principle of legal subordination of normative acts by which laws, ordinances or Government decisions are implemented to them is established.

In ensuring the purpose of the system of normative acts and its functionality, the provisions of Article 4 shall be corroborated with the provisions of Article 13 of the same law, which establishes the need for the organic integration of the normative act in the whole legislation, purpose in which it also establishes the rules to give practical effectiveness to the mentioned legal provisions, as well as article 14, which establishes the rule on the uniqueness of the relevant regulation, article 15 on the adoption of special and derogatory regulations and article 16 on the avoidance of parallelisms *(M.-I. Grigore-Rădulescu, 2019, pp. 148-149).*

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The obligation to submit to the Parliament the draft amendment, completion or repeal, in whole or in part, of the internal normative act that is contrary to the European Convention on Human Rights, to the additional protocols to the Convention, ratified by the Romanian State or to the decisions of the Court, lies with the Government, which has a maximum of 3 months from the date of communication of the Court's judgment to draw up and present it to Parliament.

2. INTERPRETIVE LAWS

The Legal Dictionary defines the interpretive law as the law that clarifies the meaning of a previous law (e-juridic.ro), namely the one that explains, details or analyzes the previous regulations without modifying them.

In the conception of the old Romania Civil Code, the provisions of these laws applied from the date when the law they were interpreting entered into force. It was natural and logical, since the goal was to apply the exact meaning of the interpreted law, the meaning that should have been attributed to it since its entry into force. In other words, it applied retroactively and was also an exception to the rule that a law no longer applies.

According to the Romanian Civil Code in force, the interpretive laws are no longer retroactive, but only act for the future.

3. THE CASE IN WHICH THE LAW EXPRESSLY PROVIDES THAT IT ALSO APPLIES TO PREVIOUS SITUATIONS OR ESTABLISHES A DATE OF ENTRY INTO FORCE PRIOR TO THE DATE OF ITS ADOPTION

This express provision of the retroactive application of the law derives from the will expressed directly and indirectly by the legislator by virtue of his right to legislate. Thus, the legislator will expressly indicate the retroactive nature of the legal norm in question. He is the only one entitled to make a normative act retroactive.

In a regime of legality of the rule of law, some rules of principle at the constitutional or legal level will be established to prevent and limit this possibility. Moreover, this measure will be resorted to with caution and only exceptionally, so as not to disrupt the normal development of social relations. If this would harm the rights and legitimate interests of citizens, such a provision will never be accepted.

CONCLUSIONS

The social relations that arise on the basis of legal norms make up the legal order which, in turn, is a component part of the social order. With the adoption of the Constitution in 1991, the principle of non-retroactivity of the law became a principle of constitutional force.

Through the provisions of art. 3 of Law no. 187 of October 24, 2012 for the implementation of the Criminal Code, the rule was established that in order to decide whether the new law decriminalizes the act, the actual act must be examined and not just the non-existence of a new incriminating norm.

The scope of application of the more favorable criminal law is different, depending on when the succession of laws intervenes in time, compared to the moment of the final conviction. Therefore, if the new, more favorable law intervenes before the conviction becomes final, its effects will be wider than if the same law intervenes after the conviction becomes final.

In accordance with art. 5 of Criminal Code, the more favorable criminal law will be determined by taking into account both the successive criminal laws and the normative acts or their provisions that are declared unconstitutional, but also the emergency ordinances approved by the Parliament, in the situation in which when they were in force, they also included more favorable criminal provisions.

Regarding the more favorable criminal law, by art. 6 of the Criminal Code regulates the only incidence situation of the *Mitior lex* Principle in relation to the cases in which the judgment has been definitively completed.

The interpretation of a legal norm can be done by the legislator himself, either within the very content of the law that contains the norm, or through the provisions of a subsequent law.

The interpretive laws only explained, detailed or analyzed the old laws to clarify their meaning, in the old conception of the Civil Code. Currently, the interpretive laws are no longer retroactive, but they also act only for the future.

Finally, express retroactivity is that exception to the principle of non-retroactivity, which results from the text of the legal norm itself. In that text there is an express provision that the law also applies to certain situations, facts that happened previously.

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THE RIGHT TO REPAIR OF DAMAGES IN THE EVENT OF AFFECTION OF THE INDIVIDUAL FREEDOM OF THE PERSON DURING THE CRIMINAL PROCEEDINGS

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Abstract

Starting from the need to respect, in any judicial procedure, the right to liberty and security of the person, in order to guarantee public safety and ensure a high level of social capital, this study addresses the issue of reparation for damage to the individual's liberty during the criminal proceedings. The paper presents the special procedure for reparation of material damage or non-pecuniary damage in case of illegal deprivation of liberty in the regulation of the current Romanian Code of Criminal Procedure, with the interpretations given by the High Court of Cassation and Justice for ensuring a unitary judicial practice, as well as with the aspect of unconstitutionality ascertained by the Decision of the Constitutional Court of Romania no. 136/2021. In the context of the legislative interventions envisaged by the latest draft law on amending and supplementing the Code of Criminal Procedure, concrete regulatory proposals are made in the paper so that this special procedure guarantees the exercise of the right to reparation for all situations of unlawful or unjust deprivation of liberty in the course of criminal proceedings, according to the standard of protection established by the European Convention for the Protection of Human Rights and Fundamental Freedoms. The possibility of extending the scope of the special reparation procedure to the case of impairment of individual liberty by restrictive measures of liberty is also being considered.

Key words: *the right to liberty and security of person, criminal trial, illegal or unjust deprivation / restriction of liberty, damage repair, legislative changes.*

INTRODUCTION

The high level of **social capital**, in the sense of mutual trust of individuals in the context of their relationship in society, is obtained and maintained by guaranteeing

public safety, including by respecting the fundamental rights of the person during legal proceedings, regardless of the nature of these proceedings (criminal, civil, administrative litigation, etc.) and the procedural quality of that person (suspect, defendant, injured party, civil party, plaintiff, defendant, etc.).

One of the fundamental rights that must be respected in a judicial procedure, to guarantee public safety, is the right to liberty and security of person.

Moreover, in the current Romanian Code of Criminal Procedure, a series of fundamental principles are enshrined (in art. 2 - art. 12), under the name of ”principles of the application of the criminal procedural law”, as rules that underlie the development of the entire criminal proceedings *(Lorincz, 2015, pp. 30-31)*, including the principle of guaranteeing the right to liberty and security.

1. THE PRINCIPLE OF GUARANTEEING THE RIGHT TO FREEDOM AND SECURITY IN CRIMINAL PROCEEDINGS

The right to liberty and security is enshrined in art. 9 of the current Romanian Code of Criminal Procedure (CCP), by the following provisions:

”(1) During the criminal proceedings, the right to liberty and security of person shall be guaranteed.

(2) Any measure of deprivation or restriction of liberty shall be provided exceptionally and only in the cases and under the conditions provided by law.

(3) Everyone who has been arrested shall have the right to be informed as soon as possible and in a language which he understands to the reasons for his arrest, and shall have the right to appeal against the decision.

(4) Where it is found that a measure of deprivation or restriction of liberty has been unlawfully ordered, the competent judicial authorities shall be required to order the revocation of the measure and, where appropriate, the release of the detained or arrested person.

(5) Any person who has been unlawfully disposed of in the course of criminal proceedings shall be entitled to reparation for the damage suffered, under the conditions provided by law.”

This recognition of the right to liberty and security, as a fundamental principle of the Romanian criminal process, represents a transposition in our criminal procedural legislation of some provisions from a series of international documents: European Convention for the Protection of Human Rights and Fundamental Freedoms *(”Everyone has the right to liberty and security of person” – art. 5)*, International Covenant on Civil and Political Rights *(”Everyone has the right to liberty and security of person” – art. 9)*, Charter of Fundamental Rights of the European Union *(”everyone has the right to liberty and security of person” – art. 6)*.

Also, in the Romanian Constitution, in the chapter dedicated to fundamental rights and freedoms (Chapter II of Title II), the principle of

guaranteeing individual freedom is enshrined (art. 23 –"Individual freedom"), in the following wording:

"(1) Individual freedom and security of the person are inviolable.

(2) Searching, retaining or arresting a person is allowed only in the cases and with the procedure provided by law.

(3) Retention may not exceed 24 hours.

(4) Pre-trial detention is ordered by the judge and only during the criminal trial.

(5) During the criminal investigation, the pre-trial detention may be ordered for a maximum of 30 days and may be extended by a maximum of 30 days, without the total duration exceeding a reasonable term, and not more than 180 days.

(6) In the trial phase, the court is obliged, in accordance with the law, to periodically verify, and not more than 60 days, the legality and validity of pre-trial detention and to order, immediately, the release of the defendant, if the grounds that led to pre-trial detention have ceased or if the court finds that there are no new grounds for maintaining the deprivation of liberty.

(7) The court's decisions regarding the measure of pre-trial detention are subject to the remedies provided by law.

(8) The retained or arrested person shall be informed immediately, in the language he understands, of the reasons for his retention or arrest, and of the charge, as soon as possible; the accusation is made known only in the presence of a lawyer, chosen or appointed ex officio.

(9) The release of the retained or arrested person is mandatory if the reasons for these measures have disappeared, as well as in other situations provided by law.

(10) The person under pre-trial detention has the right to request his or her provisional release, under judicial control or on bail.

(11) Pending the final judgment of the conviction, the person is found not guilty.

(12) No punishment may be established or applied except under the law conditions and according to the law.

(13) The custodial sentence can only be of a criminal nature."

It is observed that the current procedural-criminal regulation of the principle of guaranteeing the right to liberty and security (art. 9 CCP) is based on both the constitutional text and the international provisions that refer to two distinct notions: individual liberty and security person *(Lorincz, 2015, p. 44)*. On the one hand, "individual liberty" means the physical freedom of the person, his right to move freely, to be retained, arrested or detained only in the cases and in the forms expressly provided for in the Constitution and laws *(Muraru, 1993, p. 248)*. On the other hand, the term "safety of the person" refers to all the safeguards that protect the person in situations where the public authorities,

precisely in application of the Constitution and the laws, take certain measures concerning individual freedom, guarantees that ensure that these measures are not illegal *(Muraru, 1993, p. 249).*

From this perspective, analyzing the way in which it is regulated, in art. 9 of the current Romanian Code of Criminal Procedure, the principle of guaranteeing the right to liberty and security, it is found that, after the general statement in para. (1), of the right of every person to liberty and security of person in criminal proceedings, the following is a list of a series of safeguards *(Ghigheci, 2014, pp. 152-153)*:

- in para. (2) provides that any measure of deprivation or restriction of liberty shall be provided exceptionally and only in the cases and under the conditions provided by law; as stated in the doctrine *(Ghigheci, 2014, p. 149)* in connection with this first guarantee, in the regulation of the Romanian Code of Criminal Procedure, related to the constitutional and conventional text, the right to liberty and security seems to have a wider scope, because in para. (2) in art. 9 CCP refers to ”any measure depriving or restricting liberty”, while both the Romanian Constitution (art. 23) and the European Convention (art. 5) restrict the scope of application of this principle only to retention and pre-trial detention, as preventive measures of deprivation of liberty.
- in para. (3) the right of every arrested person to be informed as soon as possible and in a language which he understands of the reasons for his arrest shall be provided, as well as his right to lodge an appeal against the order of the measure;
- in para. (4) the competent judicial bodies shall be required to order the revocation of the measure and, where appropriate, the release of the retained or arrested person where it is found that a measure of deprivation or restriction of liberty has been unlawfully ordered;
- in para. (5) stipulates that any person who has been illegally disposed of, during the criminal proceedings, a measure of deprivation of liberty has the right to compensation for the damage suffered, under the conditions provided by law. It is noted that, in connection with this guarantee (right to compensation), the text refers only to the person against whom a custodial measure has been ordered, unlike the previous regulation [art. 5 para. (4) CCP 1968] which gave the person deprived of his liberty during the criminal proceedings or who had been restricted, illegally or unjustly, the right to seek redress under the conditions provided by law (that is, under the conditions of art. 504-507 CCP from 1968, which established the procedure applicable in case of deprivation or restriction of liberty illegally).

The current regulation [both art. 9 para. (5), as well as art. 539 para. (1) CCP] guarantees the right to reparation of the damage only to the person who, during the criminal trial, was illegally deprived of liberty. Therefore, by the current law (*lege lata*), the procedural guarantees of respect for the right to liberty

and security during criminal proceedings, from the perspective of the recognition of the right to compensation in case of deprivation of liberty, are more limited than in the previous regulation.

2. SPESPECIAL PROCEDURE FOR REPAIR OF MATERIAL DAMAGE OR MORAL DAMAGE IN THE EVENT OF ILLEGAL PRIVACY

● Provisions regarding the right to compensation in case of judicial errors or wrongful deprivation of liberty have existed, in our procedural-criminal legislation, since 1936. Thus, in the Code of Criminal Procedure Carol II (adopted in 1936) we find provisions regarding ”damages due to victims of judicial errors” (art. 513 - art. 514) contained in Chapter II (*Review and damages due to victims of judicial errors*) from Title III (*Extraordinary ways of attack*) of Book IV (*Ways of attack*).

Also, in Chapter III (art. 657 - art. 662) of Title II (*Various measures of public interest*) of Book VI (*Special procedures and measures of public interest*) there were provisions on ”compensation of persons unjustly detained in prevention”. We note, however, that these provisions, even if some of them were placed alongside the special procedures (in Book VI), did not constitute a separate special procedure.

● Subsequently, the Code of Criminal Procedure of 1968 (in its original form, which entered into force in 1969) was to regulate ”reparation of damage in the event of wrongful conviction or arrest”, as a special procedure, in the sense of a set of derogatory rules. and complementary to the usual procedure (art. 504 - art. 507, constituting Chapter IV of Title IV - *Special procedures* of the Special Part of the Code). Throughout the period of applicability of this code (from January 1, 1969 to February 1, 2014), the regulation of this special procedure has undergone several legislative changes (in 1990, 2003, 2006, 2010). For example, following the legislative intervention operated by Law no. 32/1990, the scope of application of this procedure was extended, changing the name from ”Reparation of damage in case of wrongful conviction or arrest” to ”Reparation of damage in case of conviction or taking of an unjustified preventive measure”. Moreover, by Law no. 281/2003, the name of this procedure was again changed to ”Reparation of material damage or non-pecuniary damage in case of wrongful conviction or unlawful deprivation or restriction of liberty”, thus extending the scope and to the non-pecuniary damage suffered, as well as to the case of unlawful deprivation or restriction of liberty, including through measures other than preventive measures (such as the safety measure of medical hospitalization) *(Lorincz, 2011, p. 554).*

● In the current Code of Criminal Procedure *(Law no. 135/2010, entered into force on February 1, 2014),* in Chapter VI (art. 538 - art. 542) of Title IV (*Special procedures*) of the Special Part is regulated the procedure for reparation of damage material or moral damage in case of judicial error or in case of illegal deprivation of liberty or in other cases.

THE RIGHT TO REPAIR OF DAMAGES IN THE EVENT OF AFFECTION OF THE INDIVIDUAL FREEDOM OF THE PERSON DURING THE CRIMINAL PROCEEDINGS

A first observation regarding the name of this procedure, according to the provisions in force at the moment, is that the reference to ”reparation of material damage or non-pecuniary damage” is maintained, but unlike the provisions of the previous code, the regulation of the procedure is limited to the case of deprivation of liberty, with no reference to the restriction of liberty. In this respect, we find that the current procedural-criminal provisions regarding this special procedure respect the level of protection established by art. 5 paragraph 5 of the European Convention (”any person who is the victim of an arrest or detention” under conditions contrary to the provisions guaranteeing the right to liberty and security shall have the right to reparation), level of protection limited to custodial measures.

As indicated above, in the Code of Criminal Procedure adopted in 1968 (as amended in 2003) the special procedure for reparation of damage also applies in case of unlawful restriction of liberty.

A second observation, in connection with the name of the procedure in the current code, is that the phrase ”or in other cases” has been added, although, from the analysis of the content of the provisions of art. 538 and art. 539 it appears that there are currently only two cases giving rise to the right to reparation: the case of judicial error and the case of unlawful deprivation of liberty. Therefore, although criticizable from the perspective of the requirements of legislative technique regarding the rigor of wording, it seems that the legislator intended to leave open the way for regulation, through the possibility of introducing other cases that entitle to compensation for pecuniary damage or non-pecuniary damage.

Regarding the case of illegal deprivation of liberty, from the analysis of the content of art. 539 CCP it appears that the person who, during the criminal trial, was illegally deprived of liberty has the right to reparation of the damage, requiring that the illegal deprivation of liberty be established, as the case may be (reported to the phase in which the criminal trial is and to the judicial body that finds this illegality), by:

- prosecutor's ordinance; for example, by the prosecutor's ordinance revoking the retention measure [when new circumstances arise which result in the illegality of the measure - art. 242 para. (1) CCP, or when, in resolving the complaint against the retention ordinance, the chief prosecutor or the hierarchically superior prosecutor finds that the legal provisions governing the conditions for taking this measure have been violated - art. 209 para. (15) CCP] or by the closing case ordinance, when the defendant is in the execution of a custodial measure and the prosecutor finds that, prior to the taking of the respective measure, any of the cases provided in art. 16 CCP, a case that determines the illegality of this measure (for example, the ordinance by which the prosecutor orders the case to be closed against the defendant in pre-trial detention, on the grounds that the statute of limitations preceded the order of pre-trial detention);

- final conclusion (in the sense of a decision) of the judge of rights and freedoms or of the judge of the preliminary chamber; for example, by concluding the revocation or finding of the cessation of the preventive measure, when the judge of rights and freedoms (during the criminal investigation) or the judge of the preliminary chamber (in the preliminary chamber procedure) revokes the measure of pre-trial detention or the measure of house arrest or finds that the measure has been legally terminated, at the same time considering that the measure has been taken, extended or maintained in breach of the legal provisions;

- final conclusion or final decision of the court invested with the trial of the case; for example, by the final conclusion or the final decision of the court of revocation of the preventive measure or of finding the legal termination of the measure, if the maximum duration provided by law has been exceeded, in which case the measure becomes illegal from the expiration of the term established by law *(Moroșanu, 2014, pp. 1291-1292)* or by the final decision of the court (acquittal, termination of criminal proceedings, conviction, waiver of the sentence or postponement of the sentence) by which the illegal nature of the measure of deprivation of liberty ordered during that criminal trial is retained.

Therefore, in order to invoke the right to compensation by the person whose individual liberty was unlawfully affected during the criminal proceedings, it is necessary for the prosecutor to find (by ordinance) that the custodial measure was taken illegally or the judge of rights and freedoms, the judge of the preliminary chamber or the court invested with the trial of the case to establish (by final conclusion or final decision) that the measure of deprivation of liberty was taken, extended or maintained at a certain time in violation of legal provisions *(Moroșanu, 2014, p. 1292).*

Since in the practice of the courts different interpretations have been given to the provisions of art. 539 para. (2) CCP, there is no unitary point of view regarding the application of these provisions, in the sense of establishing the illegal character of deprivation of liberty during the criminal process, which gives the right to compensation, the High Court of Cassation and Justice (by Decision no. 15/2017) admitted the recourse in the interest of the law formulated by the Board of the Timișoara Court of Appeal and thus decided:

"*In the interpretation and application of the provisions of art. 539 para. (2) of the Code of Criminal Procedure, the illegal nature of preventive measures of deprivation of liberty must be explicitly established by the jurisdictional acts provided for therein.*

The acquittal judgment, by itself, cannot constitute a ground for establishing the illegality of the custodial measure".

Therefore, the establishment of the illegal character of the deprivation of liberty during the criminal process, deprivation of liberty that gives the right to compensation, cannot be implicit, this illegal character cannot be deduced from the

final acquittal decision *(see in the same sense, Lorincz, 2016, pp. 32-39, work published prior to the decision of the supreme court).*

Also, for the unitary interpretation and application of the provisions of art. 539 para. (2) CCP, the supreme court ruled by a prior decision (Decision no. 11/2019), at the notification of the Alba Iulia Court of Appeal, Criminal Section, on the settlement in principle of the question of law if "in the situation in which the court that pronounced the final acquittal decision did not rule on the legal or illegal character of deprivation of liberty during the criminal trial of the acquitted defendant, this character can be established by way of contestation at execution based on the provisions of art. 598 para. (1) lit. d or art. 598 para. (1) lit. c thesis I CCP", establishing as follows: "*In the application of art. 539 para. (2) of the Code of Criminal Procedure, the legal or illegal character of deprivation of liberty during the criminal proceedings of the defendant acquitted by final decision cannot be established by way of an enforcement appeal based on the provisions of art. 598 para. (1) lit. d or art. 598 para. (1) lit. c thesis I of the Code of Criminal Procedure*".

In order to pronounce this preliminary decision, the Panel for resolving legal issues in criminal matters from the High Court of Cassation and Justice noted that the phrase "the court vested with the trial of the case" from the content of art. 539 para. (2) CCP refers only to the criminal court vested with the trial of the case in the first instance or in an appeal, or the enforcement court becomes competent in a judicial procedure to resolve situations correlative to the execution of the judgment, therefore of some incidents that occurred after the finality of the judgment by which the merits were resolved.

The case of contestation at execution provided in art. 598 para. (1) lit. c thesis I CCP it refers to the emergence of any ambiguity regarding the judgment that is being executed, therefore to the "necessity of clarifying a provision contained in that judgment", and not to its completion.

On the other hand, the case of contestation to execution provided in art. 598 para. (1) lit. d CCP it refers to the invocation of a cause of extinction or reduction of the punishment, appeared after the finality of the enforced decision, or "the aspects regarding the legality of the preventive measures cannot be circumscribed to this reason for appeal".

The supreme court also held that, in the case of final acquittal judgments, as in the case of termination of criminal proceedings, the enforcement appeal can only concern the enforceable provisions contained in the operative part (such as the enforcement of safety measures or the provision of immediate release following the revocation of the preventive measure). Even in the case of a final conviction, the analysis of the illegal nature of deprivation of liberty could be the subject of an enforcement contestation [pursuant to art. 598 para. (1) lit. c thesis II CCP - when an impediment to enforcement arises] only if the circumstance in question

(unlawful deprivation of liberty) arose after the judgment became final (for example, the convict against whom the execution of the sentence was suspended was kept in pre-trial detention).

Consequently, the High Court of Cassation and Justice considered that the executing court cannot rule, by way of an enforcement contestation, on the legality of the custodial measures ordered during the criminal proceedings prior to the finality of the court decision.

3. THE THE EFFECT OF THE DECISION OF THE CONSTITUTIONAL COURT OF ROMANIA NO. 136/2021

In addition to the judgment made by the High Court of Cassation and Justice to ensure a unitary judicial practice, materialized in the two decisions mentioned above *(Decision no. 15/2017 pronounced on the recourse in the interest of the law and Decision no. 11/2019 pronounced on the referral in order to take a preliminary decision for resolving a matter of law)*, the provisions of art. 539 CCP were subjected, on several occasions, to a constitutionality control, the most recent materializing in the Decision of the Constitutional Court no. 136/2021.

The exception of unconstitutionality solved by this decision was motivated by its author by invoking the fact that the regulation of the right to compensation in the light of art. 539 CCP it is ”far too restrictive”, conditioning this right only by the criterion of illegality of deprivation of liberty, without taking into account the criterion of the unfairness of the measure of deprivation of liberty taken during the criminal trial, related to the solution of closing or acquittal ordered in that case.

In other words, analyzing this exception (unlike the previous exceptions, all rejected), the constitutional court examined the issue of law aimed at deprivation of liberty through a preventive measure ordered in compliance with the conditions provided by law, but which becomes ”unfair” as a result of the closing case solution [based on art. 16 para. (1) lit. a-d CCP] or acquittal by rejecting on the merits the accusation in criminal matters made against the person deprived of liberty by that procedural measure.

In motivating this decision, the Constitutional Court showed that the analyzed situation does not represent a case of illegal deprivation of liberty within the meaning of art. 539 CCP, but a case of unjust deprivation of liberty, which must lead to the recognition of the right to compensation, as a consequence of the provisions of art. 1 para. (3) (”Romania is the rule of law ..., in which ... the rights and freedoms of citizens ... are guaranteed”), art. 23 para. (1) (”Individual freedom and security of the person are inviolable”) and art. 52 para. (3) thesis I (”The State is patrimonial liable for damages caused by judicial errors”) of the Constitution.

Making the distinction between the illegal character of deprivation of liberty [which must be explicitly established by the jurisdictional acts provided in art. 539 para. (2) CCP] and the unfair character of the deprivation of liberty, the Court considered that in the case of deprivation of liberty ordered in the criminal case solved by closing, according to art. 16 para. (1) lit. a-d CCP (that is, when it is found that the criminal action is unfounded), or acquittal, "the exercise of the right to reparation before the civil court will be based on the closing case ordinance or on the acquittal decision".

In conclusion, admitting the exception of unconstitutionality, the court of constitutional control found that "*the legislative solution contained in art. 539 of the Code of Criminal Procedure which excludes the right to reparation of the damage in case of deprivation of liberty ordered during the criminal proceedings resolved by closing case, according to art. 16 para. (1) lit. a-d of the Code of Criminal Procedure, or acquittal is unconstitutional*".

It should also be noted that this decision of the Constitutional Court was not adopted unanimously by votes, and there is a separate opinion that the exception of unconstitutionality should have been rejected as unfounded, because the constitutional court cannot assume the role of positive legislator by adding new cases of judicial error to those provided by law, in other words it cannot replace the legislator by creating, repealing or amending legal norms.

Whereas, from the moment of publication in the Official Gazette (May 12, 2021), the Decision of the Constitutional Court no. 136/2021 has become mandatory, it has as effect the need to operate legislative interventions to bring the provisions of the Code of Criminal Procedure in line with the provisions of the Constitution.

4. LEGISLATIVE INTERVENTIONS PLANNED BY THE DRAFT LAW AMENDING AND COMPLETING THE CRIMINAL PROCEDURE CODE

As it appears from the Explanatory Memorandum of the most recent draft law for amending and supplementing Law no. 135/2010 on the Code of Criminal Procedure *(subject to public debate by the Ministry of Justice on 2 September 2021 and submitted to the Government for approval on 2 June 2022)*, in order to reconcile the provisions or legislative solutions declared unconstitutional with the provisions of the Constitution, in order to compliance with the Decision of the Constitutional Court no. 136/2021, the following legislative interventions were proposed:

- modification of para. (5) in art. 9 CCP, in order to regulate, in principle, the right to reparation of the damage also in the case of the person who was unjustly deprived of liberty during the criminal trial;

- modification of art. 539 CCP, in order to regulate the procedure for reparation of the damage also in the case of the person unjustly deprived of liberty during the criminal trial;

- modification of art. 542 CCP (which has as object the regulation of the action in regress), in order to be correlated with the amendments brought to art. 539 CCP.

However, we note that, in addition to the changes expected in order to implement the Decision of the Constitutional Court no. 136/2021, other legislative interventions were proposed in connection with the provisions regarding the reparation of the damage.

► Thus, we find that the new content of art. 539 CCP (proposed by the draft law) expressly limits the possibility of exercising the right to reparation only to deprivation of liberty by preventive measures.

It is true that, strictly related to the current content of para. (2) in art. 539 of the Criminal Procedure Code, even today this special procedure cannot be used (accessed) by the person who invokes an illegal deprivation of liberty through the safety measure of medical hospitalization, as long as the illegal deprivation of liberty must be established only by the acts expressly provided for in this paragraph (namely: the prosecutor's ordinance, the final conclusion of the judge of rights and freedoms or the judge of the preliminary chamber, the final conclusion or the final decision of the court invested with the trial of the case).

According to the provisions of the General Part of the current Code of Criminal Procedure [art. 248 para. (8) and art. 248 para. (13)], regarding the taking of the safety measure of medical hospitalization, the judge (judge of rights and freedoms or judge of the preliminary chamber) or the court decides on the prosecutor's proposal by decision which can be challenged within 5 days from the pronouncement. The introduction of the contestation does not suspend the implementation of the safety measure.

This means that, if the contestation is admitted and the safety measure is found to be unlawful, the person against whom the measure was taken should be able to seek redress, the unlawful deprivation of liberty being established by the final judgment (namely the decision) by which the contestation was resolved.

Or, among the procedural acts listed exhaustively in para. (2) in art. 539 CCP, regarding the establishment of the illegal character of the deprivation of liberty, is mentioned only the final conclusion of the judge of rights and freedoms / judge of the preliminary chamber.

It should be emphasized that, according to art. 5 paragraph 5 of the European Convention, has the right to reparation ”any person who is the victim of an arrest *or detention* under conditions contrary to the provisions of this article”; therefore, not only arrest, as a precautionary measure, but also any other form of illegal detention (such as temporary involuntary medical hospitalization, as a safety measure) entitles the victim to reparation, as established by the case law of

the European Court of Human Rights *(Dragomir v. Romania, decision on application no. 59064/11, pronounced on June 3, 2014; N. v. Romania, decision on application no. 59152/08, pronounced on November 28, 2017).*

Even if the Romanian courts, in the direct application of art. 5 paragraph 5 of the European Convention, as well as of art. 52 para. (3) thesis I of the Constitution, may admit the action for reparations in case of illegal deprivation of liberty by safety measure, the level of protection established by the European Convention can be ensured by an amendment of the Code of Criminal Procedure, in order to extend the restrictive framework current application of the special damage repair procedure.

► Also, without any connection with the Decision of the Constitutional Court no. 136/2021, through the draft law for amending and supplementing Law no. 135/2010 on the Code of Criminal Procedure, it is proposed to introduce provisions on the right to compensation for damage in case of illegal surveillance measures (art. 539^1 CCP), providing that this right to benefit any person which has been disposed of, confirmed, extended or, as the case may be, a technical surveillance measure has been illegally enforced; the illegality of the technical surveillance measure is to be determined, where appropriate, by:

- the reasoned conclusion (in the sense of a decision), which is not subject to any way of attack, by which the judge of the preliminary chamber admits the complaint against the measure *(way of attack which is also proposed to be regulated by the draft law amending the Code of Criminal Procedure, for implementing the Decision of the Constitutional Court no. 244/2017);*

- the final conclusion (in the sense of a decision) by which the judge of the preliminary chamber, in the cases in which the initiation of the criminal action was ordered, decides on the complaint against the closing case solution after verifying the legality of the administration of evidence and the conduct of the criminal investigation;

- the final conclusion (in the sense of a decision) by which the judge of the preliminary chamber decides, in the preliminary chamber procedure, on the requests and exceptions formulated or of the exceptions raised ex officio.

We note that the proposal to introduce these provisions is based on another decision of the Constitutional Court *(Decision no. 244/2017)*, in which it was stated, based on an examination of the jurisprudence of the European Court of Human Rights, that the effectiveness of the way of attack against the technical surveillance measure is also analyzed according to the possibility of the petitioner to request "compensation for the interference suffered".

CONCLUSIONS

In conclusion, welcoming the amendment of the current Code of Criminal Procedure in order to reconcile with the Basic Law the provisions or legislative

solutions declared unconstitutional, we consider that the subsequent legislative interventions should extend the procedural framework of the application of the special procedure for reparation and deprivation of liberty by measures other than preventive measures.

Moreover, as we have shown above, the regulation in the Code of Criminal Procedure of 1968 (following the amendment made by Law no. 281/2003) made it possible to use the special procedure for reparation of damage and in the case of deprivation of liberty by the safety measure of medical hospitalization.

In this sense, in the context of the legislative changes envisaged by the draft law initiated by the Ministry of Justice, we propose that in the new content of art. 539 CCP to use the phrase "custodial measure" (as in the current regulation) instead of "preventive custodial measure" (as in the mentioned project).

At the same time, for the same purpose of ensuring under criminal procedural aspect the level of protection established by art. 5 paragraph 5 of the European Convention, we propose that para. (2) in art. 539 CCP to be formulated as follows: "(2) The situations provided in para. (1) are proved by ordinance of the prosecutor, by final decision of the judge of rights and freedoms, of the judge of the preliminary chamber or of the court invested with the trial of the case or with the settlement of a way of attack in that case, or, as the case may be, by the final acquittal decision". Such a text of law would make it possible to use this special procedure, guaranteeing the exercise of the right to reparation for all situations of illegal or unjust deprivation of liberty.

On the other hand, given that the proposed amendment to the Code of Criminal Procedure shows that the initiator of the bill intends to establish a higher level of protection of fundamental rights than that enshrined in the Constitution and the European Convention for the Protection of Human Rights, by introducing provisions on the right to compensation for damage in the case of illegally ordered technical surveillance measures (thus, an additional protection of the right to privacy), the possibility of introducing provisions on the right to compensation in the event of unlawful or unjustified restriction of liberty during criminal proceedings (as additional protection of the right to liberty and security) may also be questioned.

An argument for questioning the possibility of extending the scope of application of the special procedure for reparation of damage and in the case of restrictive measures of freedom is the fact that, as noted by the Constitutional Court (in the recitals of Decision no. 48/2016), art. 5 paragraph 5 of the European Convention establishes a minimum standard of protection, "Member States being entitled to provide, through national law, increased legal protection for individual liberty, by regulating the right to reparation and in other situations than those expressly resulting from the rule of art. 5 paragraph 5 of the Convention".

Moreover, as we have already shown, in the regulation of the Code of Criminal Procedure of 1968 (following the amendments operated by Law no. 281/2003), the special procedure for reparation of damage also applies in the case of restrictive measures of liberty.

Since the appreciation of the opportunity to reintroduce, such provisions belong to the legislator, this being an aspect of state criminal policy, we do not make a concrete proposal by law ferenda in this regard, but we specify that such legislative intervention would involve amending / supplementing both art. 539 CCP, as well as of para. (5) in art. 9 CCP [which would thus be correlated with para. (2) of the same article].

We note that the phrase "or in other cases" within the name of Chapter VI of Title IV of the Special Part of the Code of Criminal Procedure allows the introduction of such provisions, without any change in this name.

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GOVERNMENT RESHUFFLE BY CHANGING THE POLITICAL COMPOSITION OF THE GOVERNMENT AND THE GOVERNING PROGRAM

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Abstract

The concept of government has emerged since ancient times in history, even though it has been regarded by some as an absolute necessity and by others as indispensable for the defense of the rights and freedom of mankind.

Thomas Hobbes, reported in his work, that men in their natural state were in a continual war, and therefore argued that it was necessary for men to conclude a social contract, by which they invested all power in a third party, called the sovereign, which in turn, he gave them the security and rule of law.

At odds with Hobbes, John Locke described the state of nature as a state in which people coexist in relative harmony, without the existence of a political power to protect and judge each other.

Nowadays, when we talk about government, we think of that political institution, designed to lead and coordinate the entire administrative activity of the country. In other words, we are referring to the Government in a strict sense, namely to a political institution, which, we will see in the following, can be an emanation of the Parliament and the President, as is the case with Romania.

Key words: *Government reshuffle, government, political composition, government program.*

INTRODUCTION

From the political legacy received from Aristotle, John Locke, and Charles de Montesquieu, we know with certainty that the powers of the state are legislative, executive, and judicial. What is important to note is that these three powers should not be viewed in an isolated way, one from the other, with a certain balance between them, achieved by various means, known as means of mutual control.

These means can be grouped into two categories, namely: The means of action and control of the legislature over the executive, and the means of action and control carried out by the executive over the legislature.

The action and control exercised by the legislature over the executive is materialized by the appointment of various structures and persons that compose the executive power, for example: The appointment of the head of state by the Parliament, as well as the appointment by the Parliament of the Government *(Boc, 2000, pp. 28-31).*

Also in the category of control and action of the legislature over the executive, we include: The motion of censure, questions and interpellations, as well as the committees of inquiry *(Boc, 2000, pg. 33-37).*

In the second category, we include: The right of the Executive to dissolve the Parliament, legislative interference of the Executive, which materializes through the legislative delegation, carried out by the Government, through the modalities provided by the enabling law, or by the Constitution, as the case may be, the promulgation of the law and the right of veto, the legislative initiative and the budgetary prerogatives. It is essential to note that in addition to those already presented, the executive still exercises a certain influence on the legislature through the right of the head of state to close and open sessions of Parliament, as in the case of constitutional monarchies, by addressing messages on the state of the nation, How this procedure is well known in the United States *(Boc, 2000, p. 39-44).*

Another way to achieve the interference of the executive assumes the legislature is the referendum. The referendum is the way in which the Electoral Body decides on an important issue, usually of national interest. The referendum is of three kinds, optional, mandatory and abrogative, and is a primary means of achieving direct democracy *(Boc, 2000, p. 44).*

By referendum, the people directly participate in political life, participate directly in the making of decisions of national importance, as was the case in the 2009 referendum, by which the President of Romania, from that date, decided to organize a referendum to submit to the direct will of the people, the measure of reducing the number of MPs, referendum, which unfortunately did not have this goal, being an advisory referendum, as well as the local referendum, by which the mayor of the administrative-territorial unit is trying to be dismissed. We can say about the referendum that it is similar to direct democracy in Greek polisies.

The geographical and numerical dimension of contemporary States practically excludes the use of such a formula, used in ancient democracy, which is still found today only in certain Swiss cantons. Direct democracy, according to the suggestive expression of I.. Deleanu, "*has long passed into the world of memories, along with the oil lamp and the sail marine"* (Boc, 2000, p. 62).

Post-Decembrist Romania also adopted the system of separation of powers in the state, as stipulated in the Constitution*, "the state shall be organized according to the principle of separation and balance of powers – legislative, executive and judicial – within the framework of constitutional democracy" (Art. 1 para. 4 Constitution).*

GOVERNMENT RESHUFFLE BY CHANGING THE POLITICAL COMPOSITION OF THE GOVERNMENT AND THE GOVERNING PROGRAM

The Government reshuffle is also a method of mutual control, which can be achieved only within the executive branch, between the Government and the President, because the Executive in Romania is double-headed, and in this case, we are in the presence of a simple governmental reshuffle, as well as between the legislative and the executive, When we are in the presence of governmental reshuffle by changing the political composition of the Government and the governing program. The latter form the central theme of this Article

Government reshuffle is a change in the composition of the Government accepted by the vote of confidence of the Parliament, whereby one or more ministerial positions will be held by persons other than those who were on the initial list accepted by the Parliament. *(Boc, 2018, p. 315).*

The simple Government reshuffle is enshrined in Article 85 paragraph 2 of the Constitution, which reads as follows: *"In case of governmental reshuffle or vacancy, the President shall revoke and appoint, on the proposal of the Prime Minister, some members of the Government"* (Article 85, paragraph 2). Constitution).

As can be seen from the constitutional Article, simple governmental reshuffle is carried out by the President, at the proposal of the Prime Minister, being an emanation of the executive power, without interference of the legislature.

This type of reshuffle can be regarded as a sanction of the members of the Government, due to incompetence or other reasons related to the appreciation and political cults of the Prime Minister *(Boc, 2014, p. 4).*

In practice, the question has been asked whether the President can refuse a proposal made by the Prime Minister. The answer is yes, the President, although he has no veto right, can ask the Prime Minister once, motivated, to make a new proposal for the appointment of another person as minister. The reasons for the President's request cannot be censored by the Prime Minister, who has only the right to propose the appointment to the President, and not the decision-making power. Regarding the reasons invoked by the President, in the request for review, he is politically responsible to the electorate, about how he motivated the refusal made by the Prime Minister, and the Government are politically responsible to the Parliament *(Constitutional Court Decision no. 98/2008).*

The entire constitutional court has established that just as the Parliament does not have the right to veto, but only exercises an activity to verify the fulfillment of the conditions of compliance in office, so the President does not have the right to veto the Prime Minister's proposal, it is only the right to check the suitability of the candidate for office, and may ask the prime minister for another proposal for a candidate for office. In all cases, the retrial must be reasoned *(Constitutional Court Decision no. 356/2007).*

Another question that was asked was whether the Prime Minister can propose again the same person as a condition, who was previously rejected by the President?

The Constitutional Court has also settled this issue, establishing that the possibility of the Prime Minister to reiterate the first proposal is excluded, the Prime Minister having the obligation to appoint another person *(Constitutional Court Decision no. 98/2008).*

1. GOVERNMENT RESHUFFLE BY CHANGING THE POLITICAL COMPOSITION OF THE GOVERNMENT AND THE GOVERNING PROGRAM

If the simple government reshuffle is the exclement of the executive power, in the case of reshuffling through which the political composition of the Government changes, the Parliament's vote of approval is required.

The Constitution stipulates that *"if the reshuffle proposal changes the structure or political composition of the Government, the President of Romania shall be able to exercise the attribution provided for in paragraph (2) only on the basis of the approval of the Parliament, granted on the proposal of the Prime Minister" (art. 85 paragraph 3, Constitution).*

From the above Article, it appears that we were dealing with a governmental reshuffle which has as a consequence the change of the structure or political composition of the Government, this implies that either the number of members of the Government is increased or decreased, As well as the situation in which either one or more parties are co-opted to the government, or one or more parties are removed from the government, in this case, parliamentary control exercised by a vote approving the new government *(Muraru, Tanasescu, 2019, p. 757)* is required.

In this situation, the Parliament's approval is required for the President to be able to reshuffle and appoint other members of the Government in office, the proposal for reshuffle is made by the Prime Minister, and is submitted to the Parliament. *(Muraru, Tanasescu, 2019, page 757-758).*

From a procedural point of view, as I mentioned above, the Prime Minister sends the proposal for a remenation to the Parliament, which will be examined by the presidents of the two chambers, after which he will submit to the joint plenum of the two chambers, the Chamber of Deputies and the Senate, the new composition of the Government.

From the constitutional provisions, it follows that the simple vote of confidence has no effect, because the competence of reshuffle belongs to the President of Romania, who will do so after the Parliament has granted the vote.

But we must not forget that without Parliament's approval, the President has no right to follow up on the reshuffle proposal, because the legal act on the basis of which the President makes the reshuffle is the Parliament's decision. It is important to note that the decision given by the Parliament is binding on the

President, and in case of non-compliance with it, the President may be suspended from office for committing a serious act.*(Ionescu, 2013, p. 435).*

In the practice of governmental reshuffle by changing the political composition of the Government, the question was asked whether the change of the governing program with the change of political composition also involves the initiation of the procedure for the appointment of a new Prime Minister? The answer is negative, because the end of the term of prime minister automatically leads to the end of the mandate of the entire government. Under these circumstances, the President of Romania will appoint a minister to serve as interim Prime Minister until a new Government is appointed *(Boc, 2014, p. 5).*

The question that gave rise to many controversies and political opinions is whether by changing the political composition of the Government is necessary an update of the governing program? Some authors would be tempted to reply that there is no need for an update, because the Government is politically accountable to Parliament, which can at any time initiate a no-confidence motion, However, we believe that it would be more appropriate for any governmental reshuffler that changes the political composition of the Government to automatically lead to a debate on the governing program *(Boc, 2014, p. 6).*

Although the wording of the constitutional text leaves room for interpretation regarding the debate on the governing program, in the case of a governmental reshuffle, through which the political composition of the Government is changed, the reshuffle should be accompanied by the Government's commitment to the governing program. The reason is very simple, it is inevitable that the reshuffle will not affect the governing program, for example, if a new party is co-opted into the government, it certainly comes with some reforms it wants to implement as part of the executive *(think about the importance of the government's strategy and program in the field of public finance, Cîrmaciu Diana, 2010, p. 21).*

We consider it appropriate for both constitutional procedures to be exercised simultaneously, namely the Prime Minister when notifying the Parliament with the proposal for a Government reshuffle to trigger the procedure for the Government's liability under Article 114 of the Constitution, so that the Parliament will also analyze the new governing program. The two procedures involve different deadlines, because the reshuffle does not require a long period of time, because in this procedure, the candidates proposed for ministerial portfolios are heard in the specialized committees, and the vote is given in the joint plenary of the Parliament, while in the case of the Government's accountability, The time is longer, as it may lead to the submission of a motion of censure, with a term fixed by the Constitution. *(Boc, 2014, p. 8).*

As regards voting orders in Parliament, we believe that the procedure for the Government's accountability on the governing program should first be voted

on and subsequently the vote on the composition of the Government. The order is a logical one, because the Prime Minister comes before the Parliament and presents how he will govern the country, on the basis of what program of government, and in what composition. The reason for order is this, if the Parliament dismiss the Government by no-confidence motion, the governmental reshuffle by changing the political composition of the Government remains without object. *(Boc, 2014, p. 8)*.

CONCLUSIONS

In conclusion, the governmental reshuffle by changing the political composition of the Government is a way of mutual control by the legislature over the executive.

The important thing to note is that the update of the governing program should be carried out immediately, through the procedure of committing the Government's responsibility over the governing program, because it is inefficient to change the structure, but not to have a realistic and credible program to achieve the governing act.

Regarding the content of paragraph 3 of Article 85 of the Constitution, I believe that it should have the following content, in order to remove any arbitrary interpretations: "If the reshuffle proposal changes the structure or political composition of the Government, the President will be able to exercise the attribution provided for in paragraph 2 only after the Parliament has voted on both the proposal to change the political structure and the governing program assumed by the Government."

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VICTIMS AND PERPETRATORS IN CYBERBULLYING

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Abstract

Starting from the definition and the framework that regulates the phenomenon of cyberbullying, the article aimed to present and analyze the main aspects related to the victims and criminals involved in this phenomenon. Cyberbullying refers to illegal actions that intentionally and repeatedly cause harm to minors through new technologies.

The article analyzes issues related to the motivation and typology of criminals, the impact of the cyberbullying phenomenon among victims and the causes of this illegal behaviour.

Key words: *cyberbullying, victims, cyberbully, cyberspace.*

INTRODUCTION

Currently, there is no internationally recognized definition of cyberbullying, which refers to the use of information and communication technology or other electronic communication devices by a person in order to harass, intimidate, threaten, to humiliate or cause harm to the persons affected by this illegal conduct *(McQuade III, Colt, Meyer, 2009, pp. 21-22).*

Cyberbullying uses electronic information and communication devices such as e-mail, instant messaging, text messages, blogs, cell phones, pagers, instant messaging, and defamatory Web sites for the purpose of harassing a minor or a group of minors through personal attacks or other means.

Hence, the phenomenon of cyberbullying can be defined as the willful and repeated harm caused through the medium of cyberspace *(Siegel, 2012, p. 532).* We underline that, like the real space, a cyberbully is a malicious aggressors who seeks implicit or explicit pleasure or profit by physically or mentally harming other people individually.

Cyberbullying is a form of harassment through computer systems only of minors, as this illegal behaviour involves only minors, both as criminals and as victims.

In the speciality literature *(Siegel, 2012, p. 532)* it was emphasized that there are two major formats that cyberbullies can use to harass their victims: a cyberbully can use an information system, such as the computer and send harassing e-mails or instant messages to threaten, insult or frighten victims or may use computer systems to spread and disseminate the defamatory content of the transmitted messages; the cyberbully may use another information system such as a mobile phone to send text messages with harassing content to the victim.

The phenomenon of cyberbullying can target both a child and several groups of children. We highlight the fact that cyberbullying does not involve adults who want to intimidate and harass minors. If the offenders are adults, then we are no longer in the presence of the phenomenon of cyberbullying, but of cyberstalking or grooming.

Therefore, the fundamental elements remain the same: repeated assaults, committed with the intention of causing harm to one or more young people or children. We believe that in most cases of cyberbullying, these illicit behaviours must be intentional, repeated and aggressive.

Teenage girls are much more likely to be cyberbullied and become victims of cyberbullying than teenage boys.

Regarding perpetrators, the type of cyberbullies differ by gender as well. So, boys post or spread images or videos that disturb, displease or scare potential victims of cyberbullying, while girls usually spread rumours about other young people.

1. THE REGULATION OF CYBERBULLYING

At the European and international level there are few countries that have developed laws against cyberbullying.

At the present time, given the forms, technological means and methods of cyberbullying, they can be investigated in accordance with the criminal laws of the national states, which already criminalize acts of threat, harassment and use of electronic communications that cause harm.

Although cyberbullying is not expressly criminalized within the legal instruments in the field of cybercrime at the international and European level, national states have begun to develop specific regulations to criminalize cyberbullying or to develop provisions that include certain forms of harassment carried out through electronic communications alongside traditional forms of harassment that take place in real space.

In Romania, the phenomenon of cyberbullying is regulated under Article 208 of the Romanian Criminal Code, which refers to the crime of harassment. However, recently, Romanian legislators chose to expressly regulate cyberbullying behavior in Law no. 221/18.11.2019 for the amendment and completion of the National Education Law no. 1/2011, which defines in the

content of Article 1 point 6, for the first time expressly, the phenomenon of bullying committed in the real space and in the cyberspace.

We believe that all international, European and national legislators must cooperate to develop a uniform legal framework in the field of cyberbullying, as it has become a phenomenon that is present daily in schools and that affects many children and adolescents , by causing serious physical and mental harm.

2. THE MOTIVATIONS OF PERPETRATORS IN CYBERBULLYING

Cyberbullying occurs most of the time during school, but also outside of school, involving children or adolescents, as criminals, who use computer systems and other information and communication technology devices in order to threaten, harass or intimidate other children or teenagers, who become victims.

According to specialized literature, the most frequently encountered motivations are the following *(Easttom, Taylor, 2011, p. 309):*

II.1 Low self-esteem

Some cyberbullies have a sense of low self-esteem, and by denigrating other people they can feel better. The Internet allows ccyberbullies to denigrate other people from a distance. Most cyberbullies have low self-esteem, and by insulting and threatening other young people, they feel much better.

II.2 Obsession

În some cases the cyberbully becomes obsessed with the target he wants to harass, because he has some unrequited feelings towards the victim. There are situations in practice when cyberbullying can start even if the relationship between the cyberbully and the victim ends against the will of the perpetrator.

II.3 Revenge

In some cases, the cyberbully wants to take revenge on the victim due to some injustices, regardless of whether they are real or imaginary. The cyberbully believes that only by causing significant harm to the victim through online harassment,he will consider himself avenged against this injustice. Cyberbullies may be motivated by revenge, often feeling aggrieved.

II.4 Mental instability

There are cases in which the cyberbully presents a mental instability and can harass a person due to some illusions that he has.

Another motivation of cyberbullies can simply be the desire to have fun at the expense of other children or teenagers.

3. THE CAUSES OF THE CYBERBULLYING PHENOMENON

Cyberbullying can be committed for many reasons. In some cases, this may be a consequence of Internet addiction and the cyberbully's ability to establish normal, healthy relationships that has been compromised.

Relationships, work and daily life can be severely affected as a result of obsessive internet use. This is in stark contrast to productive use of online time.

People often develop a preference for online interactions rather than everyday physical interactions.

Cyberbullying occurs because relationships, work and daily life are severely affected as a result of obsessive internet use.

Another cause of the emergence of the phenomenon of cyberbullying is that young people and children have developed a preference to interact in cyberspace, rather than to interact physically in current activities.

This situation leads to the impossibility of young people and children to participate in a number of useful daily activities, as they choose to stay connected to information and communication technology through a mobile phone or a smartphone, an electronic tablet or a personal digital assistant.

We believe that the main cause of the emergence of the phenomenon of cyberbullying is related to Internet addiction, this being defined as any compulsive online-related behaviour that interferes with normal life and causes severe stress on family, friends, loved ones and the work environment of at school, college or work *(The National Centre for Cyberstalking Research, University of Bedfordshire, 2015, p. 32).*

Internet addiction is very similar to other addictions, such as alcohol or drug addiction, providing the necessary support that a teenager or child needs to overcome a failure or emotional frustration, thus becoming an addicted person.

Cyberbullying perpetrators choose to satisfy all their unbridled desires or compulsions in cyberspace by directly harassing young people or children.

In the specialized literature *(The National Centre for Cyberstalking Research, University of Bedfordshire, 2015, pp. 33-34)*, other dependencies or constraints that cause the phenomenon of cyberbullying have been identified, such as: cyber-relationship addiction; Internet compulsions; cybersex and pornography addiction.

Related to cyber-relationship addiction, information and communication technology has determined that young people, teenagers and children establish friendships much more easily in the online environment, because these people are less inhibited than in the real space. Many times young people have different fantasies and in order not to have any emotional disappointments, they tend not to reveal their real age, gender, or job to those they interact with in the online environment, offering false data to the interlocutors.

In connection with the Internet compulsions, the use of gambling in the online space, especially online casinos and auctions and games that use the opportunity for players to construct alternative identities, have disrupted the daily activities of young people, even affecting family relationships and other aspects of everyday life. Therefore, the level of self-isolation of teenagers has increased because they spend a lot of time in the virtual field of these games, and young people can become both perpetrators and victims of cyberbullying.

Related to cybersex and pornography addiction, we underlne that the excessive use of information and communications technology has led young people and teenagers to contact chat room services or the pornography industry on the Internet, all this situation contributing to the to the generation of the phenomenon of cyberbullying. Due to the inappropriate use of the Internet, the emotional health and activity of young people at school or at work has been seriously affected.

Therefore, young people choose to commit acts of cyberbullying, these illegal behaviors are the only way for them to free themselves from negative emotions, stress or other depressive states.

We emphasize the fact that some children or teenagers reported that they were victims of cyberbullying because of their physical appearance, while many adolescents reported that they were victims of cyberbullying as a result of aspects related to their sex life.

Other causes of committing acts of cyberbullying are the following *(McQuade III, Colt, Meyer, 2009, pp. 66-71):*

III.1 Social networks and social computing

Social networks, such as Facebook, YouTube, MySpace, are tools of new technologies that allow cyberbullying to be committed, as criminals more easily lure victims of cyberbullying on these networks.

Social computing applications take the form of instant messaging clients, chat rooms, forums or community forums, and blog-style social networking sites. Teens and young participants can exclude or include people in these online interaction groups *(Silde, 2014, pp. 5-6).*

Privacy controls are an essential part of identifying who can and cannot visit a personal web page or contact a young person or teenager through a social computing service. Given the potential flaws in computer coding, illegal exploits have been discovered in the privacy settings of software such as those used by social networking firms such as MySpace and Facebook.

When this happens, personal information posted by millions of young participants can become known, despite their efforts to prevent certain information from becoming public knowledge, and cyberbullies can commit acts of online harassment by using this personal data of victims.

III.2 Insufficient responsibility and discipline on the part of actors involved in preventing and combating cyberbullying

The lack of express regulations in the criminal legislation regarding cyberbullying, means that the law enforcement bodies do not act with maximum efficiency in combating and preventing this illegal behaviour.

The parents of the victims of cyberbullying, as well as the parents of perpetrators, are not always informed by law enforcement bodies about the criminal investigation of this illegal behaviour, about the physical and psychological consequences and damages caused by cyberbullying.

Thus, in the case of cyberbullying, school officials may not urgently contact parents of victims and perpetrators when cyberbullying is committed in schools.

Many parents do not take the time to monitor their children's use of information and communications technology resources, so they fail to discipline their children when they misuse the online environment. Moreover, some parents allow their children from the early grades at school to interact many hours a day on the Internet with the help of information systems, they often fail to discipline the children when they make mistakes or misbehave online.

We notice that both school and juvenile justice officials do not act firmly in combating the phenomenon of cyberbullying when victims of cyberbullying are identified.

III.3. Failure to report the acts of cyberbullying

Another societal cause of cyberbullying is the lack of timely reporting of online abuses that are committed and the determination of parents and victims of cyberbullying to take matters into their own hands and resolve their situation themselves.

Parents of victims do not report cyberbullying to school administrators or to the law enforcement bodies, except in extreme cases, primarily because they are unaware of the problems their children are facing, or they believe that this illegal behavior is not a significant problem.

Morever, we note that both parents of youth or children and the victims of cyberbullying refuse to report cyberbullying because in its initial stages, the cyberbullying does not seem that serious.

4. THE IMPACT OF CYBERSTALKING ON VICTIMS

Cyberbullying occurs most often during school, but also in other places, such as a workplace, involving children or teenagers, as perpetrators, using computer systems in order to offend, threaten, harass or to intimidate other children or teenagers, who become victims of this illegal behaviour.

Victims of cyberbullying suffer physical and moral damages both in the short term and in the long term *(Moise, 2020, pp. 348-349)*.

Criminological studies of cyberbullying suggest that there are short and long term consequences for both perpetrators and victims of cyberbullying *(Siegel, 2012, p. 532).* Thus, students who are chronically cyberbullied experience more physical and psychological problems than their peers who are not cyberbullied by other children and tend not to outgrow the victim role.

It was shown that young people abused by their peers, decided not to go to school and therefore some of the children no longer connected with the school system, some of them even dropped out of school and therefore missed out on educational progress. Other criminological studies have shown that victims of

cyberbullying in early elementary grades also reported being cyberbullied several years later *(Silde, 2014, pp. 68-72).*

We highlight that some students affected by cyberbullying over a long period of time may be at increased risk of depression, low self-esteem and other mental health problems such as schizophrenia *(Campfield, 2008, p. 34).*

Anxious young people and young people who encounter difficulties during school and in the community regarding the phenomenon of juvenile delinquency, are more likely to commit acts of cyberbullying.

Younger elementary school children reported being cyberbullied because of their physical appearance, while high school students were cyberbullied with sexual elements *(McQuade III, Colt, Meyer, 2009, p. 113)*. Cyberbullying can be committed by a stranger to the victim, but most often the acts of cyberbullying are committed by someone known, even close to the victim *(Moise, 2020, p. 350).*

Victims of cyberbullying often believe that the people who are aggressing them are friends, they can be intimate people, such as a boyfriend or girlfriend, very often the acts of cyberbullying are related to marital relationships.

We emphasize that all victims of cyberbullying suffered from the following conditions or ailments: depression, anxiety, loneliness and low self-esteem. The phenomenon of cyberbullying affects the functioning and social and emotional development of children and teenagers.

At the same time, the victims of cyberbullying reported to law enforcement bodies, as well as representatives from hospital units, the feeling of humiliation, the fear of going to school, as well as the feeling of confusion, depression, stress, frustration, sadness, anger, embarrassment and even suicidal thoughts.

CONCLUSIONS

Due to the anonymity provided by the Internet, the phenomenon of cyberbullying can multiply, as cyberbullies frequently use false identities.

The phenomenon of cyberbullying could undergo some changes, which appear as a result of the continuous development of information and communications technology.

Cyberbullies are constantly adapting their ways of operating to the constant changes in information and communications technology.

And because technology in society is always changing and affecting the communities in which people live, our view is that we need to think of cyberbullying as ethical, attitudinal and behavioral issues, not primarily a technological issue.

In order to prevent and combat the phenomenon of cyberbullying, we believe that all actors involved in preventing and combating this phenomenon should cooperate, and here we mean the parents of victims and criminals in the

field of cyberbullying, representatives of school units and enforcement bodies of the law.

We believe that the legislators at the national, European and international level must start taking steps so that the phenomenon of cyberbullying is expressly criminalized in the criminal legislation of the national states.

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THE LEGAL FORCE OF THE PRINCIPLES APPLIED BY COURT OF JUSTICE OF THE EUROPEAN UNION

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Abstract

The Court of Justice of the European Union applies, in addition to the general principles of law, other principles in the cases brought before it, which are used by the Member States and, in particular, by the courts. One category includes fundamental human rights, which are regarded as a variety of general principles. Another category of principles guides the procedure for deciding cases before national courts, namely: the principle of respect for the rights of the defence, the principle of equality, the principle of legal certainty, etc. All have been applied by the Court of Justice of the European Union since the European Communities were founded.

Key words: *Court of Justice of the European Union; member states; courts; general principles; fundamental rights; European Union Treaties.*

INTRODUCTION

Fundamental human rights are a special category of general **principles** *(I. Boghirnea, C. Dinică, M. Dinică, 2011, pp. 333-342; Ioana-Nely Militaru, 2017, p. 155 et seq.)*, constituting, we can say, the majority of them *(O. Ținca, 1999, p. 205)*; the founding Treaties of the European Communities have not provided in their contents express or general provisions in this regard.

1. FUNDAMENTAL HUMAN RIGHTS[1]

The subsequent Treaties, however, contain such provisions, as follows *(O. Manolache, 2006, pp. 26-28):*

☞ The Maastricht Treaty, in Art. 6 par. 1: "The Union is founded on the principles of democracy, respect for human rights and fundamental freedoms, and the rule of law, principles which are common to the Member States"; in para. 2: "The Union shall respect fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms signed in Rome on 4 November 1950[2] , and as they result from the constitutional traditions common to the Member States, all of which are considered to be general principles of Community law", today of the European Union;

☞ The Treaty of Amsterdam introduced new provisions on this matter into the TEU (Maastricht Treaty), which were subsequently amended by the Treaty of Nice in Article 7(1), as follows: "The Council, meeting in the composition of the Heads of State and/or Government and acting unanimously on a proposal from one third of the Member States or from the Commission and after obtaining the assent of the European Parliament, may determine the existence of a serious and persistent breach by a Member of the principles set out in Article 6(1) of the Treaty on European Union. 1 (...), in which case it may decide to suspend certain rights of the Member State"[3] .

In 1969[4] and 1970[5], the Court of Justice ruled that fundamental rights form an integral part of the general principles of law, drawing on common constitutional traditions, and that their observance is an obligation requiring a guarantee which meets the objectives of the Community.

In 1974[6], the Court made the following clarifications *(G. Isaac, M. Blanquet, 2001, pp. 178-179)* which are considered important from a case-law perspective:

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[1] There are other general principles applied by the Court of Justice than those presented in the text of this paper, namely: the right to property, the principle of unjust enrichment, the right to freedom to pursue economic activities, the recognition of self-defence, force majeure and state of necessity, the possibility of assignment of rights, respect for legal certainty, non-retroactivity of criminal law, the principle of legitimate expectations, the principle of equality in the field of economic regulation, respect for acquired rights, respect for professional and business secrecy, respect for private and family life, the right to freedom of expression, the principle of good administration in relations with Member States, the principle of protection against arbitrary or disproportionate interference by public authorities, the *nulla poena sine lege* principle, freedom of religion, the right to an effective judicial remedy.

[2] It entered into force on 3 September 1953.

[3] The provision is almost identical to that contained in Article 7 of the Lisbon Treaty (TEU).

[4] ECJ, 26/69, *Stauder*, 12 November 1969, ECR 419.

[5] ECJ, 11/70, *Internationale Handelsgesellschaft*, 17 December 1970, ECR 1125.

[6] ECJ, 4/73, Nöld, 14 May 1974, ECR 491.

- in the field of fundamental rights, the general principles of law to be applied at Community level are the national guarantees with the highest degree of transposition;

- by means of general principles, the provisions of the European Convention on Human Rights and Fundamental Freedoms are integrated -into the Community legal order, i.e. the European Union (today), as a minimum standard of applicability;

- these fundamental rights, which must be taken into account in relation to the social significance of the goods and/or activities protected, may be subject to certain limits in order to achieve objectives of general interest pursued by the Community/Union, provided that these rights are not prejudiced.

-The Joint Declaration of 5 April 1977 by the institutions of the Parliament, the Council and the Commission stressed the paramount importance which these Union structures attach to respect for fundamental rights, as they result from the provisions of the constitutions of the Member States and the European Convention on Human Rights and Fundamental Freedoms of Rome (1950). With regard to this Convention, the Court of Justice of the EU, in 1986, stated that it is the primary reference on fundamental rights[7] .

Thus, the Court has held that where a Member State refers to the provisions of the EU Treaties in order to justify a national provision which is capable of hindering the exercise of a right guaranteed by the Treaty, this justification provided for by Community law must be interpreted in the light of the general principles of law and, in particular, in the light of fundamental rights[8] .

The European Communities were concerned about acceding to the Convention, but the Court of Justice of the EU, on 28 March 1996, in an opinion, considered that - at the time - the Communities were not in a position to conclude international agreements to this effect[9] and also did not have the right to adopt Community rules on human rights *(O. Ţinca, 1999, p. 206; P. Manin, 1997, p. 291).*

☞ At the Nice European Council on 7 November 2000, the institutions of the European Parliament, the Council of the European Union and the Commission solemnly proclaimed the Charter of Fundamental Human Rights. It was drawn up by a convention of 30 representatives from national parliaments, 16 representatives from the members of the European Parliament, 15 personal representatives of the Heads of State or Government and one Commissioner

[7] ECJ, 222/84, *Johnston*, 15 May 1986, ECR 1663.
[8] ECJ, 209/90 I, *Commission v. Germany*, 8 April 1992, ECR 2639.
[9] By the Treaty of Lisbon "the Union accedes to the Convention (...)"; see Art. 6 par. 2 TEU.

representing the Commission *(V. Constantinesco, 2002, p. 816; O. Manolache, 2006, p. 29)*[10].

- It was pointed out that this proclamation makes the protection of fundamental rights at Union level more visible and transparent for the Union citizen, and the Court of Justice in Luxembourg will be entitled in the future to refer to the Charter when examining the compatibility of a specific (EU) act with fundamental rights. This gives the Charter the exclusive status of a genuine interpretation of the legal principles laid down in Article 6 TEU, all the more so since it was unanimously approved by the national governments and parliaments of the Member States[11].

A clear distinction between fundamental human rights and other principles of law could not be established, therefore their application is confusing[12].

For example, the Luxembourg Court has validated such principles, but they can also fall under the category of human rights. Here we also include, for example, the following principles: the fundamental right to inviolability of the home (this is a principle common to all the legal systems of the Member States), the right to form trade unions (this is expressly provided for in international reference documents) [13], the principle of democracy (this is reflected in the need for Union citizens to participate in the European Parliament, as a representative assembly) [14], the right to respect for private life (this derives from the common constitutional traditions of the Member States), the right of all persons in adversarial proceedings to a fair trial *(For a detailed analysis of these principles - O. Manolache, 2006, pp. 29-33).*

☞ In the Lisbon Treaty, according to Art. 6 par. 1 TEU, "the Union recognises the rights, freedoms and principles set out in the Charter of Fundamental Rights of the European Union of 7 December 2000, as adapted on 12 December in Strasbourg, which has the same legal value as the Treaties.

Next, par. 2 of Article 6 TEU states that the Union shall accede to the European Convention for the Protection of Human Rights and Fundamental Freedoms. Fundamental rights, as guaranteed by the European Convention for the

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[10] The proclamation was made jointly by the Presidents of the Council, Parliament and Commission on
7 December 2000 - Bull. E.U. No 12/2000, pp. 171-177.

[11] *Ditto.*

[12] *Ditto.*

[13] For example, the Universal Declaration of Human Rights, adopted by the UN in 1948; the European Convention on Human Rights of 1950; the International Labour Organisation Convention No 87/1948 concerning Freedom of Association and Protection of the Right to Organise; the International Covenant on Civil and Political Rights, adopted by the UN in 1966; the International Covenant on Economic, Social and Cultural Rights, adopted by the UN in 1966, etc.

[14] According to Article 43 para. (2) TEC, consultation of the Parliament is required as a means by which it participates in the Community legislative process, as an essential factor in the institutional balance sought by the Treaty.

Protection of Human Rights and Fundamental Freedoms, as they result from the constitutional traditions of the Member States, fall within the category of general principles of Union law *(T. Avrigeanu, 2010, pp. 70-84).*

☞ Scope of the Charter *(in accordance with Article 51 of the Charter).*

The provisions of the Charter of Fundamental Rights are addressed to the institutions, bodies, offices and agencies of the Union (subject to respect for the principle of subsidiarity) and to the Member States only in so far as these structures apply Union law.

These institutions, bodies, offices and agencies of the Union and the Member States shall respect those rights and principles and promote their application within their limits:

their - duties;

- powers conferred on the Union by the Treaties.

In the same sense, the Charter:

does- not extend the scope of Union law;

- no new tasks or competences are created for the Union;

there - is no change in the tasks and powers laid down in the Treaties.

☞ The scope of interpretation of the rights and principles contained in the Charter is expressly set out in Article 52 of the Charter.

Subject to compliance with the principle of proportionality, restrictions on the exercise of the rights and freedoms recognised by the Charter may be imposed only if they are necessary and genuinely meet objectives of general interest laid down by the Union or if they meet the need to protect the rights and freedoms of others.

The interpretation of the rights and principles that are regulated by the Charter is achieved by the fact that they are either to be found in the Charter or arise from the regulations mentioned in the order of their legal force:

European - Union Treaties; *(E.N. Vâlcu, 2012, pp.17 and following)*

- European Convention on Human Rights and Fundamental Freedoms;

- the constitutional traditions common to the Member States.

The rights recognised by the Charter, present and in the Treaties, shall be exercised under the conditions and within the limits of the provisions contained therein

Moreover, since the Charter contains rights which are reflected in the rights guaranteed by the European Convention for the Protection of Fundamental Rights and Freedoms, their meaning and scope are identical to those laid down in that Convention. Under these circumstances, European Union law gives wider and more secure protection to these rights.

In the same way, the Charter recognises fundamental rights as they result from the constitutional traditions common to the Member States, rights which are interpreted in accordance with those traditions.

With regard to the principles contained in the Charter, they will be applied as follows:

through legislation;

- by means of implementing acts adopted by the Union institutions, bodies, offices and agencies;

- by means of acts of the Member States when implementing Union law in the exercise of their powers.

Those acts, i.e. those implementing the principles laid down in the Charter, may be relied on before the courts solely for the purpose of interpreting and reviewing their legality.

The Charter also contains provisions designed to protect fundamental human rights and freedoms. Accordingly, no provision of the Charter may be interpreted as restricting or affecting these rights and freedoms, within their proper scope of application of course, by the following regulations:

European - Union law as well as international law;

- international conventions to which the European -Union or its Member States are all parties;

- European Convention for the Protection of Human Rights and Fundamental Freedoms;

- Member States' constitutions.

2. PRINCIPLE OF RESPECT FOR THE RIGHTS OF THE DEFENCE

This principle must guide the procedure before the courts of the European Union *(N.-E. Hegheș, B. Buneci, 2022, p. 7 et seq.).* In the process of applying EU law, guaranteeing 'respect for the rights of the defence' has many aspects:

☞ the right to be heard, subject to respect for the adversarial nature of the procedure, both before judicial bodies imposing financial penalties[15] and before administrative bodies, even if they are purely advisory, involving disciplinary[16] or administrative penalties[17]. In this connection, the question of hearing witnesses, whether this has been requested in specific cases, or the right to obtain information, arises. For example, in relation to documents requiring the Commission to decide whether an agreement has infringed Article 105 TFEU, under the conditions of respect for confidentiality and professional secrecy, vis-à-vis interested third parties *(O. Manolache, 2006, p. 34 and works cited therein)*;

☞ the right to assistance offered by national authorities including the right to legal assistance and representation[18] .

Cyberbullying occurs most of the time during school, but also outside of school, involving children or adolescents, as criminals, who use computer systems

[15] ECJ, 42 and 49/59, *S.N.U.P.A.T*, 22 March 1961, ECR 156.
[16] ECJ, 35/67, *Van Eick*, 11 July 1968, ECR 481.
[17] ECJ, 85/76, *Hoffmann-Laroche*, 13 February 1979, ECR 511.
[18] *Ditto*.

and other information and communication technology devices in order to threaten, harass or intimidate other children or teenagers, who become victims.

According to specialized literature, the most frequently encountered motivations are the following *(Easttom, Taylor, 2011, p. 309):*

II.1 Low self-esteem

Some cyberbullies have a sense of low self-esteem, and by denigrating other people they can feel better. The Internet allows ccyberbullies to denigrate other people from a distance. Most cyberbullies have low self-esteem, and by insulting and threatening other young people, they feel much better.

II.2 Obsession

Îin some cases the cyberbully becomes obsessed with the target he wants to harass, because he has some unrequited feelings towards the victim. There are situations in practice when cyberbullying can start even if the relationship between the cyberbully and the victim ends against the will of the perpetrator.

II.3 Revenge

In some cases, the cyberbully wants to take revenge on the victim due to some injustices, regardless of whether they are real or imaginary. The cyberbully believes that only by causing significant harm to the victim through online harassment,he will consider himself avenged against this injustice. Cyberbullies may be motivated by revenge, often feeling aggrieved.

II.4 Mental instability

There are cases in which the cyberbully presents a mental instability and can harass a person due to some illusions that he has.

Another motivation of cyberbullies can simply be the desire to have fun at the expense of other children or teenagers.

3. THE PRINCIPLE OF EQUALITY

The principle of equality prohibits discrimination on grounds of nationality or sex, which means equal treatment of parties in identical and comparable situations[19]. This principle is regulated by the provisions of the Treaties themselves, as follows:

- ☞ Article 157 TFEU prohibits discrimination between the sexes, in line with the principle that women and men should receive equal pay for equal work;
- ☞ Article 18 TFEU expressly prohibits discrimination on grounds of nationality. Thus, the institutions of the European Parliament and the Council may adopt, in accordance with the ordinary procedure under Article 294 TFEU, any rules prohibiting such discrimination;

[19] ECJ, 8/57, *Groupement des hauts fourneaux...*, 21 June 1958, ECR 223; ECJ, 265/78, *Ferwerda*, 5 March 1980, ECR 617.

- ☞ according to Article 19 TFEU, reference is made to combating discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation, through the adoption of the necessary measures by the Council, acting in accordance with a special legislative procedure, and with the consent of the European Parliament;
- ☞ according to Article 46 para. (3) TFEU, any discrimination between producers and consumers within the European Union is excluded in the common organisation of agricultural markets;
- ☞ according to other provisions, for example Articles 46, 48 and 49 TFEU *(O. Manolache, 2006, p. 34 and works cited therein)*, discrimination is prohibited in the area of free movement of goods, persons and capital.

The principle of non-discrimination applies to all legal relationships established in the territory of the Union, based on the place where they were concluded or the place where they produce their legal effects (O. Manolache, 2006, p. 34 and works cited therein). It should be noted that discrimination must be sufficiently and objectively justified and not arbitrary.

4. THE PRINCIPLE OF LEGAL CERTAINTY

The principle of legal certainty is based on the certainty which the law offers, both as regards individuals and as regards the Member States and the Community institutions *(A. Barav, C. Philip, 1993, p. 211)* and the Union. The principle of legal certainty applies in particular in the following areas *(G. Isaac, M. Blanquet, 2001, p. 180);*

- ☞ prescription and limitation.The Court of Justice imposes certain time-limits for the institutions to exercise their powers, with the aim of enabling litigants to make use of their legal remedies. By way of example, the Commission is obliged to rule within -two months on the compatibility with the TFEU of draft aid measures submitted by the Member States[20]; in the context of an action for failure to act, the applicant is also obliged to refer the matter to the institution concerned within -two months *(Article 265 TFEU)*[21] ;
- ☞ non-enforceability of an act which -has not been adequately publicised[22] ;
- ☞ non-retroactivity.

With certain exceptions, a legal act of the Union cannot produce its effects at a date prior to its publication; in the spirit of legal certainty, the Court of Justice, in certain situations, limits or rejects the retroactive effect which accompanies a judgment of interpretation or a declaration of invalidity adopted on

[20] ECJ, 120/73, *Lorentz*, 11 December 1973, ECR 1481.
[21] ECJ, 59/70, *Netherlands*, ECR 639, 6 July 1971.
[22] ECJ, 98/78, *Racke*, 25 January 1979, ECR 69.

the occasion of a preliminary reference for interpretation or examination of validity[23];

☞ legitimate expectations *(F. Hubeau, 1983, p. 143; P. Mengozzi, légitime, 1997, p. 13).* The principle is transposed from German law. In particular, it protects the addressees of Community/Union provisions against changes to the regulations in question[24] with immediate effect and without prior notification, as well as against wrongly supplied information[25];

☞ clarity and precision of the law. This principle challenges unclear formulations of Community/EU texts [26], the transposition of directives by administrative means, which by their legal nature are amendable [27] or the communication of a decision in a -language other than that of the addressees[28] .

Therefore, regulations must be *(A. Barav, C. Philip, 1993, p. 862; O. Tinca, 1999, p. 208):*

- clear and precise in order to establish with certainty the rights and obligations of the recipients;
- predictable for litigants;
- effective and also cover all cases where a transposition of a directive into national, domestic law is envisaged;
- limited in time in terms of their effects; this means that a text can only be applied exceptionally for a period prior to its publication. Also, the interpretation of Community/EU texts must be made in relation to the legal rules in force and not in relation to subsequent amendments.

5. PRINCIPLE OF RES JUDICATA

The principle, also known as non bis in idem, is governed by Art. 4 par. 1 Protocol No. 7 of the European Convention on Human Rights.

It prohibits a new assessment, with regard to the commission of an act which results either in a second sanction, in addition to the first, if liability is established for the second time, or a first sanction, if the liability not established by the first sanction is established by the -second (sanction) *(O. Manolache, 2006., p. 34).*

However, two parallel procedures have been accepted for preliminary rulings, one Community and one national - for example, in competition matters, to impose a double cartel sanction. The acceptance of such a dual procedure results from the system of shared jurisdiction between the Community and the Member

[23] ECJ, 43/75, *Defrenne*, 8 April 1976, ECR 455; ECJ, 145/79, *Roquette*, ECR 1917.
[24] ECJ, 74/74, *C.N.T.A.*, 14 May 1975, ECR 533.
[25] ECJ, 169/73, *Compagnie Continentale France*, 4 February 1975, ECR 117.
[26] ECJ, 169/80, *Société Gondrand*, 9 July 1981, ECR 1931.
[27] ECJ, 102/79, *Com. C Belgium*, 6 May 1980, ECR 1473.
[28] ECJ, 66/74, *Farrauto*, 18 February 1975, ECR 157.

States with regard to cartels[29]. In order for the procedure to apply, the offences must have been committed on Community territory and the proceedings must be brought before Community courts.

6. THE PRINCIPLE OF LOYAL COOPERATION

The principle of loyal cooperation[30], also known as the principle of solidarity, is laid down by the Court of Justice[31] and regulated in Article 4 TFEU. It derives from the very nature of Union law and involves three categories of obligations. One is positive, and is incumbent on both the Union and the Member States, and the other two are incumbent only on the Member States, of which one is positive - of a general nature - and the other is negative, as follows:

- ☞ The Union and the Member States shall respect and assist each other in carrying out their tasks under the Treaties *(Article 4 TEU, first sentence)*;
- ☞ Member States are required to take any general or special measures required to ensure fulfilment of the obligations arising out of the Treaties or resulting from action taken by the institutions of the Union *(Article 4 TEU, second sentence)*;
- ☞ Member States are obliged to refrain from any measure which could jeopardise the attainment of the objectives of the Union *(Article 4 TEU, third sentence).*

An example of loyal cooperation is that provided for in Article 13(1). (2) TEU, which states that the institutions shall cooperate in conditions of mutual loyalty.

In the same sense, an obligation of loyalty also results from Art. 24 para. (This states that "Member States shall support actively and unreservedly the common foreign and security policy (CFSP) of the Union in a spirit of loyalty and mutual solidarity (...). They shall refrain from any action contrary to the interests of the Union or likely to impair its effectiveness as a cohesive force in international relations".

CONCLUSIONS

The Court of Justice of the European Union, as the sole public authority for deciding cases brought before it, has applied and applies the (general principles of) law since the founding of the European Communities (today, the European Union).

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[29] *Ditto*.
[30] *Ibid*, p. 45.
[31] See ECJ, 374/89, *Commission v. Belgium*, 19 February 1991, ECR 1991, 2 (-III), p. 367. The Court of Justice -has often referred to Article 10 TEC (now Article 4 TEU) as a separate source for Member State obligations in the TEC system.

If the principles of law were not laid down in the founding Treaties[32] , the Court of Justice has implicitly imposed them by applying them in the resolution of cases, and ultimately by the judgments it has delivered.

This led the Lisbon Treaty[33], the TFEU and the TEU, to lay them down expressly, and they have the same legal value as these Treaties.

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[32] Treaty establishing the Coal and Steel Economic Community (TCECO), Treaty establishing the European Economic Community, (TCEE) and Treaty establishing the Atomic Energy Economic Community (TEuratom).
[33] Signed on 13 December 2007 and entered into force on 1 December 2009.

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LEGAL LIMITS ON THE RIGHT OF PRIVATE PROPERTY CONCERNING JUS ABUTENDI

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Abstract

This article proposes an analysis of the limits of private property rights. They do not limit the property right, but they temporarily limit one of its essential attributes - ius abutendi - which can have as its source either the will of the party or the will of the legislator expressed in the content of the normative act.

Key words: *property, right of disposition, legal norm, convention, limits.*

INTRODUCTION

Starting from the axiom value provisions formulated in Art. 44 paragraph 1 from the Constitution of Romania which provides that "the right to property is guaranteed, its content and limits being established by law", Art. 555 of the Civil Code referring to the attributes of the right to private property shows that they are exercised within the limits established by law.

Therefore, the right to private property as the main real right is not unlimited in terms of its content and attributes, it is exercised within its limits which can be - either material limits related to the corporeality of the object of the property right or they are of a legal nature having as source either the law, the object, the convention or the court decision.

In the present analysis, we approach the legal limits of public interest, taking into account those causes of temporary inalienability of some goods subject to the right of private property.

In contrast to these, the legal limits of private interest which in the economy of the Civil Code from 1864 were classified in the category of "natural servitudes" or of "legal servitudes", they "in reality did not represent true servitudes - dismemberment of real rights - but they reflected a normal situation generated by the neighborhood,, *(G.Boroi, A.Anghelescu, B.Nazat, 2013, p.20.)* which imposed a series of duties on the part of the property right holders.

LEGAL LIMITS ON THE RIGHT OF PRIVATE PROPERTY CONCERNING JUS ABUTENDI

The legal limits mentioned in the fundamental law, the constitution, have their legal basis in the fact that the private interest must correlate with the public interest, in general, thus ensuring an optimal balance within society.

The exercise of the attributes of the property right, and in particular we refer to "jus abutendi", can be limited in accordance with the normative acts issued by the competent authorities.

For example, we mention in the category of constitutional limits the causes of expropriation of privately owned goods (see Art. 44 paragraph 3 of the Constitution to which it refers Art. 562 paragraph 3 of the Civil Code) according to which "no one can be expropriated except for cause of public utility, and then, only according to legal conditions and with fair and prior compensation,,. Starting from this constitutional regulation, the legislator in the content of Law no. 33/1994 clearly establishes the conditions, assumptions and principles that define the general framework of expropriation for reasons of public utility.

In cases of violation of the imperative provisions stipulated by the mentioned legal text, the act of expropriation is abusive, being null and void, a fact that reinforces the absolute nature of the right to private property.

Another legal limit established by the Constitution that comes to harmonize the general interest with the private one refers to the use of the basement of a building. Thus, in Art. 44 paragraph 5 it is specified that "for works of general interest the public authority can use the basement of any real estate with the obligation to compensate the owner for the damage caused to the soil, plantations or constructions as well as for other damages imputable to the authority".

It should be mentioned in this regard that the one whose right is violated by an action or inaction likely to cause him damage is entitled to compensation equivalent to the damage caused, which is regulated by civil legislation in terms of civil liability delictual or unjust enrichment (see Art. 1345 and 1348 Civil Code). Thus, art. 1357 Civil Code, paragraph 1 mentions "He who causes damage to another through an illegal act, committed with guilt, is obliged to repair it,,. In our opinion, in order to reach a legal limit regarding the right to private property in this case, the exploitation of the basement must be justified by satisfying a general interest that responds to an economic need, and the unavailability of the basement of the respective property must be covered by the the person that uses it otherwise it would seriously violate the principles of social equity.

In the doctrine, it was emphasized that art.44 par. 2, the second thesis of the 2003 Romanian Constitution through its provisions would bring a limitation of the exercise of property right. Thus, "foreign citizens and stateless persons can acquire the right of property of land only under the conditions resulting from Romania's accession to the European Union and from other international treaties to which Romania is a party on the basis of reciprocity under the conditions provided by the organic law as well as through legal inheritance ,,.

This situation results naturally from the constitutive acts of the European Union as well as from the treaties and international agreements to which Romania is a party, making direct reference to the principle of reciprocity, because in these circumstances the respect for the sovereign character of the Romanian state is taken into account.

The current civil legislation regulates numerous situations that create limits to property right that have as their object immovables intended for land or constructions.

These assets are basically temporarily removed from the civil circuit if the law expressly provides for this.

It is the derogating effect from the principle established by Art. 12 paragraph 1 of the Civil Code which establishes the rule of free circulation of goods that are subject to the right of private property.

Through express provisions of a prohibitive nature, the legislator temporarily removes certain assets from the civil circuit, sanctioning with absolute nullity the acts that violate this limit regarding the right of disposition. In this context, Art. 32 of Law no. 18/1991, now repealed, "stipulated the prohibition of the alienation of land acquired by the beneficiaries of the right of private property established under the conditions of Art. 19 paragraph 1 and Art. 43 of the mentioned normative act,, *(I.Adam, 2013, p.70)*.

The sanction of nullity could be requested either by the prefecture, the town hall, the prosecutor or any person who had an interest.

The interest of the legislator who introduced this limitation was to encourage small owners of agricultural lands and to prevent speculative actions on these lands.

A case of limitation of the right to dispose of lands was the one provided by art. 15 of the currently abrogated Law no. 54/1998, which removed from the civil circuit the lands on which there were disputes brought to court.

Likewise, the existence of a dispute regarding the reconstitution of private property rights over lands that fell under the land fund laws were also removed from the civil circuit (see Art. 4 of Law no. 247/2005).

Such a case of permanent inalienability is the one stipulated by Law no. 247/2005 which prohibits the sale of lands owned by constitutive associative forms according to Art. 26 of Law no. 1/2000.

The prohibition obviously concerns only acts concluded "inter vivos", because the prohibitive norm is of public order; per a contrario – those for the cause of death do not fall under this prohibition.

A situation that limited the "jus abutendi", concerned the lands with forest vegetation that had been returned to the property of the composesorates, these lands not being able to be the subject of acts of alienation except for their owners, only to people in the same association. By way of exception, they could only be

transmitted by legal inheritance to persons who did not have the capacity of associated members (see Art. 28 par. 8 of Law no. 1/2000).

In case of reorganization through total division, the respective lands would become the property of the state, to be used by the respective territorial administrative unit (see Art. 28 par. 6 of Law no. 1/2000).

The legislator's intention was not to divert the purpose for which he had reconstituted the property right of these associative forms, as well as to protect the interests of their members.

In symmetry with the previous provisions, the legislator created a similar legal regime through a series of special laws, namely Decree Law no. 61/1990 on the sale of housing from the state housing fund to the population, amended by Law no. 85/1992 which would be amended in turn by Law no. 76/1994 on the sale of houses and premises with other purposes built from the state fund and from the funds of the economic or state budgetary units *(The Official Monitor no. 196 from 29 July 1994.).*

Through the package of laws mentioned above, it was imperatively regulated that the alienation of the goods intended for housing and the spaces with other purposes that were the subject of these regulations should be done exclusively only to the persons who had the status of tenants at the time of the sale. The arguments that the legislator had in mind by introducing these prohibitions were mainly constituted in the general policy of the state aimed at the social protection of certain categories of people who, in this way, "could acquire real estate at modest prices, much below the market price,, *(I.Adam, 2013, p.73).*

The respective provisions were incidental to the houses built from the state funds and the funds of the state budgetary units, with the exception of those that before March 6, 1945 belonged to state institutions, autonomous regencies and companies with mixed state or private capital that ceased their activity after that date or they became state economic or budgetary units through reorganization, as well as the houses under construction that were not completed by the state until the date of entry into force of Law no. 85/1992, respectively July 29, 1992.

A similar regulation was also enjoyed by the people who had the status of tenants, thus being able to acquire ownership of the buildings in which they lived as tenants, the state therefore having the obligation to alienate the homes to these people based on Art. 9 paragraph 1 of Law no. 112/1995, and the same article paragraph 5 removed temporarily, respectively for 10 years from the civil circuit, the homes acquired by tenants now in the new capacity, namely that of owners.

As it was correctly shown in the specialized doctrine, the state was "imposed the obligation to sell real estate intended for housing to tenants, therefore a limitation of the right of disposal, but the beneficiaries of this provision, in turn, were required the obligation not to sell for the period provided

by law the home purchased under the penalty of absolute nullity,, *(I.Adam, 2013, p.74)*.

By Art. 44 par. 3 of law no. 10/2001, however, former tenants who have now become owners were given the possibility to sell the building to the former owners if the latter expressed the desire to buy the building within 90 days from the entry into force of the respective normative act, which was done through an express notification.

An alienation ban is also the one provided by Art. 14 of Law no. 114/1996, which conditions the act of alienation on the up-to-date payment of the amounts received as a grant from the state budget.

A case of perpetual inalienability is the one in which a good object of private ownership has passed through one of the forms regulated by law in the public domain. Thus, the provisions of art. 136 paragraph 4 of the Constitution are imperative so that the public domain is inalienable, so it is removed from the civil circuit. By way of consequence according to Art. 861 paragraph 3,, under the conditions of the law, public property assets can be given into administration or use and can be concessioned or rented,,.

From the interpretation of the legal provisions in force, it follows that any act of alienation of an asset from the public domain is null and void.

The right of disposition is limited in the case of co-ownership, so when the exercise of the attributes of the right of private ownership with respect to the same asset is exercised by several holders who have the capacity of co-owners, whether we are talking about the joint ownership in shares or the joint ownership in devolution.

In the case of this type of property right, the rule of unanimity applies in terms of "jus abutendi", because an act of disposition concluded by one or some of the co-owners without the consent of the others is null and void. In the situation where one of the co-owners becomes the sole owner, for example, he inherits the other co-owner, the acts of disposition will come out of the scope of the limitation, because the attributes of the exercise of the real ownership right are exercised by a single owner.

All the more, the rule of unanimity regarding the right of disposal is imposed in the hypothesis of forced and perpetual co-ownership when, depending on the nature of the asset or its destination, it usually serves a main asset, and the right of disposal over these assets is limited.

The perpetual character of the forced co-ownership comes to show that regardless of the will of the parties (the co-owners), if the property were to be divided, it would lose its usefulness and destination as such, becoming practically unsuitable for use.

A controversial issue in the specialized doctrine was whether or not the limitation of the right of disposition born by conventional means has its source in

the law. The natural question arising is whether "the inclusion of an inalienability clause in the documents concluded by the owners is based on a normative provision"*(C.Hamangiu, Rosetti Bălănescu, AI Băicoianu, Bucharest, p.94-100).*

It is unanimously accepted in the doctrine that in the economy of our Civil Code, the unanimous rule of inalienability was imposed, because through the transmission of the right of ownership it is consolidated.

Starting from this axiom of inalienability argued in Cuza's Code in numerous articles (see 475, 480, 803, 804, 1236, 1306, 1310, 1594 s.a.) it was opined in the specialized doctrine that as long as an inalienability clause is not expressly stipulated by the legislator, it is allowed, practically remaining at the discretion of the court to rule on its legality.

Starting from the plenary affirmation of the full freedom of will that animates the conduct of the subjects of civil law, the doctrine required that when the party or parties insert an inalienability clause in the act that is going to be drafted, this clause must be determined by a ,,serious and legitimate interest and be of temporary duration,, *(G.Marty, P.Raynoud, 1980, p.69).*

Thus, a fundamental principle is set in motion in the conclusion of civil legal acts, namely the unrestricted affirmation of the freedom of will of civil law subjects will be taken into account.

Starting from these circumstances, three articles can be found in the economy of the New Civil Code, namely 627, 628, 629 – the regulation of the inalienability clause.

Such clauses can be stipulated through property transfer deeds, whether concluded inter vivos or for cause of death, but under the condition that they violate public order or harm the good manners in society, because otherwise the sanction will be absolute nullity.

A special mention is required in this regard concerning the hypothesis of inserting an inalienability clause in the content of a will where "the validity of the inalienability clause will be governed by the law in force on the date of its drafting and the effects that the clause will produce will be governed by the law in force at the opening of the succession,, (*(I.Adam, 2013, p.61*).

For the temporary period in which the inalienability clause is active, the term is 49 years maximum, a term that runs from the date of acquisition of the asset. The serious and legitimate interest is appreciated either in the person of the disposer or in that of the acquirer, or even of a third party *(J.Carbonier, 1980, p.128-129).*

In the situation where the serious and legitimate interest is no longer justified, the acquirer can ask the court to freely dispose of the asset. Nothing, however, prevents the beneficiary of such a clause from renouncing it, but here it will have to be determined if there cannot be taken in discussion cases regarding the vitiation of his consent.

The inalienability clause in the situation in which it no longer proves to be of interest and legitimate, in the opinion recently formulated in the doctrine, it "can be requested in court also by the acquirer's creditors" *(M.Nicolae, 2011, p.558-559).*

As a novelty, the legislator of the New Civil Code has regulated in the content of Art. 627 paragraph 4 an implicit inalienability clause considering the given assumption by which the property is to be transferred in the future to a person determined or determinable through a convention concluded.

It was correctly shown that in the situation where the acquirer does not respect the inalienability clause, "the applicable sanction will not be that of the nullity of the concluded legal act, but the resolution or, as the case may be, its revocation." *(O.Ungureanu, C.Munteanu, Bucharest, p.174).*

According to Art. 2351 paragraph 2, inalienable goods can be mortgaged, this being qualified as a future good as in accordance with Art. 627 paragraph 5 Civil Code the existence of an inalienability clause does not lead to the impossibility of inheriting the asset as such. In this sense, the French Civil Code in art. 900-1 introduced by Law no. 71-526 of July 3, 1971 provides - Inalienability clauses affecting a donated or bequeathed property are not valid unless they are temporary and justify an interest seriously.

CONCLUSIONS

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COMBATING CORRUPTION OFFENCES

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Abstract

Corruption remains a challenge at national and regional levels. This phenomenon affects society in the most diverse ways, being likely to generate negative consequences both in the economic and social life of citizens. At the level of the European Union, it is estimated that the phenomenon of corruption generates costs for the European community in the amount of 120 billion EURO, and over 69% of European citizens consider corruption unacceptable.

Key words: *corruption, strategy, combating tools, legislative framework, solutions.*

INTRODUCTION

Corruption remains a challenge at national and regional levels. This phenomenon affects society in the most diverse ways, being likely to generate negative consequences both in the economic and social life of citizens. Therefore, during the last years it could be observed that the phenomenon of corruption has affected the life, physical integrity, trust towards state institutions and citizens' patrimony.

Corruption remains a cause that limits Romania's development prospects and the ability to promote foreign policy objectives, including Romania's image in the international environment.

The Treaty on the functioning of the EU establishes that the phenomenon of corruption represents a field of crime with a particular gravity and cross-border dimension [Article 83 (1) of the TFEU].

According to the EU's Anti-Corruption Report, the phenomenon of corruption generates costs for the European community in the amount of 120 billion Euros, and over 69% of European citizens consider corruption unacceptable.

At the national level by Government Decision no. 1269/2021 the National Anti-corruption Strategy 2021-2025 was approved. Through this instrument,

guidelines and instruments are established regarding the fight against the phenomenon of corruption.

Broadly speaking, the National Anticorruption Strategy brings together institutional transparency and corruption prevention measures, regulated by various normative acts regarding: ethical/deontological/conduct code, ethics advisor, declaration of assets, declaration of gifts, conflicts of interest, incompatibilities, transparency in the decision-making process, access to information of public interest, whistleblower protection in the public interest, post-employment prohibitions within public institutions (pantouflages), sensitive functions, integrity risk management and ex-post evaluation of integrity incidents.

The importance of combating the fight against corruption has been constantly illustrated by the European Commission in the reports of the Cooperation and Verification Mechanism (CVM), in the reports of the Group of States against Corruption (GRECO), as well as in the recommendations of the Venice Commission.

In Romania, the main public institutions whose activity falls within the scope of the fight against corruption are the following: the Ministry of Justice, the Ministry of Internal Affairs, through the General Anti-Corruption Directorate and the Romanian Police, The National Integrity Agency, the Prosecutor's Office attached to the High Court of Cassation and Justice, the National Anti-Corruption Directorate and the Department for the fight against fraud and the Prime Minister's Control Body.

1. LEGAL FRAMEWORK

At the national level, the main corruption offenses are regulated in the Criminal Code and Law no. 78/2000 for the prevention, discovery and sanctioning of acts of corruption, with subsequent amendments and additions.

The Criminal Code criminalizes acts of corruption under Title V, Offenses of Corruption and Service, Chapter I - Offenses of Corruption.

Law no. 78/2000, with subsequent amendments and additions, criminalizes crimes assimilated to corruption crimes within the scope of Article 10 - 13, and within Article 18 sections 1 - 18 sections 5 crimes against the financial interests of the European Union.

By Emergency Ordinance no. 43/2002, the National Anticorruption Directorate was established. The National Anticorruption Directorate is independent in relation to the courts and the prosecutor's offices next to them, as well as in the relations with the other public authorities, exercising its powers only on the basis of the law and to ensure its compliance.

The competence of the National Anticorruption Directorate is provided for in Article 13 of the previously mentioned normative act. Therefore, the National Anti-corruption Directorate is responsible for the offenses provided for in Law no. 78/2000, with subsequent amendments and additions, made under one of the

following conditions: if, regardless of the quality of the persons who committed them, they caused material damage greater than the equivalent in RON of 200,000 euros or if the value of the amount or the property that forms the object of the crime of corruption is greater than the equivalent in RON of 10,000 euros; if, regardless of the value of the material damage or the value of the amount or the asset that forms the object of the corruption crime, they are committed by: deputies; senators; the Romanian members of the European Parliament; the member designated by Romania in the European Commission; members of the Government, secretaries of state or undersecretaries of state and their equivalents; advisers to ministers; judges of the High Court of Cassation and Justice and of the Constitutional Court; the other judges and prosecutors; members of the Superior Council of Magistracy; the president of the Legislative Council and his deputy; The People's Advocate and his deputies; presidential advisers and state advisers within the Presidential Administration; the state advisers of the prime minister; the members and external public auditors of the Court of Accounts of Romania and of the county chambers of accounts; the governor, first vice-governor and vice-governors of the National Bank of Romania; the president and vice-president of the Competition Council; officers, admirals, generals and marshals; police officers; the presidents and vice-presidents of the county councils; the general mayor and vice mayors of Bucharest; the mayors and vice-mayors of the sectors of Bucharest municipality; mayors and vice-mayors of municipalities; county councillors; prefects and sub-prefects; the heads of central and local public authorities and institutions and the persons with control functions within them, with the exception of the heads of public authorities and institutions at the level of cities and communes and the persons with control functions within them; lawyers; commissioners of the Financial Guard; customs staff; the persons who hold management positions, including the director, within the autonomous authorities of national interest, of national companies and societies, of banks and commercial companies in which the state is the majority shareholder, of public institutions that have attributions in the privatization process and of central financial-banking units; the persons provided for in Article 293 and 294 of the Criminal Code.

Also, the National Anticorruption Directorate has jurisdiction over crimes against the financial interests of the European Union, as well as the crimes of misappropriation of public tenders, abuse of office and usurpation of office, if damage greater than the equivalent in RON of 1,000,000 Euros has been caused.

In situations where the competence of the National Anticorruption Directorate is not involved, corruption crimes, as well as crimes assimilated to corruption crimes, are the material competence of the prosecutor's office attached to the court.

In other news, a European Union report revealed that EU countries lost an estimated EUR 140 billion in value added tax (VAT) revenue in 2018 due to transnational fraud. It was estimated that the figures for 2020 could be higher due

to the effects of the COVID-19 pandemic on the EU economy. Member States also reported that around EUR 638 million of EU structural funds were misused in 2015.

In this context, it was decided to establish an international body in order to protect the financing interests of the European Union.

The European Public Prosecutor's Office (EPPO) is an independent body of the European Union, responsible for investigating, prosecuting and prosecuting the perpetrators of crimes against the financial interests of the EU, including: fraud, corruption, money laundering, cross-border VAT fraud. The European Public Prosecutor's Office started its activity on 1 June 2021.

In order to operationalize the European Public Prosecutor's Office, a series of normative acts were adopted, among which we mention: Emergency Ordinance no. 8/2019 regarding some measures for the application of Council Regulation (EU) 2017/1,939 of October 12, 2017 implementing a form of consolidated cooperation regarding the establishment of the European Public Prosecutor's Office (EPPO) and Law no. 6/2021 regarding the establishment of measures for the implementation of Council Regulation (EU) 2017/1.939 of October 12, 2017 on the implementation of a form of consolidated cooperation regarding the establishment of the European Public Prosecutor's Office (EPPO).

2. LEGISLATIVE ISSUES IN THE FIGHT AGAINST CORRUPTION

Although the main international bodies *(the European Commission, the Group of States against Corruption, the Venice Commission)* stated in the reports drawn up in recent years that it is necessary to intensify the anti-corruption fight by ensuring appropriate legislative instruments, the reality in Romania was completely otherwise.

Thus, in the course of 2018, by Decision no. 297/2018, published in the Official Gazette no. 518 of June 25, 2018, the Constitutional Court found that the legislative solution that provides for the interruption of the criminal liability limitation period by fulfilling "any procedural act in question", from the provisions of Article 155 (1) of the Criminal Code, is unconstitutional.

According to Article 31 (3) of Law no. 47/1992 on the organization and functioning of the Constitutional Court, republished, with subsequent amendments and additions, „The provisions of the laws and ordinances in force found to be unconstitutional cease to have legal effects 45 days after the publication of the decision of the Constitutional Court, if, during this interval, the Parliament or the Government, as the case may be, does not reconcile the unconstitutional provisions with the provisions of the Constitution. During this period, the provisions found to be unconstitutional are suspended by law".

Until May 30, 2022, the legislator did not reconcile the provisions of Article 155 (1) of the Criminal Code in relation to the findings of the Constitutional Court.

During 2022, by Decision no. 358/2022, published in the Official Gazette no. 565 of June 9, 2022, the Constitutional Court found that the provisions of Article 155 (1) of the Criminal Code are unconstitutional.

In the considerations, the Constitutional Court of Romania held, among other things, that the situation created by the legislator's passivity, following the publication of the mentioned admission decision, represents a violation of the provisions of Article 1 (3) and (5) of the Basic Law, which enshrines the state character of law of the Romanian state, as well as the supremacy of the Constitution. This, because the prevalence of the Constitution over the entire normative system represents the crucial principle of the rule of law. However, the Constitutional Court itself is the guarantor of the supremacy of the Fundamental Law, through the decisions it pronounces, so neglecting the findings and provisions contained in its decisions causes the weakening of the constitutional structure that must characterize the rule of law.

By Emergency Ordinance no. 71/2022 for the amendment of Article 155 (1) of Law no. 286/2009 regarding the Criminal Code, the substantive law criminal norm regarding the interruption of the prescription was modified.

By Decision no. 67/25.10.2002, the High Court of Cassation and Justice, the Panel for resolving some legal issues in criminal matters ruled that the rules related to the interruption of the prescription are rules of material (substantial) criminal law subject from the perspective of their application in time to the principle of activity the criminal law provided for by Article 3 of the Criminal Code, with the exception of more favorable provisions, according to the mitior lex principle provided by Article 15 (2) of the Constitution and Article 5 of the Criminal Code.

As a result of the previously mentioned decisions, the National Anticorruption Directorate estimated the closure of a number of 557 criminal cases under criminal investigation and before the courts. In these criminal cases, the estimated damage amounts to 1.2 billion euros, and the total value of bribery and influence peddling amounts to 150 million euros.

At the same time, recently the decision-making chamber adopted the draft laws on the amendment of the Justice Laws (PLX no. 440/2022; no. 441/2022; no. 442/2022). These draft laws concern substantial changes to Law no. 303/2004 regarding the status of judges and prosecutors, Law no. 304/2004 regarding judicial organization, respectively Law no. 317/2004 regarding the Superior Council of the Magistracy.

Within these normative projects are regulated a series of measures with a direct impact on the functioning of the National Anticorruption Directorate. Among them we mention: the increase of the minimum seniority in the position of prosecutor necessary for the appointment within the specialized direction, respectively the limitation of the period in which a prosecutor can be delegated within this specialized structure to a maximum of one year.

According to the data published on the website of the Superior Council of the Magistracy, during September the degree of occupancy of the scheme of prosecutors from the National Anticorruption Directorate was 73%.

In this context, it is estimated that the staffing level of the National Anticorruption Directorate will constantly decrease due to the previously mentioned legislative changes.

CONCLUSIONS

PROPOSALS TO MAKE THE ANTI-CORRUPTION FIGHT MORE EFFICIENT

In order to ensure effective legislative instruments to combat the phenomenon of corruption, we believe that a series of measures should be implemented at the level of national legislation.

In these senses, we appreciate that it is necessary to ensure a predictable legislative framework in this matter, in order to avoid the closure of some criminal files.

We also appreciate that it is necessary to develop a national strategy/development plan in which a series of concrete measures are foreseen regarding the efficient allocation of human resources to structures specialized in fighting corruption. In this sense, by way of example, we recommend: increasing the personnel scheme of the National Anti-Corruption Directorate, allocating a sufficient number of judicial police officers, facilitating attractive working conditions.

At the same time, we appreciate that it is necessary to maintain the current minimum seniority in the position of prosecutor necessary for the appointment to the position of prosecutor within the National Anti-corruption Directorate, in order to ensure the human resources for combating the anti-corruption fight.

Last but not least, we believe that it is necessary to eliminate the provisions provided in the draft amendments to the Justice Laws regarding the limitation to one year of the period in which a prosecutor can be delegated within the National Anti-Corruption Directorate. Such a measure is necessary in order to ensure the necessary human resources in order to resolve within a reasonable period of time the criminal files pending before the National Anticorruption Directorate.

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FORMAL SOURCES OF INTERNATIONAL TRADE LAW. SPECIAL VIEW ON CUSTOM

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Abstract

In a period of time where the legal norm sought to cover by regulation all the fields of society, it could easily think that the custom has lost its relevance and its approach could only be done from a historical perspective. Such a conception is wrong because even at this time the customs have a special practical utility and even if they are apparently not widely used in business, it is necessary to know the rules regarding their operation and the effects they produce in the relations between the parties. The customary norm does not exclude the legal norm, they coexist in a relationship of complementarity. These are the basic parameters that form the basis of the present study through which we will analyze the custom and its role as a formal source in the regulation of international trade relations.

Key words: *custom; trader; normative usage; conventional usage; formal source.*

INTRODUCTION

One of the characteristics of international trade law is interdisciplinarity, being located at the confluence of national legal systems and public international law, but with defining, particular elements that give it an independent character in the whole of law.

Starting from this characteristic of international trade law and with regard to its own sources, it has as its source the sources of public international law within which we distinguish between the main sources custom and the treaty *(for more details to be seen, C. Mătușescu, 2003, pp. 12-13)* and subsidiary sources (sources): the general principles of law, international jurisprudence, doctrine, acts of international organizations, unilateral acts of states and equity.

Since, at the global level, three large legal systems have mainly emerged: the Romanist, common-law and the religious system, with major differences in

the regulation of internal trade relations, whose norms coexist with international regulations, this determined outlining the main sources of international trade law in domestic sources and international sources. To these are added commercial usages, general principles and doctrine *(to be seen in this regard A.-D. Dumitrescu, 2014, pp. 15-26, judging that the use is characterized by continuity, constancy and uniformity, apud I. Macovei, 1987, pp. 20-21)*.

In the present study, we will focus our attention on normative custom *(I. N. Militaru, 2013, p. 33 and p. 36.)* - custom, as a source of international trade law, the oldest source of unwritten law. In general, by custom we mean a continuous, constant and recognized practice *(A.-D. Dumitrescu, 2014 p. 22; D-A Sitaru, 2008, p. 137)* by a certain business community that applies it in compliance with the principle of good faith[1] in trade.

Most authors agree that customs represent a certain form of natural manifestation of entrepreneurs in a certain legal relationship, being considered as a practice, attitude, behavior, the existence of which, in principle, is not recorded in a written document at to be referred to, but which through repeatability in a certain period of time, in the contracts between the parties, its value and efficiency are recognized.

Thus, commercial usages are based on the following defining elements:

1. They contain a set of manifestations of participants in international trade, of a repeated nature, with a certain frequency over time, we consider reasonable, because a certain precise period of time cannot be identified with certainty. The frequency of the commercial practice is closely related to the other elements: constancy, i.e. not being isolated and repeating at a certain interval long enough to create the appearance of a new practice and its recognition or stability. In the conditions of the extraordinary evolution of trade in general and international trade in particular, these elements must be considered in another dimension, adapted to the modern period, but without the tendency to artificially create commercial customs according to a certain interest of the parties.

2. Another defining element is the general and impersonal character of the custom, called in the specialized literature "collective" character *(D-A Sitaru, 2008, p. 138; F. Cafaggi, 2022, p. 1)*, because the custom is not addressed to a specific person, but to the business community which may differ according to certain criteria (from a certain area geographical, regarding a certain category of products or services, ethnic community, etc.)

The inclusion of a practice in the category of commercial customs does not automatically lead to its qualification as a source of law, the assessment being made according to the type of custom - normative or conventional, the latter not being considered a source of law.

[1] In Romanian law, art. 1 paragraph 4 of the Civil Code establishes that "Only customs in accordance with public order and good morals are recognized as sources of law."

1. NORMATIVE USAGE (CUSTOM) VERSUS CONVENTIONAL USAGE

It is known and accepted by theorists and practitioners that this source of law, custom includes unwritten practices (customs), but over time there has been an increased interest of international organizations and international professional associations to collect these practices and to codifies them (in written form), making them available to practitioners to facilitate their transactions *(E.N. Vâlcu, 2008, pp. 23-24)*. In this way, some of the customs undergo form transformations depending on the interest of the practitioners. We highlight the role of the International Chamber of Commerce in Paris which consolidates and codifies existing commercial practices, mainly through the Uniform Practices for Documentary Credits (UCP 600) and the Incoterms Rules[2]

This operation of collecting trade practices frequently used in trade, for which there is a concern of international bodies[3], is called codification by harmonization. Use of this tool is optional for merchants. They can take over a usage made available through the effort of these bodies

The most important criterion for differentiating customs is that of legal force, according to which we distinguish between normative and conventional customs *(for details see also C.T. Ungureanu, 2018, pp. 17-19)**. We will briefly refer to the latter because our study is not specifically addressed to this category.

Conventional usages have the legal force of a contract clause because the parties express their agreement to the use of a particular trade usage, either expressly by a reference clause in the contract, or tacitly or by implication, inferring the will of the parties. For this reason, conventional customs are not a source of law.

The parties are the ones who decide the use of a custom, usually using the codified customs, it being much easier to determine the rights and obligations of the parties throughout the entire process of developing the contract.

The primary difference between custom and normative custom *(we find that in the doctrine there is no unity of view regarding the use of the notion of usage and the meaning it has. See in this regard D-A Sitaru, 2008, pp.140 et seq.; C.T. Ungureanu, 2018, pp. 17-18)** is that custom in principle is optional, while

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[2] The business partners will indicate in their agreement, if they decide to obey the Incoterms Rules, specifying the version they opt for showing the year, because the Incoterms Rules have been found in various versions over the years: 1923, 1928, 1936, 1953, 1967, 1974 , 1980, 1990, 2000, 2010, 2020; for details see Incoterms® rules history - ICC - International Chamber of Commerce (iccwbo.org)

[3] International merchant associations (such as: International Chamber of Commerce - ICC; International Federation of Consulting Engineers - FIDIC; International Association of Commercial Collectors - IACC) or international organizations (such as: United Nations Economic Commission for Europe - UNECE, International Institute for the Unification of Private Law - UNIDROIT, Organization for Economic Co-operation and Development - OECD, European Free Trade Association - EFTA, Asia-Pacific Economic Cooperation - APEC)

custom (normative custom) is respected by parties with the value of law, like any legal regulation.

We also join the opinion outlined in the specialized literature *(see in this regard D-A Sitaru, 2008, pp.140 et seq; A-D Dumitrescu, 2014, pp. 15-26)*, which appreciates that the normative usage, established also under the name of custom, constitutes a source of law in the matter of international trade law. The name normative usage comes from the perception that it is valid as a legal norm.

Referring to the previous presentation of the defining elements of customs in general, we can appreciate that custom is a general, constant, relatively long and repeated practice of the active parties on the market, considered by them to have binding legal force *(A. Severin, 2004, p. 90)*. It is appreciated that, for a custom to have the legal force of custom, it must meet the conditions: longevity, stability, generality, credibility, complementarity and compatibility (with the fundamental principles of the legal system it complements and within which it integrates).

In the legal literature, it is considered that the central element of custom is its use, its repeatability at the level of social practice, which differs from other social practices in that, custom is respected and accepted as obligatory for all (opinio necessitatis), and in in case of non-compliance, the consequences are much greater than simple social blame *(S. Ionescu, 2008, p. 92)*.

Since the custom has binding force (being respected with the conviction that it is worth "right", with the awareness of its obligation), compared to the conventional usage that has binding force under the contract, it must be better determined, more stable and with an increased degree of continuity and repeatability. It is known that a feature of the custom is its antiquity, but at the same time, it adapts much better than the state norm to the needs of social life, proving that it is often extremely mobile, being dynamic and easy to adapt to social changes, economically from a community.

Whenever a custom regulates a matter of international trade, it is also a source of international trade law. The awareness that it is worth right represents the internal psychological element of custom, because the normative usage is applied and assumed with the conviction that it must be respected like a legal norm, the violation of which can be sanctioned, and can be imposed by means of coercion.

In order for a custom to have these valences shown above, it is absolutely necessary for the legal system determined as lex causae in the specific case, to recognize the normative force of the custom *(See in this regard D.- A. Sitaru,2008, p. 141;* The author presents the positions of different legal systems in relation to normative usage, showing that some of them are universally accepted by exemplifying Italian law, where the civil code by art. 1 mentions customs among the sources of law, others admit them specifically, recognizing them in a certain field of activity, and other systems admit them through a reasoning per a

contrario, not being considered contrary to the fundamental principles of the respective legal system, *apud I. Rucăreanu, 1980, p.78 et seq.)*.

The importance of recognizing the normative force of custom (normative usage) resides in the determination of the rights and obligations of the parties born from a legal relationship, like the law, as a state normative act. Obviously, the normative intervention of custom in a certain legal system must be understood in the following senses:

- to regulate where the legislator has not intervened or the norm is lacunar, fallen into disuse or there are texts adopted considering other historical realities[4];
- to interpret the legal provisions when they are incomplete, confusing, anachronistic;
- to regulate when the legal provisions allow it.

2. THE COMPLEMENTARITY OF THE CUSTOMARY NORM WITH RESPECT TO THE STATE NORMATIVE ACT

Economic life knows such an intensity that traders allocate a lot of resources: human, capital materials. Trade is carried out at a very fast pace and professional traders create their own rules to govern the relationships that arise between them. On the other hand, the authorities cannot remain passive to this evolution of trade, being concerned with normatively regulating (through legal rules) the operation of the market, of competition. The formalism, the rigidity of the normative procedures sometimes lead to regulatory delays, the usage being the one that is created more quickly from the traders' need to respond to their interests being recognized and repeated. A custom that proved in practice to be ineffective, that it did not have the result expected by the parties, will not be taken over and repeated, being only isolated in one or a few operations that demonstrated its inefficiency.

At the same time, we can admit as a paradox, considering the features of custom, that a custom can arise faster[5] than the state norm, and if the legal system recognizes it, there is a coexistence, a complementarity between them.

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[4] In our law, the civil code by art. 1 paragraph 2 expressly enshrines this: "In cases not provided for by law, customs are applied, and in their absence, the legal provisions regarding similar situations, and when there are no such provisions, the general principles of law";

[5] This is explained by the difficulties that the normative process sometimes encounters, for certain reasons, such as: the lack of cohesion of political interests in the adoption of a normative act; delays, long term postponements due to organizing issues; expressing and supporting diametrically opposed points of view and not reaching a common point of view agreed by a majority. All this means that a normative act is not adopted or is adopted late and no longer corresponds to the requirements of regulating the operation in a certain business community. The parties quickly find a solution because business has to run and if the solution proves to be optimal, it will have a constancy. Usually there are networks of entrepreneurs and good ideas are shared with the community and if they are appreciated they have continuity

In this last situation the discussion is more extensive because we have to clarify what is the ratio between the state norm and the customary norm or which of them applies with priority. As shown in the specialized literature *(D.- A. Sitaru, 2008., p. 142)*, we also express our opinion that normative usage is applied with priority referring to a supplementary law[6] (when the parties do not reject the application of custom), considering their special character (”*Specialia generalibus derogant”)*, and the supplementary norm it allows the parties to choose their conduct and if they do not choose it the state rule applies. Undoubtedly, only customs in accordance with public order and good morals, according to the legal system that represents the lex causae, are recognized as sources of law.

Compared to conventional usage, in which the parties choose by contract to submit to conduct established by way of practice in a certain business community (collectivity), in the case of normative usage (custom), the conduct of the parties does not have its genesis under the contractual agreement, but based on the normative authority of the custom, which is binding, recognized at the level of the respective business community (of course with the fulfillment of the other conditions – continuity, constancy, repeatability).

Another particularity of the custom that results from the mandatory character is that it is imposed on the contracting parties without having to be accepted in a certain form, as in the case of conventional usage. The parties respect it with the awareness that it is worth right. On the other hand, it is possible that the parties do not know the customary practice or do not agree with it, their common will being in a different direction, for which fact, nothing prevents them from expressing their will in a other meaning than the customary norm, because in business we are talking about the freedom of legal expression, expressed by the availability recognized by the participants in business relations to contain the elements and conditions of the business.

On this aspect, regarding the possibility to refuse the application of a custom (explicit refusal of the parties), in the specialized literature it is stated that a custom is an optional normative custom, because the parties can refuse it, unlike an imperative normative custom *(see in this sense A. Severin, 2004, p. 90*; The author exemplifies as imperative normative customs: the legal provisions that establish imperatively that the duration of a certain operation will be that resulting from the customs of the port where the operation takes place; provisions that establish that a commodity must have the quality established by the customs of the country of manufacture), appreciating - it is known that the latter is a custom accepted by the law, as the law refers to the custom in order to complete its own provisions.

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[6]. As far as permissive norms are concerned, we cannot discuss about a relationship between two categories of norms because by their nature permissive norms give freedom to the parties to choose their conduct;

3. ROUTINES

Apparently between custom and routine is only a terminological difference, but with the same meaning. In fact, they are different concepts. A routine is a practice created by certain business partners, without being taken up at the community level. It is reflected in the practice of two or more parties (usually a small number) with a certain contractual tradition, who over time have (used to) accommodated to certain clauses, considering them self-enforceable when they renew their commitments. These parties get to know each other very well because they are "old" partners for whom there is mutual respect. It is no longer a concern for them to identify new contractual rules as long as the ones already used to them are effective and meet their requirements.

Obviously, nothing prevents the parties from sharing their experience with other parties who can take it up and similarly, over time a routine acquires the characteristics of usage.

The Romanian Civil Code specifies in article 2 para. 6 that "usage means habit (customs) and professional usage". We note that the Romanian legislator gives the same meaning to habit and custom *(see in this sense I. Boghirnea, A. Tabacu, 2011, pp. 137-142)*, but we must not confuse the habit (in the sense of normative usage in international trade) with routine, which we referred to above.

4. CUSTOM IN ROMANIAN LAW

As was natural, the Romanian Civil Code establishes from article 1 paragraph 1 what are the sources of civil law[7]: the law, customs and general principles of law, so that later, in the content of this article, it clarifies what their legal force is , the order of application and their sample. We refer to the Civil Code as its provisions represent common law in the matter.

Also, as we have shown above, the legislator explains what is meant by custom, referring to two categories: habit or custom[8] *(regarding the customs in romanian law, see N.E. Hegheș, 2022, p. 71.)* and professional usage. This last category is also found in international trade, being specific rules that govern the relationships that arise between the members of a certain profession or between

[7] It is known that the Romanian legal system abandoned the dualistic view of private law and with the entry into force of the Civil Code (Law no. 287/2009, entered into force on 01.10.2011) our system opted fot the unity of private law. In this sense art. 2 para. 2 of the Civil Code states "This code is made up of a set of rules that constitute the common law for all areas to which the letter or spirit of its provisions refer" and art. 3 paragraph 1 "The provisions of this code also apply to relations between professionals, as well as to relations between them and any other subjects of civil law".

[8] Art. 1 para. 6 of the Civil Code. The Romanian legislator "puts the sign of equality" between habit and custom, compared to the Civil Code from 1864 which used the notion of custom. Moreover, in the regulation of the current code, the legislator prefers to use the notion of custom (art. 1349, 662, 613, 603)

them and their clients in connection with the exercise of the profession. The provisions of paragraph 6 in conjunction with the other articles in which we find references to custom, using the expression "custom of the place"[9], entitle us to draw the conclusion that custom is a general practice, while usage is specific to a certain profession.

Also, in order to be considered sources of law, only customs in accordance with public order and good morals have this quality (art. 1 paragraph 4), and they can be proven by the interested party only if they prove the existence and content of the customs. On the other hand, for usages published in compilations developed by entities or bodies authorized in the field, it is assumed that they exist, until proven otherwise (art. 1 paragraph 5).

From the content of the text we understand that customs can be proven by any means of proof, and practice shows us that judicial expertise is often used, being carried out by people with expertise in this regard. In the case of codification, specific documents certify the existence and content of the usage.

The Civil Code establishes that customs are applied both in cases not provided for by law, and in cases where the law regulates a certain matter and expressly refers to them.

CONCLUSIONS

Custom is a practice that fulfills certain conditions, respected by the parties with the awareness that it is valid, with the awareness of its obligation. Recognition as a source of law by the legal system that represents the lex cause is an essential element for a custom to produce legal effects.

Custom as a formal source of international trade law, although it is the oldest source of law, evolves at the same time as the whole society and, perhaps surprisingly, copes with its dynamics. The businessman is innovative, he adapts to the market in an extraordinary way, creating rules in the development of contracts, in full accordance with the law and which have an immediate echo at the level of the business community. These rules are sometimes spontaneous, sometimes they are the result of a rational process, generated by the complexity of a situation. The selection of these rules to be put into practice is done by the business community, applying first of all the criterion of efficiency, followed by other possible criteria such as: consistency, clarity of the rule.

The recognition of the legal value of customs by the laws of the states proves precisely their importance and role in regulating the relations between the parties. The taking over and codification of customs by national and international

[9] For example, "... to respect the rules of conduct that the local law or custom imposes..."; "In the absence of legal provisions, urban planning rules or local custom..." (excerpt from art. 1349 para. 1, respectively art. 662 para. 2)

bodies making them available to the business community in written form proves once again the major interest in customs.

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CONSIDERATIONS REGARDING THE LIMITS AND EFFECTS OF THE RECOGNITION OF A FOREIGN JUDGMENT

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Abstract

In this article we aimed to analyze from a theoretical and practical point of view the limits and effects of the recognition of a foreign court decision in criminal matters, in relation to the existing regulations in European and national legislation.

The establishment at European level of an area of freedom, security and justice through the provisions of art. 67 of the Treaty on the Functioning of the European Union (TFEU), imposed a new approach to the entire issue of judicial cooperation in criminal matters.

The research undertaken aims to highlight the interest of the European legislator, but also the national one in this segment, as well as the existing regulatory limits, with consequences in judicial practice, but also the need for the intervention of the Union legislator to give full and complete efficiency to the principle of mutual recognition of decisions foreign judicial orders pronounced by the judicial authorities of the member states.

Key words: *member states, judicial cooperation, appropriate legal mechanisms, the principle of mutual recognition of court judgments and judicial decisions, fundamental principles of human rights.*

INTRODUCTION

Title V of the Treaty on the Functioning of the European Union (TFEU)[1], with the marginal name "Area of freedom, security and justice", contains provisions relating to the integration of the entire area of freedom, security and justice in the general framework applicable to all European Union policies and mentions express that the basis of judicial cooperation in criminal matters is the

principle of mutual recognition of judicial and extrajudicial decisions (art.82 para.1 TFUE).

According to art. 82-83 TFEU, the creation and application of appropriate legal mechanisms, based on the principle of mutual recognition of court judgments and judicial decisions, as well as the establishment of an institutional framework designed to support the development of judicial cooperation between member states are objectives of the European Union *(M. Pătrăuș, 2021, p.186)*.

Among the lines of action in the matter of judicial cooperation in the criminal sphere are: mutual recognition of decisions; establishing minimum standards for the harmonization of criminal procedural legislation; approximating the substantive criminal law in certain areas with an element of flexibility so that the list inserted in art. 83 para. 1 TFEU can be expanded in relation to the evolution of crime, etc.

In art. 83 para. 2 TFEU provides that in the situation where harmonization in the criminal field "proves to be indispensable to ensure the effective implementation of a Union policy in an area that has been the subject of harmonization measures, directives may establish minimum rules regarding to the definition of crimes and sanctions in the field in question". Through this regulation, an explicit competence was conferred on the European Union to adopt material and procedural criminal law measures in the segment of international judicial cooperation in criminal matters.

In this sense, the Council, as an institution with legislative powers, has adopted a series of normative acts that capitalize on the principle of mutual recognition of judicial decisions in criminal matters, including Framework Decision 2008/909/JAI, amended, regarding the application of the principle of mutual recognition in criminal matters that impose penalties or custodial measures for the purpose of their execution in the European Union.

The mutual recognition of judicial decisions handed down in the Member States involves, in the first phase, an examination of the foreign conviction to verify whether fundamental rights have been respected in the judicial proceedings in the sentencing state (See recital 5 of the Framework Decision 2008/909/JAI).

The European legislator has shown a sustained concern for respecting the rights of accused or suspected persons in criminal trials, and the Luxembourg Court of Justice has developed the general principles of European Union law, a body of legal principles, including in the field of human rights, which derives from national constitutional traditions, from the ECHR, as well as from international treaties signed by member states, to ensure that human rights are respected according to the EU Charter of Fundamental Rights, which acquired binding legal force in 2009 *(P.Craig, G. de Burca, 2017, p.426 -431)*.

Considering the complexity and particularities of the mutual recognition of court decisions, of judicial acts issued by a competent authority of a member state, we propose to briefly examine this form of cooperation and reveal within the

limits of the European normative act and the consequences it has in practice judicial.

1. BRIEF CONSIDERATIONS ON THE LIMITS AND EFFECTS OF THE MUTUAL RECOGNITION OF JUDICIAL DOCUMENTS AND JUDICIAL ACTS ISSUED BY THE JUDICIAL AUTHORITIES OF THE MEMBER STATES

The principle of mutual recognition, which is the cornerstone of international judicial cooperation in criminal matters (The Council adopted in Tampere, 15-16 October 1999 a program of measures to implement the principle of mutual recognition of judicial decisions in criminal matters) required the establishment of modern mechanisms for the mutual recognition of judicial decisions handed down in the member states, including the Framework Decision 2008/909/JAI.

The scope of the framework decision is the recognition of a foreign court decision and the execution of the sentence in order to facilitate the social rehabilitation of the convict *(Flore, D., și Bosly, S., 2014, p. 580)*. Therefore, the Union instrument has a field of applicability only when we are in the presence of a court decision pronounced in a member state that must be recognized in another member state in order to execute the sentence by the convicted person, located in the territory of the executing state.

In order to recognize and enforce the foreign court decision, the sentencing state must transmit the judgment rendered and the certificate provided for in Annex 1 of the framework decision to the executing state, whose citizen or resident is the convicted person, or to another state that agrees to the transmission the decision and the certificate.

The executing state may refuse the recognition and execution of the judgment or foreign judicial decisions under the conditions provided by art. 9 of the framework decision or can partially recognize it, according to art.10, or can order the postponement of the recognition of the judicial decision pronounced in the state of conviction.

Framework decision 2008/909/JAI, amended, in art. 25 provides that the normative provisions that include them must apply mutatis mutandis to the execution of sentences in cases where art. 4 paragraph 6 and art. 5 para.3 of the Council's Framework Decision 2002/584/JAI of 13 June 2002 on the European arrest warrant and surrender procedures between member states, which implies, including, that the executing state can verify the existence of reasons for non-recognition and non-execution , as provided for in art. 9. declaration pursuant to art. 7 paragraph 4 of the Framework Decision 2008/909/JAI.

Regarding the limits of the recognition of foreign judicial decisions, it should be noted that, from the economy of the legal text, it follows that jurisdiction is acquired when the execution of the judgment actually begins, and

the execution of the sentence is regulated by the law of the executing state *(art. 10 of the Framework Decision 2008/909/JAI).*

With regard to the effects of recognition, it must be emphasized that they essentially reside in the execution on the territory of the executing state of the sanction applied by the issuing state through a final judicial decision, in whole or in part[2], as the case may be, after the punishment has been adapted *(art. 8 and art. 12 of the Framework Decision 2008/909/JAI).*

2. JURISPRUDENTIAL ASPECTS. NATIONAL JURISPRUDENCE

Our theoretical approach started from a case *(Timiș Court, Criminal Section, sent. pen no. 429/PI pronounced in file no. 8818/30/2011, unpublished)* in which the European arrest warrant no. 4 issued by the Timiș Court on March 6, 2014, the surrender of the Austrian citizen W.H was requested for the execution of a custodial sentence of 5 years and 6 months in prison, based on the criminal sentence in no. 429/PI pronounced by the Timiș Court, final by decision criminal case no. 27/A/6.02.2014 of the Timișoara Court of Appeal, for the crimes provided for and punished by art. 29 letter a of Law no. 656/2002 (money laundering, act committed in 2007, consisting in the fact that , repeatedly introduced into the recycling system sums derived from tax evasion caused by the sale of SC. G. I. SRL Timișoara) and tax evasion, provided for and punished by art. 9 letter b with reference to art. 9 paragraph 3 of Law no. 241/2005 (fact consisting in that on June 25, 2007 as a shareholder of SC G. I. SRL Timișoara together with the general director and shareholder J.F sold the assets worth 43,060,550 euros to SC P. SPV SRL Bucharest, without recording this transaction in the accounting logs of the company and the declaration of sales to the tax authority, causing a damage to the state in the amount of 22 million RON, the equivalent of 4.9 million euros).

After the arrest of the person requested by the Austrian judicial authorities, the request for extradition to Romania was rejected by the decision of September 15, 2014, since the person in question did not agree to the extradition and did not renounce the benefit of non-extradition of Austrian citizens *(art. 39 -44 of the Law on judicial cooperation in criminal matters with the member states of the European Union).*

After the transmission of the court decision by the judicial authorities in Romania, the Prosecutor's Office in Vienna expressed its acceptance of the partial execution of the prison sentence in connection with the conviction for tax evasion with the corresponding reduction of the sentence, according to art. 41 b paragraph 3 of the Law on judicial cooperation in criminal matter with the member states of the European Union. Regarding the crime of money laundering, the Vienna Prosecutor's Office revealed that it was not punished in Austria.

On March 7, 2016, the Romanian judicial authorities requested to be notified if a request to take over the execution was submitted, and by the decision of August 12, 2016, the Criminal Court of Vienna rejected the takeover of the execution of the sentence on the grounds that the Romanian authorities did not communicate in the deadline set by the Austrian court if they will agree to take over the execution even for only part of the imposed prison sentence. This judgment remained definitive by the decision of the Higher Regional Court in Vienna on September 30, 2016.

On July 13, 2020, the Romanian judicial authorities filed a new request for partial takeover of the execution of the sentence regarding the conviction of the requested person W.H for the crime of tax evasion.

The judicial authority in Austria, in accordance with the provisions of art. 40 Z6 of the Law on judicial cooperation in criminal matters with the member states of the European Union, which has a correspondent in the provisions of art. 9 paragraph 1 letter e of the Framework Decision 2008/909/ The JAI rejected as inadmissible the request to take over the execution of the penalty for tax evasion, as the statute of limitations had expired in accordance with Austrian law, the statute of limitations being 5 years from the entry into force of the decision by which the penalty to be executed was recognized, according to art. 32 paragraph 1 of the Austrian Criminal Tax Law. According to Austrian law, the statute of limitations for enforcement expired on February 6, 2019.

To clarify the legal issues in the case, we must start from the fact that art. 8 paragraph 1 letter c of the Framework Decision 2002/584/JAI must be interpreted in the sense that a decision to sentence to a custodial sentence pursuant to which a European arrest warrant was issued refused pursuant to art. 4 points 1 and 4, with the recognition of the decision, but with the refusal to take over the execution, as a result of the prescription of the execution of the sentence according to the law of the executing state, it loses its enforceable nature.

For the recognition of a judgment in a procedure for the execution of a European arrest warrant, refused pursuant to art. 4 points 1 and 6 of the Framework Decision 2002/584/JAI, the consent of the sentencing state is required pursuant to art. 25 and of art. 4 paragraph 1 and 2 of the Framework Decision 2008/909/JAI. Such a procedure, in this case, was carried out in compliance with these provisions, since the judicial authorities in Romania, even if late, compared to the date of the request, namely on July 13, 2020 (after almost 4 years from the first request), agreed for Austria to partially take over the execution of the tax evasion sentence. The Austrian judicial authorities applied the provisions of art. 32 paragraph 1 of the Fiscal Criminal Law, according to which the statute of limitations for enforcement in relation to financial crimes is 5 years from the entry into force of the judgment in which the penalty to be executed was recognized, noting that in this case, the statute of limitations for execution expired on February 6, 2019. Due to these circumstances, the request to take over the

execution of the sentence of 5 years and 6 months in prison imposed by the Timiș Court for the crime of tax evasion was rejected by the Austrian judicial authorities.

From a regulatory perspective, if the takeover request had been granted, this decision should have been able to have legal effects with respect to the decision issued by the Austrian judicial authorities. However, as long as the start of the execution of the custodial sentence by incarceration of the convicted person has not been announced, since the statute of limitations has run out in Austria for the crime of tax evasion, the sentencing state (Romania) fully retains the right to enforce the judgment pronounced on the territory his, in relation to the provisions of art. 22 para. 1 of the Framework Decision 2008/909/JAI.

However, considering the given situation, since the judicial authorities in Austria recognized the decision from Romania, it can be interpreted as a "conviction decision for the same facts".

A contrary interpretation would generate an apparent conflict between the manner of interpretation by the courts involved in this procedure - Romania and Austria, of the correlation norms of the two framework decisions and the legal effects that the violation of these provisions may produce.

In such a situation, we find it useful to refer the Luxembourg Court to clarify the way of interpretation of the European norms, so that the provisions are interpreted and applied uniformly in the member states.

In relation to this case, we must specify that the enforcement of the criminal provisions of the court decision handed down by a court in Romania can only be carried out if the Austrian criminal law provides for the application of such a measure for the offense committed. We consider this regulation to be natural, since enforcement is subject to the domestic law of each requested state, according to art. 17 of the framework decision.

Considering the existing situation, the convicted person benefits from the effects of prescription on the territory of the state of which he is a citizen, but on the territory of the other member states the European arrest warrant issued by the Romanian judicial authorities remains active, until the expiration of the prescription period according to the Romanian criminal legislation.

The statute of limitations, a case that removes the execution of the sentence on the territory of the Austrian state, does not produce effects regarding the sentence to be executed on the territory of Romania, if the requested person were arrested on the basis of the European arrest warrant issued by the Romanian judicial authorities in another member state or even on the territory of the sentencing state.

According to the data of the complaint, in Romania the requested person would benefit from the cause of removal of the punishment only on February 5, 2024, which means that until the expiration of this limitation period the European arrest warrant remains active.

In this case, we are in an exceptional situation from the rule according to which when the person in question has the citizenship of a member state, the procedure provided for in the content of Framework Decision 2008/909/JHA on the application of the principle of mutual recognition in the case of judicial decisions in criminal matters that impose penalties or custodial measures for the purpose of their execution in the European Union, since the Austrian state has declared that it does not want to take over the execution of the sentence imposed on the convicted person, due to the intervention of the statute of limitations according to internal regulations. The judicial authorities in Austria, recognizing the judgment handed down in the state of sentencing, noting at the same time the intervention of the statute of limitations, we find ourselves in the situation of the existence of two judgments for the same crime.

For such a hypothesis, from the perspective of internal regulation, it is necessary to distinguish the following aspects:

According to the provisions of art. 160-163 Penal Code. Romanian, pardon and prescription are causes that remove or modify the execution of the sentence.

The current Penal Code has reorganized Title VII of the Penal Code from 1969, placing the pardon within the cases that remove or modify the execution of the penalty, alongside the prescription of the execution of the penalty, this option being justified by the legal nature of the personal pardon for removing or modifying the execution of the penalty *(G.Bodoroncea, V.Cioclei, I.Kuglay, L.V.Lefterache, T.Manea, I.Nedelcu, F.M.Vasile, G.Zlati, 2020, p.616).*

The sentence that is executed represents the sentence established by the court taking into account the subsequent causes for its modification. Therefore, as the case may be, subsequent causes of change must also be taken into account, such as, for example, the intervention of the pardon.

By means of an appeal to the execution, the statute of limitations for the execution of the sentence can be invoked exclusively.

Art. 142 paragraph 2 letter e of Law no. 302/2004, provides that the foreign court decision will not be recognized and enforced on the territory of the Romanian state, among other things, if the person was convicted in Romania for the same acts.

In this case, the requested person, as I have shown previously, had been convicted in Romania, and in Austria, for the same act, the statute of limitations for the execution of the sentence was ordered. Consequently, there would apparently be a legal impediment to the recognition of this foreign judgment, but the Vienna Regional Court for Criminal Cases, in file no. 181 NS9/14 p, recognized the court judgment pronounced by the Timiș Court, but as a result of the state's inaction sentence of about 4 years, refused to take over the execution, reasoning that on the date of the judgment, in the absence of double incrimination for the crime of money laundering and the intervention of the statute of limitations

for the crime of tax evasion, the request for takeover made by Romania cannot be accepted.

According to the national regulation, art. 156 par. 2 and 3 of Law no. 302/2004 on international judicial cooperation in criminal matters, through which the provisions of art. 19 paragraph 1 of the Framework Decision 2008/909/JAI were transposed, the amnesty or pardon can be applied both by the Romanian state and by the issuing state, and in the hypothesis in which Romania is the issuing state and the executing state communicates its decision not to execute or has stopped the execution of the sentence as a result of the application of the amnesty or pardon, the competent court is obliged to make mention of this in the Register of records and execution in execution of criminal decisions.

Consequently, by analogy, in the hypothesis in which the executing state communicates to Romania, as the sentencing state, its decision not to enforce a sentence established by a final court decision by the Romanian judicial authorities, since the statute of limitations has intervened, for to give extended effectiveness to the principle of mutual recognition of foreign judicial decisions, but also to respect the rights enjoyed by any convicted person, it would be necessary to extend the procedure for the recognition of foreign judicial decisions in order to produce effects other than that of execution under privative regime of freedom of punishment and other judicial documents issued by foreign authorities and on the case of prescription.

A contrary solution leads to an unjustified difference in treatment between the persons who were the subject of a European arrest warrant and for whom, for example, a pardon was applied and those who in the executing state found the incidence of a cause to remove the execution of the sentence.

A judicial decision emanating from the foreign judicial authority should be recognized, in a special procedure, by the court in all situations where it is necessary to solve a criminal case (for example, deduction of the period of preventive detention executed in another state member) or when it can contribute to improving the situation of the convicted person or to his reintegration.

This special procedure of recognition and execution in order to produce effects other than that of the execution in detention of the sentence as well as other judicial documents issued by foreign authorities, carried out principally or incidentally, must be available to any interested person, for to produce other effects, than that of executing the sentence in detention, as long as it is likely to produce legal effects.

3. JURISPRUDENTIAL ASPECTS. CJEU JURISPRUDENCE

The Court of Luxembourg has been called on numerous occasions to rule on the interpretation of the provisions of Framework Decision 2008/909/JHA.

In our theoretical approach, we propose to briefly present the interpretations given by the CJEU in two relevant cases.

Regarding the obligation imposed on the executing state, according to the provisions of art. 4 point 6 of the Framework Decision 2002/584, that in the event that it decides to refuse the execution of the European arrest warrant, to proceed with the actual taking over of the custodial sentence, the CJEU ruled that "this obligation implies a genuine commitment of this state to execute the custodial sentence pronounced against the wanted person".

Therefore, the Court emphasized that, before refusing to execute a European arrest warrant, the executing member state must verify the possibility of actually executing the sentence imposed in the sentencing state, in accordance with its domestic law *(Judgment of 29 June 2017, Poplawski, C-5 79/15, EU: C:2017:503, point 22).*

In this case, the CJEU showed that the executing state must ensure the application of Framework Decision 2002/584, and, consequently, the Kingdom of the Netherlands has the obligation to execute the European arrest warrant, and in case of refusal, it has the obligation to to guarantee the effective execution of the sentence pronounced in Poland against Mr. Poplawski.

In another case *(Judgment of 13 December 2018, Sut, C-514/17, EU:C:2018:1016, point 37)*, the Court of Justice of the EU (CJEU), in relation to the provisions of art. 4 point 6 of the above-mentioned framework decision, ruled that, prior to the decision of the judicial enforcement authority's refusal to hand over the requested person, it should proceed with the verification, if "this person remains in the member state of enforcement, is a national or its resident" and, if "the custodial sentence pronounced by the issuing Member State against this person can effectively be executed in the executing Member State". At the same time, it is required that the executing Member State observes "that there is a legitimate interest that justifies the non-execution of the penalty applied in the issuing Member State, but on the territory of the executing Member State".

In relation to a situation similar to the one in the analyzed case, the CJEU did not pronounce judgments.

CONCLUSIONS

If the judicial authorities in the executing state issue a recognition decision, this could be interpreted as a "conviction decision for the same acts".

We believe that, a contrary interpretation, generates an apparent conflict between the manner of interpretation by the courts involved in this procedure, the correlation norms of the two framework decisions and the legal effects that the violation of these provisions can produce.

Therefore, in order to clarify these aspects related to the way of interpretation of European norms, it would be necessary to refer the Court of Luxembourg (CJEU), so that the provisions are interpreted and applied uniformly in the member states.

Through a congruence of the doctrinal aspects and the practice of the European court, with an emphasis on the protection standards provided by the Charter of Fundamental Rights of the European Union, the examination of the rights of the persons who are the subject of procedures, such as those revealed, would be required in the judicial proceedings in this paper, and the result would find its concreteness in the unitary application of the instruments of international judicial cooperation in criminal matters.

At the same time, in order to cover situations of this kind, the intervention of the European legislator would be required in order to extend the effects of the special recognition and enforcement procedures, in order to produce other effects than those of the execution of the sentence in detention. If the amnesty or pardon ordered by foreign judicial acts can be recognized in the main or incidental way, it would be necessary to be able to recognize by the Romanian judicial authorities also a foreign decision ordering the termination of the criminal process due to the prescription, when it appears necessary solving a criminal case or could contribute to improving the situation of the convicted or to his reintegration.

Not as a last resort, it would be necessary to standardize the national legislation of the European states in the field of criminal law and criminal procedural law, which limits the reluctance of the judicial authorities in the member states and would give due importance to the mutual recognition of judicial decisions, a principle which infuses the entire space with freedom, security and justice.

If we refer to the concrete case analyzed, in relation to the previously presented elements, it would be required that these procedures take place with speed, in order to prevent situations in which the prescription of the execution of the sentence intervenes on the territory of the executing state.

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PREVENTION OF COMPUTER CRIME THROUGH KNOWLEDGE OF THE CONCEPT OF CYBER SECURITY

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Abstract

The purpose of this article is to make the reader aware of the concept of cyber security and of the importance of establishing cyber data protection systems that we currently manage. Cyber-attacks have experienced a continuous upward trend in recent years, being targeted at both personal computer systems, computer systems managed by companies or computer systems managed by state institutions, as such cyber security has become a necessity for any user, provider, or consumer of cyber data.

Key words: *cybersecurity, cybercrime, cyber, security, crime, data, protection.*

INTRODUCTION

To understand the concept of cyber security, we must look at the evolution of digital technologies in recent years. It is easy to see that on all levels (personal, business, economic, financial, entertainment, state, etc.) the digitization trend has an accelerated crescendo.

Digitization has the potential to offer solutions for many of the challenges faced by the society we live in today and offers opportunities among the most varied, such as: changing the work paradigm from a spatial or temporal perspective (now you can work from anywhere at any time, you have you only need a computer device with a high-speed internet connection), the promotion of new educational methods and techniques (online school), the expansion of the commercial potential of companies through online commerce, the facilitation of citizens' access to public services of the state through the digitization of government institutions/ state, etc.

At the European level, the Council of the European Union gave an additional impetus to accelerate the technological transition, and to determine the member states to enter the process of institutional digitization, processes financed by the European Council through the National Recovery and Resilience Plans[1] (consilium.europa.eu).

At the European level, the first steps have been taken to protect citizens, companies, and institutions by establishing new mandatory rules on cyber security for products with digital elements throughout their entire life cycle[2] *(digital-strategy.ec. europa. I).*

1. WHAT IS THE CONCEPT OF "*CYBERCRIME*"

The Internet is an important part of our daily lives. We listen to music through streaming apps, read books using e-books, and watch our favorite video content. The Internet is also the main place where we shop, organize our lives, and perform important daily tasks such as paying bills and managing bank accounts.

However, no matter how carefully integrated the online environment is in our daily lives, cybercriminals are always nearby. We can find them on our favorite websites, in our emails, on social media platforms, video streaming.

In its simplest form, cybercrime includes anything illegal that takes place on the Internet through a computer or similar device. It is most related to hacking, but can also be used in financial fraud, data theft, harassment.

Cybercriminals are intelligent people with extensive knowledge of how online systems work. Not only are they capable of exploiting websites, encoding dangerous attacks like ransomware, and destroying other people's devices, but they are also adept at convincing unsuspecting victims to do what they want, willingly provide personal or financial information.

It is very likely that most people who are active in the online environment have already faced cybercrime attempts. It is very likely that in the e-mail address of each user there are e-mails marked as spam, which have corrupted content (virus) or which urge the user to various actions, which once executed will provide the cyber-criminal with all the data he needs for to complete their cyber-attack[3] (uk.norton.com). Phishing, ransomware, and data breaches are just a few examples of today's cyber threats, while new types of crimes and cyber-attacks are constantly emerging. Cybercriminals are increasingly agile and more organized, exploiting new technologies, adapting their attacks, and acting in new and increasingly novel ways[4] (*interpol.int*).

[1] https://www.consilium.europa.eu/en/your-online-life-and-the-eu/
[2] https://digital-strategy.ec.europa.eu/en/policies/cyber-resilience-act
[3] https://uk.norton.com/blog/how-to/what-is-cybercrime-how-it-works-and-how-to-stop-it
[4] https://www.interpol.int/Crimes/Cybercrime

Cybercrime goes even further as it can also include malware, or malicious software, which can wreak havoc on a user's life by encrypting all important files so they cannot be accessed, or by remotely installing a file to steal personal information such as passwords and credit card numbers.

Cybercrimes know no national borders, the victims and the technical infrastructure are spread globally, in several jurisdictions, in different legal systems, bringing many challenges to criminal investigations and prosecutions.

2. THE MAIN TYPES OF CYBER SECURITY THREATS

1. ***Phishing*** is the practice of sending fraudulent emails that look like emails from reputable sources. The goal is to steal sensitive data such as credit card numbers and login information. It is the most common type of cyber-attack. You can help protect yourself through education or a technology solution that filters out malicious emails[5] (*ncsc.gov.uk*).
2. ***Social engineering*** - Social engineering is a tactic attackers use to trick you into revealing sensitive information. They may request a cash payment or gain access to your confidential data. Social engineering can be combined with any of the other threats to get the person to click on links, download malware, or trust a malicious source[6] (*imperva.com*).
3. ***Ransomware*** - Ransomware is a type of malicious software. It is designed to extort money by blocking access to your files or computer system until the ransom is paid. Paying the ransom does not guarantee that files will be recovered or that the system will be restored[7] (*checkpoint.com*).
4. ***Malware*** - Malware is a type of software designed to gain unauthorized access or cause damage to a computer[8] (*rapid7.com*).
5. ***Backdoors*** - any malware, virus or technology used to gain unauthorized access to an application, a system, a network, bypassing all implemented security measures. Unlike other types of viruses/malwares, backdoor attack elements reach the core of the targeted application and often drive the targeted resource as a key driver or administrator[9] (*wallarm.com*).
6. ***Formjacking*** - Formjacking attacks are designed and executed by cybercriminals to steal financial and banking details from payment forms that can be captured directly on the payment pages of e-commerce sites [10] (*loginradius.com*).
7. ***Cryptojacking*** - is a threat that embeds itself in a computer or mobile device and then uses its resources to mine cryptocurrencies. Cryptocurrency is

[5] https://www.ncsc.gov.uk/guidance/phishing#section_2
[6] https://www.imperva.com/learn/application-security/social-engineering-attack/
[7] https://www.checkpoint.com/cyber-hub/threat-prevention/ransomware/
[8] https://www.rapid7.com/fundamentals/malware-attacks/
[9] https://www.wallarm.com/what/what-is-a-backdoor-attack
[10] https://www.loginradius.com/blog/identity/what-is-formjacking/

digital or virtual currency, which takes the form of tokens or "coins". The most well-known cryptocurrency is Bitcoin, but there are about 3,000 other forms of cryptocurrency, and while some cryptocurrencies have ventured into the physical world through credit cards or other projects, most remain virtual [11] (*kaspersky.com*).

DDoS (distributed denial-of-service) attacks - Distributed denial of service (DDoS) attacks are a subclass of denial of service (DoS) attacks. A DDoS attack involves several connected online devices, known as a botnet, which are used to flood a target website with fake traffic, causing it to be blocked for a period[12] (*imperva.com*).

3. GROWING THREATS PROMPT NEW LEVELS OF ACTION

3.1. Growing threats

The high-profile cyber-attacks in industries and governments last year increased the need for cyber security and generated an essential risk management for most people with executive functions in the business environment as well as around state institutions. Growing threats during the pandemic have added business risks to manufacturers from the point of view of ransomware[13] (*csis.org*). Most Western companies report phishing or ransomware security incidents in the past 12 months

82% of Western companies have already taken steps to increase their budgets by committing to invest more in cyber security in 2022, with almost a quarter allocating financial resources, at least 10% more than in 2021. An expanding attack surface from the connection of operational technology (OT), information technology (IT), from the perspective of external networks, it was found that they require more security measures. Outdated systems and technology were not suited to the sophisticated challenges of today's online environment from a security systems perspective[14] (*Devin Partida, 2021*).

As threats also increase with workforce displacement, the need for cyber security inside and outside organizations is ever greater, literally vital, in today's business architecture. It is vital for the cyber security of companies that they designate point persons responsible for cyber security procedures, being an essential responsibility at the company level. Zero-trust security measures that require authentication and restrict access can be part of prevention. Vigilance

[11] https://www.kaspersky.com/resource-center/definitions/what-is-cryptojacking

[12] https://www.imperva.com/learn/ddos/denial-of-service/

[13] https://www.csis.org/programs/strategic-technologies-program/significant-cyber-incidents

[14] Devin Partida, "Who's responsible for cybersecurity in industrial and manufacturing settings?," *Occupational Health & Safety*, August 24, 2021.

requires retooling, employee training, and oversight within and across departments[15] (*Gerry Grealish, 2021*).

3.2. The main protective actions against cyber attacks

In today's world, cyber security must be treated with maximum attention, responsibility, and professionalism, especially in the context where the traffic of personal or confidential data is continuously increasing. With ever-increasing threats to individuals, businesses, or state institutions, having a robust security solution is essential.

There are simply too many security threats to ignore the risks – from ransomware to phishing, they can all affect the integrity and privacy of a computer system. Prevention is key and, in this article, we are trying to identify some common and effective ways to prevent cyber-attacks.

a) Continuous documentation and training of employees on security risks

One of the most common ways in which cybercriminals have access to computer data is through employees or even the user of the computer system (in the case of natural persons). They will send fraudulent emails impersonating a person in the target's organization or entourage and request either personal details or access to certain files. Links often look legitimate to the uneducated eye, and it's easy for anyone to fall into the trap. Therefore, employee awareness is vital.

One of the most effective ways to protect ourselves against cyberattacks and all types of data breaches is to implement a system of ongoing employee training on cyberattack prevention[16] (leaf-it.com).

Verification actions:

- Checking links before accessing them
- Checking the e-mail address in the received e-mail
- If a request seems strange, it probably is, as a result, it is necessary to verify and confirm the request through a phone call (or any other means of direct communication) with the person concerned before acting on the "*request*"

b) Keeping software and systems fully up to date

Often, cyber-attacks occur because the systems or software used are not fully updated, leaving weak points that become security breaches. Consequently, cybercriminals will exploit these vulnerabilities to gain access to the network. Once they have entered, it is often too late to take measures to counter, stop or limit the attack.

To counter this, a smart move is to invest in a patch management system that will handle all software and system updates, keeping your system resilient and up to date.

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[15] Gerry Grealish, "The pace of government won't fix cybersecurity," Industry Week, September 3, 2021.

[16] https://leaf-it.com/10-ways-prevent-cyber-attacks/

c) Terminal protection

Protection of all devices (*terminals*) interconnected in the internal network, protects the networks by making it difficult to connect remotely, through Internet networks, to the devices. Mobile devices, tablets and laptops that are connected to internal networks provide access points and pose security threats. These paths must be protected with specific endpoint protection software [17] (*cybermagazine.com*).

d) Installing a Firewall

Placing your network behind a firewall is one of the most effective ways to defend against any cyber-attack. A firewall system will block any brute force attacks made on the network or systems.

A firewall helps protect your computer systems by blocking unauthorized network traffic or access. It also provides an additional layer of protection against malware and viruses, which hackers commonly use to gain access to systems.

That being said, it is recommended to install and enable a strong firewall on your networks. One can start by enabling the basic firewalls that come with most computers (*Windows Firewall and Mac Firewall*) as well as on your Internet router. While it might not seem like much, it certainly deters a hacker from accessing your network's data and computer systems[18] (*purplesec.us*).

e) Frequent data backup

In the event of a cyber-attack, you must have data backups to avoid data loss and significant financial losses.

Cases of ransomware attacks have been on the rise in the recent past. Cybercriminals use ransomware to encrypt data and block access to computer systems, making it virtually impossible to modify or access any data. The hackers then force the victims of the attack to pay a certain amount (in the form of a ransom) in order to be able to access the data and systems again. Ransomware attacks can occur even if the latest protection systems are installed, or a firewall or antivirus is active.

One way to avoid such inconveniences is to perform regular data backups as often as possible. In this way, a backup solution will be implemented in case an attack happens and data is lost. Plus, it's much easier to restore data from a clean backup than paying a hacker for a decryption key[19] (*mightygadget.co.uk*).

f) Controlled access to computer systems

One of the attacks that can occur on computer systems can be of a physical nature. The possibility of unauthorized access by plugging a USB key containing infected files into one of the computers on the network, allowing it to access or

[17] https://cybermagazine.com/cyber-security/top-10-ways-prevent-cyber-attacks
[18] https://purplesec.us/resources/prevent-cyber-attacks/
[19] https://www.wallstreetins.com/blog/post-2/

infect the entire network, must be eliminated. Installing a perimeter security system is a great way to stop cybercrime as much as break-ins (*wallstreetins.com*).

g) Security of Wi-Fi networks

Any device can get infected by connecting to a Wi-Fi network, if this infected device has unrestricted access to the entire network, then the entire system is at serious risk.

Securing Wi-Fi networks and hiding them is one of the safest actions you can take to protect your computer systems. With wireless technology developing more and more every day, there are thousands of devices that can connect to a Wi-Fi network that they can compromise[20] (*mightygadget.co.uk*).

h) Establishment of personal accounts for employees.

Each employee needs their own login for each application and program. Multiple users logging in under the same credentials can put the network at risk.

Having separate logins for each staff member will reduce the number of attack fronts. Users log in only once per day and will only use their own set of login credentials[21] (*upguard.com*).

i) Access management

Controlling access to established policies and data can also help protect your most valuable information and data. With an access management system in place, staff can only be assigned the data they should be accessing, making everything inaccessible.

In addition, access management records every action that staff take while accessing these files as well. This also means that one can grant or deny the ability to access, copy, print or even delete files. With this approach, the authorization required to access certain files and data must be identified. Although it may seem a bit harsh, enforcing administrator rights and blocking staff from accessing or installing applications or data will go a long way towards increasing your resilience against cyber-attack[22] (*mightygadget.co.uk*).

j) Establish strong and different passwords for each device

Having the same password set up for all devices or apps can be dangerous. Once a hacker discovers the password, they will have access to everything on the computer system and any application used. Password cracking technology has advanced a lot, and simple passwords are a major vulnerability. Instead, complex passwords should be used, and multi-factor authentication strategies implemented to deter cybercrime. Also, password sharing between employees should be

[20] https://mightygadget.co.uk/10-ways-to-prevent-cyber-attacks/

[21] https://www.upguard.com/blog/reduce-cybersecurity-risk

[22] https://mightygadget.co.uk/10-ways-to-prevent-cyber-attacks/

discouraged so that even if one desktop is hacked, the rest remain secure[23] (*upguard.com*).

CONCLUSIONS

Data plays a critical role in the commission of many cybercrimes and generates the main vulnerabilities to cyberattacks. Even though data offers its users (individuals, private companies, organizations, and governments) countless opportunities, these benefits can be (and have been) exploited by some for criminal purposes. More precisely, the collection, storage, analysis and sharing of data allow the commission of a wide range of cybercrimes, especially when these operations are carried out by neglecting, voluntarily or involuntarily, the legal means of protection by establishing optimal security protocols.

In addition, the aggregation, analysis, and transfer of data is occurring at a scale that governments and organizations are unprepared for, creating several cybersecurity risks.

Privacy, data protection and security of systems, networks and data are interrelated. With this in mind, to protect against cybercrime, security measures are required that are designed to protect user data and privacy and prevent cyberattacks.

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PROTECTION OF SOCIAL VALUES AND RELATIONS PROTECTED BY CRIMINAL LAW

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Abstract

This article deals with the particular aspects regarding the protection that criminal law norms grant to social values and relations, which is precisely the object of criminal law.

As the main instrument of the criminal policy, the criminal law aims to defend the state and all the people who are at a given moment in the national territory, against the criminal phenomenon.

A condition of the existence of human society was and is the need to defend social values through a system of relationships formed between members of society in such a way as to succeed in their achievement and normal evolution.

The system for the defense of social values has a binding force against people who carry out dangerous actions for society and defines the crime, the forms of criminal liability and the sanctions that are applied when crimes are committed by violating the criminal rules.

How is the protection provided by the criminal law with regard to social values achieved?

By means of the two essential requirements that the criminal rules claim: firstly, the requirement required of all persons who are at a given time in the territory to which the law has its applicability and who are its recipients. All of them are obliged to conform their conduct to the requirements that the criminal law provides.

And last but not least, the state bodies that must ensure criminal liability when the criminal law has been violated and crimes have been committed.

Through the rules of the criminal law, the values and social relations that are formed around these values are promoted and protected. In this way, the protection of society in general is achieved.

Criminal law criminalizes crimes, which are the most serious social acts because they affect the most important social values.

Key words: *criminal law, values and social relations, crime.*

INTRODUCTION

”Men were created equal, being endowed by the Creator with certain inalienable rights, among these rights are life, liberty and the pursuit of happiness” *(US Declaration of Independence).*

These represent social values whose guarantee and respect is ensured by the state.

As expressed over time and in criminal doctrine, *(Streteanu, Nitu, 2014, p. 14)* values and social relations protected by the rules of criminal law and criminal regulations are also of public interest, as they can equally be of private interest.

By committing the criminal offense, the crime, social values that belong to individual subjects, natural or legal persons, can be damaged, but the legal order in general is also damaged, which must be restored only through the intervention of the competent state bodies.

Regardless of whether we refer only to the damage to social values that belong to a particular person or if we approach the damage to general social values protected by law as a set of general values, it is worth noting a special importance that criminal law gives to values, captured either in the sense of social values, either as relationships that are born around and in relation to these values.

The existence of human society, regardless of its form of organization, is based on the respect by its members of the most important values, such as: life, integrity and health and other attributes related to the person, the legal order, property, etc.

Respect for these values takes place within cooperative relationships that impose the obligation for each person to mutually respect these important values through their conduct.

”With the emergence of society, individuals can no longer be absolutely independent, the human person by its very nature, being involved in collaborative relationships, exchanges and mutual trust” *(Streteanu, Nitu, 2014, p. 9).*

As Montesquieu mentioned in the work "On the Spirit of the Laws", any man can express his individual freedom by emphasizing that this entails "the right to do everything that the laws permit; and if a citizen could do what they forbid, he would no longer have freedom because others could do the same."

That is precisely why laws exist, because they must serve the interests of the people, defending their values and establishing those values that must be protected. This is all the more significant in the field of criminal law where when values are violated they must be protected by sanctions.

The sanctions provided for each individual crime must reflect the concrete social danger that each one presents *(Dongoroz and collective, 2003, p. 100).*

PROTECTION OF SOCIAL VALUES AND RELATIONS PROTECTED BY CRIMINAL LAW

The behavior of the individual in society is related to his freedom of thought and action and to the way in which individual freedom is reflected in the act committed, whether permitted or not.

Beyond these individual manifestations, it is the state that must ensure the defense of the behavioral order.

How will he accomplish this? By repressing any form of individual resistance that that goes against the law.

Of course the role of the law is to draw rules of conduct. The force of the law, which has supremacy over everything that manifests itself in society, imposes rules of conduct, so that certain social relations are defended, and other relations are sanctioned. so that values and social relationships that arise and are formed around these values are defended through it, and those relationships that harm the values are sanctioned.

1. DEFENSE OF SOCIAL VALUES, OBJECT OF CRIMINAL LAW

When legal theorists approach the general aspects of criminal law, one of the main and essential notions of criminal law theory is that of showing the object of this branch of law.

Law is grouped into different branches according to exact criteria.

The main criterion by which law is grouped into its various branches is that of the object to which the legal norms refer, and the secondary criterion is the method of regulation *(Oancea, 1965, p. 10).*

Each of the branches of law regulates a certain type of social relations that represent the very object of that branch of law.

Constitutional law, for example, has as its object the social relations that concern the organization and activity of the state.

Civil law deals with social relations with patrimonial content.

Family law deals with social relations regarding the family.

Criminal law is based on the same idea, which in turn has an object. The social relations that form the object of criminal law are those that defend the state and society against the most serious anti-social acts, namely against crimes.

There are authors who claimed that these social relations are born between the state and the criminal or perpetrator. The moment of their birth is marked by the commission of a crime, a moment that coincides with the birth of the state's right to prosecute the criminal.

There are also authors who supported the birth of social relations even before the crime is committed, that is, at the moment the criminal law enters into force.

The basic consideration that argues this statement is that it must be taken into account that the criminal law has first of all an educational preventive function, which mentions it takes precedence over the other function of the criminal law, namely the sanctioning one *(Dobrinoiu and collective, 1997, p. 8).*

It is certain that there are social relations associated with criminal law that form its object.

By the rules of criminal law, the conduct that people must have in their relations with each other, in their relations with the state and even in relation to goods or animals is prescribed under an imperative aspect.

Legea penală recunoaște și consacră relații sociale care iau naștere în societate, dar care prin manifestarea lor corespund asigurării stabilității ordinii publice.

The specific feature of prescribing a conduct and sanctioning the individual, in case of non-compliance, falls under the rule of criminal law.

Compliance with this compliance behavior is achieved under the coercive force of the state.

If the members of society harm social values through their conduct, endangering or harming them, the necessity of creating conflict relations between individuals and the state inevitably arises, which must be resolved in order to restore the relations of conformity between them *(Ivan, 2003, p. 5).*

In other words, the state has the obligation to fight against crimes, both by preventing them, by criminalizing acts that violate social values as crimes, and by bringing to criminal responsibility carried out by specialized bodies, those who commit crimes.

Ensuring the stability of social relations, through strict compliance with the law or through the sanctioning power of the law, defines the concept of legal order.

Based on its own regulatory object, criminal law occupies a well-defined place in the Romanian legal system.

In any advanced human society a system of defense of social values is promoted.

It imposes itself with a binding legal force on the persons who carry out dangerous actions for the society.

It also defines these dangerous acts under the name of crime and establishes what happens when the crime is committed by violating the criminal law.

At this moment, the state's obligation to prosecute those who have committed crimes arises, this being the legal instrument for preventing and punishing crimes.

Of course, it should not be understood from here that only the criminal law would represent the only tool of social control, it being only a part of a global system *(Streteanu, Nitu, 2014, p. 9).*

”The moral, social and political ideas that act in a synthesis, for a certain period of time, are defense by law, in order to protect the interests of society, to prevent destructive actions or inactions, and in the case of sanctioning them

through the coercion of the law rights are established for the victim and the aggressor" *(Tanasescu and collective, 2002, p. 60).*

The evolution of man, of social life, of state institutions, of the activities in which people are involved, the diversification of the way of interaction between people, no matter how they are taken, individually, or organized in forms of legal organization, determined over time, the promotion and defending the values around which all these relationships of social coexistence are formed to ensure their development in a fair manner for all involved.

Any social activity is based on rules *(Bobos, 1994, p. 177).*

The need for these rules is imposed in interpersonal relationships that cannot be imagined without rules.

2. THE NEED FOR CRIMINAL RULES THAT PROTECT SOCIAL VALUES

Just as one cannot deny the necessity of the existence and provision of law and order in society, in the same way one cannot deny the necessity of criminal law which, through its rules, regulates social relations in the fight against crimes and defends the legal order.

Crimes are studied not only as a legal phenomenon, that is, what they represent as a manifestation from a legal point of view and what are their legal consequences, but also as a social phenomenon, as a mass phenomenon, in relation to society, with the proper functioning of society, with society's requirements to manifest themselves correctly, justly, legally.

When crimes are committed, we enter the field of criminal law, and the violated legal order must be restored.

The sad reality of any human society was and is criminality.

It existed "regardless of period, type of government, social system, geographical location, cultural pattern or any other type of factors" *(Marculescu-Michinici, Dunea, 2017, p. 13).*

The state must fight against this phenomenon, and the mechanism of the fight against the criminal phenomenon is the criminal regulation.

Thus, criminal law was established as a distinct branch of law that includes distinct legal norms defining a crime, criminal liability and sanctions that are applied when a crime is committed and that through their content prevent, fight and fight against the criminal phenomenon.

The need for criminal law as a branch of the system of positive law can be approached from several points of view, none of them less important and content than the others.

As mentioned above, one of the primary desires of human society is its manifestation in a climate of peace and social order.

Because this has not been possible in any of the known human societies, crimes being committed over time, criminal law appears as a constant necessity in that it protects above all the fundamental social values of life in society.

”The protection of the fundamental values on which life in society is built constitutes the basic mission of criminal law” *(Streteanu, Nitu, 2014, p. 12).*

With the emergence of the state came the need to defend these important values.

Practically, the defense of fundamental values in society is the important function of the state and it is carried out with the help of those legal norms that form the criminal law *(Mitrache, Mitrache, 2006, p. 19).*

This important role of criminal law is deduced from its very definition, as given by legal theorists.

Traian Pop, professor of criminal law claims that”criminal law deals with those antisocial acts that are declared crimes and with the means of social defense against those people who commit them”.

Matei Basarab, gives a broader definition, inserting in his course that”criminal law, as a branch of the Romanian legal system, is made up of all the legal norms that stipulate the conditions under which an act is a crime, the type of these crimes, the sanctions applies in the case of their commission as well as criminal liability in order to defend the legal order in Romania against such acts”.

The defense of social values through criminal law is achieved through prevention and repression.

Thus, by sanctioning those who commit crimes, not only the repression exercised by the state against them as a result of the manifestation of their non-conformist behavior in relation to legal norms is achieved, but also prevention, because by sanctioning criminals, the state raises an alarm signal regarding the suffering on which involves bringing criminal responsibility, for those who, in the future, would be tempted to commit crimes, achieving in this way also the prevention of committing new crimes.

Special emphasis is therefore placed on preventive means to combat criminality.

However, preventive means are not sufficient at the criminal level.

In relation to those who commit crimes, it is necessary to take more severe measures, such as those of a repressive nature.

Thus, as a result of the danger presented by those who commit crimes, a complex activity must be carried out against them.

But, also with regard to criminals, the need for criminal law is manifested, appearing as a ”necessary, useful and timely normative construction because in the absence of a strictly determined formal legal regulation of the socio-state reaction to people who commit crimes, this reaction would could end up being excessive, arbitrary, disproportionate” *(Mărculescu-Michinici, Dunea, 2017, p. 13).*

The activity of the state, of the state bodies of bringing to criminal responsibility those who have committed crimes and the application of criminal

sanctions against them must be done only within the legal limits, with respect for the rights they have and with respect for human dignity.

”By protecting the fundamental social values and offering the possibility of sanctioning the people who attack those values, the criminal law also establishes the limits of this repression, in order to prevent any abusive or disproportionate sanctioning of the person who committed the crime” *(Streteanu, Nitu, 2014, p. 12).*

Criminal law establishes rights and obligations for people involved in the commission of a crime, both as a victim and for those involved as a perpetrator.

Criminal law establishes that the application of criminal sanctions and criminal liability should take place in order to protect social values. The defense of social values is pursued.

By the rules of the criminal law, the facts that constitute crimes are established first of all, that is, that violation of the law that can be criminalized as a crime, given the fact that the criminal rules do not intervene to protect any social value, nor in the case of any violation and damage thereof.

Criminal law intervenes when the social value through a certain specific conduct can be affected by a damage considered more serious.

3. THE TASKS AND PURPOSE OF CRIMINAL RULES IN THE DEFENSE OF SOCIAL VALUES

The main task of the criminal law is to define the crime and to show which acts are criminal, which acts are crimes, so that they can be known by the citizens.

Through these incriminations, criminal law warns the addressees of the rules regarding the seriousness of certain acts and what are the legal consequences to which they are exposed when they are committed by not complying with them.

Criminal law shows what the system of criminal sanctions is in general and what sanction is applied for each individual crime.

Criminal sanctions must correspond to the needs of defense against crime.

Criminal sanctions are repressive measures because they restrict the exercise of the fundamental rights of the person for a certain period of time corresponding to the period of the criminal sanction.

In addition to restricting individuals' participation in social and economic life, some sanctions restrict one of the most important human rights, namely freedom of movement. Participation in family life or the interruption of professional activity can also be restricted.

When it is found that a person has violated the imperative provisions of the criminal law and ended up committing a crime, the criminal sanction is applied, which is a measure of coercion and a measure of repression by which the criminal is subjected to certain deprivations *(Mitrache, 1994, p. 187).*

The most serious of these privations is the deprivation of freedom of the offender provided for in the case of custodial sanctions, when he is removed from the social and family environment, losing his freedom for a certain period of time.

But suffering exists even when the punishment is not custodial, but pecuniary (fine, confiscation), because even in this case the criminal is subject to certain deprivations that affect his material interests and thus cause him suffering.

Also, criminal law warns about the intervention of criminal liability, as the most serious form of legal liability by applying the most serious criminal sanctions, such as life imprisonment or imprisonment, the only branch of law that provides sanctions of deprivation of liberty the person.

At the same time, criminal law also provides for the categories of persons who are exempt from criminal liability and the application of criminal sanctions.

CONCLUSIONS

The defense of fundamental social values and the social relations that arise and manifest around these values is the essence of criminal law and criminal rules.

By defending social values, criminal rules guarantee a legal framework for preventing and combating criminality (Marculescu-Michinici, Dunea, 2017, p. 13).

The realization of a healthy and solid society from a socio-human and legal point of view can only be achieved through a rigorous protection provided by the state through the legal norms it enacts.

Under this aspect, the criminal rules, which promote and defend the most important social values and the legal relations that arise, develop and manifest themselves in relation to these values, are all the more necessary and important in such a society.

By defending social values, criminal norms ensure the very defense of social order and discipline.

A social protection of all is achieved, precisely by the fact that possibly criminal behaviors are kept under control through the fear of exposure to criminal sanctions or the legal order violated by the serious damage to social values is restored when criminal behaviors have actually manifested themselves.

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DIPLOMATIC CUSTOMS IN THE PERSPECTIVE OF FORMAL SOURCES OF LAW

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Abstract

Custom is considered a formal source of law, but this interpretation and qualification varies from one national system to another, depending on the national system's membership of the major legal systems.

In public international law, custom has been maintained as the source of this branch of law, especially in the field of diplomatic law, an aspect that is also the object of this study.

Key words: *custom; source of law; diplomatic law.*

INTRODUCTION

In legal doctrine, international custom represents "the tacit expression of states' consent regarding the recognition of a determined rule as a mandatory norm of conduct in relations between them" *(D. Popescu, 2005, p. 32).* We can understand that it gives expression to the custom, accepted by the states as a legal norm, through a long, generalized (Case concerning the Anglo-Norwegian Fisheries), uniform and constant *(Case concerning the right of asylum, Judgment of 20 November 1950, ICJ Report , 1950, p. 266)* application.

Custom is a main source of international law, along with the treaty and the general principles of law, since most of the norms of classical international law were formed by custom and later, benefited from incorporation in treaties or general codification *(PM Dupuy, 2000, p. 302).*

Relations between states are carried out both on the basis of legal norms and on the basis of customs, which contribute to the evolution and progress of international law, especially by the fact that they can turn into customary norms. Thus, over time, in diplomatic and consular practice, a system of customs was formed applicable to diplomatic ceremonial or diplomatic and consular means of action, whose general acceptance allowed them to be transformed into imperative legal norms of diplomatic and consular law.

Although not every custom can become law, the transformation of a non-legal custom into a legal one is possible through its recognition by the state *(M.-I. Grigore-Rădulescu, 2019, p. 120)*. Consequently, in diplomatic and consular law, at least two states must express their consent for a custom to become a rule of law.

One of the first customary rules in diplomatic law refers to the inviolability of the diplomatic agent, arguing in this regard with the refusal of the Swiss state to assume responsibility for the assassination of a participant in a conference held in Lausanne in 1923, on the grounds that protection is provided only to participants in an international conference, and that person did not have this status *(IM Anghel, 2011, p. 38).*

Through the conventional regulation represented by the Convention on Diplomatic Relations of 1961 and the Convention on Consular Relations of 1963 *(I. Brownlie, 2009, p.162 et seq.),* both concluded in Vienna, the field of diplomatic and consular law was codified, however, the preamble of these conventions state that the application of the rules of customary international law in the areas not expressly regulated in the provisions of the Convention *(G. Schwarzenberger, pp. 98-99),* provisions also existing in the European Convention on consular functions concluded in 1967, the purpose of which was the transposition, at the level of European practice, of the provisions contained in the Vienna Convention regarding customs.

1. CUSTOMARY RULES OF DIPLOMATIC PROTOCOL

Evolution of the diplomatic ceremonial started from rituals invoking goodwill and the protection of supernatural forces to religious rituals, to profane activities and the expression of respect in relation to some of the community members who were braver or who became leaders.

As a result of the variety and multiplicity of the existing diplomatic ceremonials, it was necessary to establish some rules for their conduct, a fact that determined the appearance of the institution of the protocol, with the aim of grouping and allowing knowledge of the set of rules based on which the ceremonials are carried out and to ensure compliance them, in the process of moving from the practice of sending messengers or temporary diplomatic missions to the establishment of permanent diplomatic representations *(A. Quondam, 1997, p.148).*

The diplomatic protocol includes all the rules of conduct regarding the relations between diplomats and the authorities of the accredited strata, as well as those between diplomatic missions and their personnel, unanimously accepted by the international community *(IM Anghel, 2011, p. 30).*

By virtue of the rules of protocol, international relations are governed by the principle of equal rights of all nations and, in direct correlation with this principle, there is the order of precedence of state representatives. If, initially, the order of precedence was established according to the seniority of the states

represented by the ambassadors , in 1815, at the Vienna Congress of the European powers, a regulation was adopted establishing the order of precedence of the heads of diplomatic missions, according from the date of presentation of the letters of accreditation, and in 1818, it was established, by the Protocol of Aix-la-Chapelle, that the signing of treaties should be done in alphabetical order of the signatory strata *(D. Mazilu, 2010, p. 121).*

Likewise, the protocol norms also establish international courtesy, which includes a set of non-legal rules, but which contribute to maintaining good relations between states (Nouveau Larousse, p. 799) and to "creating a favorable climate for the development of bilateral or multilateral ties between them" *(IM Anghel, 2011, p. 30).*

Another extremely old customary rule *(B Sen, 1965, p. 80)* refers to the granting of privileges and immunities to the personnel of diplomatic missions, the observance of which is particularly important for the entire international community, benefiting from the regulation of the Vienna Conventions of 1961 and 1963, but also of other international legal documents adopted as a result of their serious violation in Iran in 1979 and in Lima in 1996 *(CF Popescu, MI. Grigore-Rădulescu, 2015, p. 74 et seq.)*.

In Romania, by virtue of respecting the customary rules, the Protocol Guide was developed for diplomatic missions, consular posts and representative offices of international organizations.

According to the mentioned guide, when they arrive at the post, the heads of diplomatic missions are expected, at the airport or at the train station, by the director of the Protocol Directorate or by his deputy or by another official from the mentioned department, if the arrival takes place on public holidays, on Saturday, Sunday or after 10:00 p.m. or before 8:00 a.m.

On the occasion of the visit that the head of the diplomatic mission makes to the Ministry of Foreign Affairs, he is informed about the local customs observed when presenting letters of accreditation, the rules of protocol imposed on the heads of diplomatic missions in Romania and, at the same time, the details of the audience with the Minister of Foreign Affairs are established *(P. Tănăsie, G. Marin, D. Dumitrescu 2000, pp. 25-30).*

Respecting the day and time set, the head of the diplomatic mission presents himself at the ministry, where he is presented to the relevant minister by the director of the Protocol Directorate.

The procedure for presenting the letters of accreditation begins with the departure of the head of the diplomatic mission from his residence to the Cotroceni Palace, in a protocol car of the Presidency, accompanied by the director of the protocol department within the ministry.

Once there, he passes through the military guard of honor and, accompanied by the director of the Protocol Directorate and his collaborators, enters the Union Hall, stopping 4-5 steps in front of the President of Romania.

The ceremony is attended by the foreign minister or, in his absence, a secretary of state, as well as a presidential adviser.

The letters of accreditation, as well as those of recall of the predecessor, if applicable, are handed, with both hands, by the head of the diplomatic mission to the President of Romania from a distance of approximately 1 m, there is a handshake and mutual introduction of the participants at the ceremony.

After the official photo, next to the Romanian flag, there is a meeting between the President and the head of the diplomatic mission for about 15 minutes, in the presence of the participants in the ceremony of submitting the letters of accreditation *(P. Tănăsie, G. Marin, D. Dumitrescu 2000, p. 39).*

At the end of the meeting, a glass of champagne is offered, then the President says goodbye to the head of the diplomatic mission, who, accompanied by his collaborators, leaves the palace and heads for the car.

Upon departure, the head of the diplomatic mission is led to his residence also by the director of the Protocol Directorate or by his deputy, and the official car has the national flag of the respective country flying on the right wing.

Pursuant to the provisions of Law no. 269/2003 regarding the Statute of the Diplomatic and Consular Corps of Romania, with subsequent amendments and additions, the order of precedence of the heads of diplomatic missions will be determined by the day and time of presentation of the letters of accreditation to the President of Romania, for ambassadors, or by the date of notification to the Ministry of Foreign Affairs of taking over the management of the diplomatic mission, for those charged with business *(P. Tănăsie, G. Marin, D. Dumitrescu, 2000, p.40).*

The day and time of the presentation of the letters of accreditation by the heads of diplomatic missions are determined according to the day and time of presentation of the copies of the letters of accreditation to the Minister of Foreign Affairs or a Secretary of State, and the day and time of the presentation of the copies of the letters of accreditation are determined in relation to the day and arrival time in Bucharest. In the case of the arrival of several heads of mission on the same day and at the same time, by the same plane, train or sea ship, the order of submission of copies of letters of accreditation is established according to the alphabetical criterion of the name of the country or by drawing lots, if there is no other solution.

In the case of the absence of the head of the diplomatic mission, a verbal note is sent to the Protocol Directorate, specifying the name of the collaborator who replaces the head of the diplomatic mission during his absence. The same procedure is followed on the return and resumption of his functions by the head of the diplomatic mission.

In the case of the permanent or temporary departure from Romania of a charge d'affaires, the minister of foreign affairs of the respective country will

notify his replacement, through a letter or telegram addressed to the Romanian minister of foreign affairs.

2. DOES VIOLATING THE RULES OF DIPLOMATIC PROTOCOL ATTRACT SANCTIONS?

The rules of diplomatic protocol are strict and they cannot be subdued interpretation, in the sense that they must respected again their violation expresses the will to the one who does not apply them to evade obligations consented in the interest to everyone.

Anything offense deliberate It is considered as a manifestation of disregard towards the victim, fact what the will have repercussions on relations from respective states.

At the same time, anything favor agreement of a missions diplomatic it will be right away sought and by other missions of similar rank, which either cancels preferential gesture, either create a category privileged, both situations being likely to generate tension protocols.

We appreciate that rules general protocol are applied and respected in the consideration the need to solve the fundamental problems and common interests, capitalizing benevolence one state against another. On the way consequence, only in front of a violations systematic protocol, emanating from an authority state qualified, is case to protest and to be adopted any response measures.

In this context of sanctions applicable in the case abuse protocol rules, it appears as a matter of course the question if these rules are of origin customary, considering that it is not characterized through uniformity, what which leads to lack a unique protocol code accepted by the whole community international of the strata .

On the other hand party, however, to be in the presence of a rules common law must met the two elements, respectively objective elemental and subjective element or psychologically. If, in what what the concerns the objective element of protocol norms, represented by practices long, generalized and constantly applied do not exist none doubt, the element subjective it is May hard to prove.

It is possible hire liability legally international of the state in the case abuse protocol rules by the officials its? Of course that sanction applicable in this case is not the may engrave possibly, being able consist only in the affectation or deterioration relations mutual between states.

At the same time, however, the conduct and activity diplomatic staff are regulated by the provisions Convention looking relations diplomatic from 1961 and Convention looking relations consular from 1963, as well as the Statute The Diplomatic and Consular Corps of each state, which what the creates in pregnancy this categories of personnel the obligation to promote policy external of the represented state and to respect the assignments what the him I return, in virtue quality owned.

CONCLUSIONS

Considering that rules of ceremony and protocol apply inclusive in the case of negotiation, closure or entry into force of the treaties international, the answer to this question leads to the conclusion that protocol rules are binding in practice relations between states in insurance good development of relationships between states.

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PREVENTION OF RECIDIVISM - THEORETICAL REFERENCES

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Abstract

Regardless of the model, forms and/or strategies of crime prevention, we believe that a component related to the prevention of recidivism should not be missing. Through this article, we aim to highlight some theoretical aspects that could be taken into account in the foundation of some public/penal policies in our country, starting with conceptual clarifications, pointing out prevention models and representative theories and ending with some conclusions.

Key words: *recidivisme prevention, prevention models, primary prevention, secondary prevention, tertiary prevention, criminological theories.*

INTRODUCTION

In order to perceive public safety and experience feelings of security and tranquility in public space, and not only, it is necessary to identify and promote the concerns of specialists from several fields.Asigurarea unei percepții clare și corecte este determinată de mai mulți factori: de natură economică, socială, educațională și, nu în ultimul rând, cei de sorginte legislativă pentru a cunoaște valorile ocrotite de legiuitor.

Beyond these premises, public safety can also be directly correlated with the level of quality of life, so indirectly also the prevention of recidivism can influence this level.

1. QUANTITATIVE AND QUALITATIVE PREMISES

Chronologically, we should specify that studies carried out as far back as 1993 *(Yvan Bordeleau, 1993, p.1)* show that a significant proportion of crimes (more than 50%) are committed by a subgroup of recidivists representing at most

10% of all criminals. *(Yvan Bordeleau, 1993, p.90)* According to other authors, recidivists commit 70% of the total number of crimes.

Also, recent data shows recidivism in numbers for our country. So, the recidivism rate is 36% here, compared to the European average of 47%. In Romania, 43 euros are spent every day for a prisoner (of which 80% are staff salaries) while the European average is 64 euros, according to the Council of Europe, Annual Report 2021 on the conditions in the penitentiaries of European states[1].

These quantitative aspects must be supplemented with other elements related to the cost of crime. A few pointers are also needed here, also from Canada *(Yvan Bordeleau, 1993, p.58)*:

- $431 million in unrecovered property and money, unclaimed damages, medical costs, lost wages and insurance payouts;
- almost a billion and a half in police services and another billion in private security;28 de milioane de dolari cheltuiți pentru urmărirea penală în instanțele penale;
- almost 600 million dollars dedicated to the custody of defendants/convicts, minors/adults;
- $28 million to help victims;

A total of three billion dollars, which represents only a fraction of the real costs, because social costs are added to them, which are more difficult to quantify. In short, crime is extremely expensive from a financial point of view.

The same conclusions were also evident in a study in which I participated, research carried out within the Institute of Legal Research (Romanian Academy), in the years 2006-2008 *(R.M. Stănoiu, A. Preda, Costul crimei, 2008, p. 51-61)*: huge sums from the state budget during the course of a criminal trial (from the investigation to the release from detention of the convicted person), although the team of researchers was unable, for various reasons, to obtain all the figures that could complete the final table of expenses.

We add the fact that there is no national crime prevention strategy in the country, the only one identified being the National Strategy against Organized Crime 2021-2024[2] *(as an annex to a decision from 2021)*.

Last but not least, we must mention the attempt by the Ministry of Justice, as the contracting authority, to sign up a service contract for the development of a study (with three components): the causes of recidivism in Romania, a public

[1] https://www.dw.com/ro/%C3%AEnchisorile-din-rom%C3%A2nia-g%C3%A2ndaci-plo%C8%99ni%C8%9Be-%C8%99i-tentative-de-suicid/a-62336208)

[2] https://lege5.ro/Gratuit/ha4dinjrg4yq/hotararea-nr-930-2021-privind-aprobarea-strategiei-nationale-impotriva-criminalitatii-organizate-2021-2024?pid=412696357#p-412696357, accesed on 9th November 2022

policy document and an action plan for the prevention of recidivism in Romania, the estimated total value , without WAT, reaches *at 397,815.29 lei, which had 24.10.2022 as the deadline for submitting offers in SEAP. Probably the reported figures regarding recidivism in our country also justified this scientific approach. We note that field/empirical research looks at interdisciplinary aspects involving jurists (specialized in criminal law and criminal procedure, and another in criminology), sociologists and psychologist.*[3]

Our approach will be supplemented with practical aspects pointed out by a probation counselor with more than 15 years of experience in the Bucharest Probation Service, namely Dr. Andreea Faur.

2. CONCEPTUAL DELIMITATIONS

One of the elements of the study object of Criminology is the social reaction to crime, criminal, criminality which can take many forms. The forms of social reaction can be: official/unofficial, repressive/preventive, etc.

Among these classic classifications, the second one is relevant for the stated theme, as it also refers to social control (replacing the outdated term "combat" and prevention. If we refer to the first, then we have to consider the following levels: the establishment and application of sanctions, methods based on intimidation and coercion, etc. If we refer to prevention, then we have in mind: resocialization/ attempts at reintegration, alternatives to imprisonment, etc. We also specify that prevention takes place on several levels: at the level of society, at the level of the community, at the level of the family, at the individual level.

As Andre Lemaitre rightly points out, "whether it is an academic or a professional concern, no observer can escape the fact that in recent years we have witnessed a great resurgence of interest in crime prevention" *(A. Lemaitre, 2014, p. 9).*

The problem of prevention began to take a much more important place, now being known even with the status of a sub-branch of Criminology *(D. Szabo, 1983, p. 9).*

But how is prevention defined? As Prof. Gassin *(R. Gassin, 2011, p.852-858)* also remarks, following types of definitions over time, prevention is an imprecise notion that has multiple definitions that involve criticism (something that is so obvious that it does not need to be defined until the opposite of repression) and benefits.

Consequently, we underline to a definition of a renowned Canadian professor who claims that crime prevention includes non-coercive actions on the causes of crime with the specific aim of reducing their probability and severity. *(M. Cusson, 2002, p.9).*

[3] https://www.juridice.ro/802757/ministerul-justitiei-organizeaza-licitatie-pentru-elaborarea-unui-studiu-a-cauzelor-recidivei-a-unui-document-de-politici-publice-si-a-unui-plan-de-actiune-pentru-prevenirea-recidivei.html, accesed on 10 November 2022

Romanian authors *(Gh. Nistoreanu, C. Păun, 1996, p.207)* manage a broader definition. They designate crime prevention as a permanent social process that involves the application of a set of social, cultural, economic, political, administrative and legal measures intended to prevent the commission of antisocial acts by identifying, neutralizing and removing the causes of the criminal phenomenon.

3. PREVENTION MODELS

While many agree that prevention is a must, each society has embraced the security model that best responds to the current political trend and conveyed values. By focusing on one aspect of prevention rather than another, it tends to influence the crime rate in the sense of reducing it by identifying criminogenic risks and acting on criminogenic factors. A historical overview seems necessary to highlight elements of continuity and discontinuity in the construction of types of models or returns to the diversity of existing models and presents the different forms that delinquency prevention can take *(A. Lemaître, 2015, p.3)*[4].

3.1. Clasical model

It has two important sides: general prevention and special prevention. The general prevention is ensured by the intimidating effect of the punishment, by the force of the example generated by two premises:

- the more severe is the punishment provided by law, the more others will refrain from committing the criminal act; - the more certain and faster the application of the law, the more obvious the preventive effect will be *(A. Lemaître, 2014, p.209-210).*

3.2.Social model

It appears as a reaction to the limits of the previous model and is also generated by the increase in crime worldwide, implicitly in recidivism *(A. Lemaître, 2014, p.211).* In essence, it is about educational actions to stop the evolution of the individual towards maladjustment and antisocial, calling on institutions and specialists. *(Gh. Florian, 2005, p.18 și p. 20-26).*

It proposes three levels of achievement and involvement in prevention activities, such as:

- *Primary prevention* - at a general level - specific measures in the social, economic, cultural, educational fields to annihilate criminogenic situations and that predominate the involvement of the community, even some welfare of society *(Gh. Florian, 2005, p.19 și p. 27-30).*
- *Secondary prevention* – at the level of criminogenic risk groups (early identification), but also of criminogenic areas

[4] http://www.reflexions.uliege.be/cms/c_406085/en/la-prevention-criminelle-miroir-de-notre-societe?part=3

▶ *Tertiary prevention* – activities designed to avoid the risk of recidivism *(A. Lemaître, 2014, p.214).* Actions are taken for the treatment, re-education, re-socialization and social reinsertion of ex-inmates.

Analyzing the present model, we notice that the third level concerns the very subject of the present debate, but we cannot fail to mention that it cannot be applied to any societies because it implies a certain level of social cohesion, a cultural integration of all ethnicities and minorities, as well as a pronounced civic spirit of such a nature as to ensure community awareness. Also, if we carefully observe the first two types of prevention, we notice that they are primarily aimed at *preventing victimization*, regardless of whether it refers to society as a whole or to groups with potential victimization. In this context, we also mention the efforts of a small group (9 founding members: lawyers, psychologists, medical staff, teaching staff, etc.) that wants to contribute to the efforts of specialized public authorities and to that of some NGOs, also specialized, to identify the black figure of victimization, participate in victimization prevention campaigns, conduct studies and contribute to the adaptation of legislation according to the results of the las tone. (https://victimologie.ro/,https://www.facebook.com/profile.php?id=100086504680117)

3.3.The situational model (preventive techno)

In summary, it aims to reduce the opportunities to commit antisocial acts, through simple, realistic, low-cost measures. *(A. Lemaître, 2014, p.214).* As such, it is focused on protecting people and property using police officers and other experts in the field. *(Gh. Florian, 2005,p. 31).*

The model specifically targets potential victims, prompting them to take precautionary measures that are mainly two categories:

A. *Security measures* that make it difficult to commit crimes (making targets more difficult).

B. Measures influencing the *risks and benefits* of criminals (marking of property, technical surveillance, ensuring zonal surveillance).

4. CRIMINOLOGICAL THEORIES

Among the criminological theories of sociological origin, I selected from the consensual model, the theories of social control, appreciating that the theories from the conflict model are not relevant in relation to the proposed theme.

4.1.The theory of Walter Reckless

The premise from which the author starts is: *Why in the same circumstances, some people commit crimes and others do not?*

The containment theory, promoted by Reckless in the first half of the 20th century, believes that crime can be prevented or restrained at two essential processes: one located at the level of social organization, the other at the individual level. *(R.M. Stănoiu, 2006, p. 214)*.

Here are some of the conclusions he reaches that are relevant to the topic under study. His theory is based on a hierarchical construction, in relation to the individual's ability to curb the social and psychological conflicts he faces. Internal and external factors occupy a position between the pressures and attractions (pulls) of the social environment and the impulses (pushes) of the individual personality. At the top of the hierarchy are the social pressures that press upon the individual. These social pressures are: poverty, unemployment, economic insecurity, family conflicts, minority group status, lack of opportunities, social inequalities, therefore socio-economic and family. At the same level are the social attractions that pull the individual outside the accepted models of life. Such

At the top of the hierarchy are the social pressures that press upon the individual. These social pressures are: poverty, unemployment, economic insecurity, family conflicts, minority group status, lack of opportunities, social inequalities, therefore of a socio-economic and family order. At the same level are the social attractions that pull the individual out of accepted models of life. Such attractions include deviant influences, harmful companies, delinquent subcultures, a certain media coverage of crime.

According to Reckless *(R.M. Stănoiu,2006,p. 215)*, the individual's immediate (immediate) environment represents a first external brake (e.g. family/friends and includes factors such as morality, supervision, discipline and reasonable standards of expectation. If these barriers are weak, the individual is vulnerable to social pressures and attractions.

Inside the individual there are internal brakes, such as a high tolerance for frustration, a sense of responsibility, an adequate goal orientation.

Internal brakes are the last line of defense against internal and external pressures and attractions. Finally, the bottom end of the hierarchy consists of psychological impulses. These include varying degrees of hostility, aggressiveness, suggestibility, revolt, rebellion, need for gratification,[5] reactions of guilt, feelings of inferiority and other organic deficiencies such as brain damage or epilepsy.

According to Reckless, some of these psychological impulses are usually too strong in relation to internal and external brakes.

This theory posits that the social control[6] - that constrains the tendances to deviance, delinquency, and crime—included the "inner" (i.e, strong conscience or "good self-concept") and "outer" forces of isolation (i.e, parental supervision and discipline) and school, strong group cohesion). The author thinks that both

[5] https://www.google.com/search?q=containment+theory+criminology+definition&oq=containment+theory+&aqs=chrome.9.69i57j0i19i512l9.10294j1j7&sourceid=chrome&ie=UTF-8,accesed on 11 Novenber 2022

[6] https://en.wikipedia.org/wiki/Walter_Reckless, accesed on 12 November 2022

internal and external limitation are essential between the pressures and pulls of the external environment and the impulses and forces from inside.[7]

4.2. Theory of Travis Hirschi

It is called the bonding theory, it is also part of the of social control theories (the consensual model) and, although it dates from the 70s of the last century, its theory still arouses interest for theorists and practioners from XXI century *(Travis Hirschi, 1969, p.55 apud https://in.sagepub.com/sites/default/files/upm-binaries/36812_5.pdf)*

According to Hirschi (1969), virtually all criminological theories existing up to that time began with a fundamentally flawed premise: criminal behavior requires, in some form, the existence of criminal motivation. A follower of the schools of thought promoted by Hobbes and Freud, Hirschi, on the other hand, began with the opposite premise to another criminolgists: that we, from birth, possess the hedonistic impulse to act in selfish and aggressive ways that lead to criminal behavior. Consequently, Hirschi believes that most people have antisocial tendencies, and these tendencies are actualized only when social control weakens. Therefore, it is more concerned with identifying and ranking the causes of conformity. In his studies, he tries to show what are the elements that keep the individual away from committing crimes. He found the answer in the bonds people form toward prosocial values, prosocial people, and prosocial institutions. These connections, Hirschi argued, come to control our behavior when people are tempted to engage in criminal or deviant acts.

As such, he concludes, the probability of the individual becoming deviant or conformist depends on:

1) *attachment* (defined as a psychological affection towards certain persons or institutions), such as towards parents, school, group of friends - in general, towards positive models; *(T. Hirschi, 1969, p.58)*

2) *engaging* in a conventional line of conduct (the importance of social relationships that people value and would not want to risk/endanger by committing crimes or deviant acts. In essence, Hirschi noted that people are less likely to misbehave when they know they have something to lose. They need a relatively stable climate around them and an established schedule, especially during the week);

3) *involvement in conventional activities* (school, cultural, sports, etc.); refers to the opportunity costs associated with how people spend their time. Specifically, Hirschi appealed to the old philosophy that "*the hands are the devil's workshop*" *(T. Hirshi, 1969, p.59)* meaning that if people spend their time engaged in some form of prosocial activity, then they are not tempted to waste their time in antisocial activities. For example, youth who are heavily involved in legitimate school-related activities—whether academically, socially, or athletically—will not

[7] idem

spend the same amount of time doing bed things, such :destroying property, stealing things that don't belong to them, shooting, using or stealing heroinand so on. But, this doesn`t mean, of course, that such young people cannot engage in those behaviors before or after their legitimate mentioned activities. However, Hirschi argued that, at least during that period of vocational activities, such young people will not commit any crime.

4) *the belief in conventional values* (respect for elders, teachers, etc.) *(R.M. Stănoiu, 2006, p.216).* The final type of social bond identified by Hirschi is belief, which refers to the degree to which one adheres to values associated with law-conforming behaviors; the assumption is that the more important such values are to a person, the less likely he is to engage in criminal behavior. For example, young people who don't appreciate that it's a bad idea to skip school and instead value spending money every day playing the latest version of Guitar Hero (music video game) and smoking marijuana are more likely to become criminals. Although this relationship is quite simple, the basic concept that Hirschi was exploiting was that there is an important link between attitudes and behavior.

Perhaps the most significant element of Hirschi's theory is that theese prosocial conections bring us together and they remain in our lives to keep our behavior in check. So, prosocial bonds bind us, and can control our behavior even when that persons are no longer there.

CONCLUSIONS

Some conclusions are necessary and, in our opinion,they could be the following aspects:

- the need for pilot studies with recidivist subjects, which correlate the etiology with the forms of social reaction in specialized institutions, with qualified personnel (interdisciplinary teams, such as the National Institute of Criminology)

- empirical research of the type of experiment before/after, based on questionnaires, interviews, psychological tests applied to recidivists

- types of interventions at microgroup and individual level through post-penal assistance (economic, educational, cultural, health measures/transition houses)

- the essential role of municipalities in finding solutions for the reintegration of recidivists

- encouraging commercial companies/public institutions that hire recidivists

- Psychotherapy Centers for recidivists, (each of them presents a certain personality profile, structured differently as a result of various experiences lived and/or filtered with a certain intensity)

- transitional houses for recidivists, recommended for those who do not have a family to return to, do not have a secure job, and have lost or not had the skills to be responsible, etc.) In such homes they can learn and/or relearn how to

household, how to manage their financial resources, how to spend their free time as they are monitored by teams of specialists who have certain schedule hours when they provide counseling to recidivists assigned to such homes. After a certain period of time, in which they prove to the specialists that they can manage on their own, they become independent and socially reintegrated, professionally they can leave these homes, with the consent of all the specialists who supervised them for a certain period of time (Quebec model).

- *involvement in projects regarding the prevention of victimization* (Decision no. 592 of May 27, 2021 regarding the approval of the National Strategy for the prevention and combating of sexual violence "SINERGIE" 2021-2030 and the Action Plan for the implementation of the National Strategy for the prevention and combating of sexual violence "SINERGIE" 2021 -2030 and in victims` studies (Romanian Society of Victimology).[8]

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RISKS IN THE MATTER OF PUBLIC PROCUREMENT FROM THE PERSPECTIVE OF LEGAL TREATMENT

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Abstract

Through this article, we aim to highlight the way in which managers from several public institutions in Romania perceive the risks regarding public procurement procedures from the perspective of the legal framework. The public procurement process represents a sequence of stages, following which the product or the right to use it, the service or the work is obtained, as a result of the award of a public procurement contract. The identification of errors/omissions that may occur during the realization of the public procurement process is an essential activity in order to analyze the results obtained in comparison with those expected in the planning stage and to be able to ensure the necessary conditions for the continuous improvement of the entire process. The control mechanism of the public procurement process must be based on specific risk analysis.

Key words: *procedures, public procurement, risks, legal framework.*

INTRODUCTION

The public procurement system contains all the rules that must be respected in relation to the use of funds from the state budget/local budgets, through which the requests for the purchase of products, services or works of the various contracting authorities meet the offers proposed by the various economic operators. These rules are established by the national regulatory authority, taking the form of the applicable rules for carrying out the procedures for awarding contracts/framework agreements. The purpose of the public procurement system in Romania is to facilitate the development of Romanian society through the non-discriminatory and transparent spending of public funds. Both in Romania and

throughout the world, public procurement systems represent an essential point of contact between the economy and the public administration of each state and an important tool through which a series of government objectives can be met.

Public procurement systems that are well designed and function properly contribute to the fulfillment of political objectives such as creating new jobs, supporting small and medium-sized enterprises, environmental protection and supporting the field of research and innovation (*Androniceanu, 2006, p.216*)

The regulatory framework in force in the field of public procurement contains a series of provisions regarding the roles and obligations of the contracting authority with regard to situations potentially generating conflicts of interest, as well as the rules that must be applied to avoid such situations.

Public procurement is defined as: procurement of goods, execution of works or provision of services for the needs of one or several contracting authorities (*Lazăr, 2010, p.116*).

The examination of disputes arising in the process of public procurement is given to the jurisdiction of administrative litigation courts, because the public procurement contract is an administrative contract and is subject to the legal regime of public law.

The public procurement process represents a sequence of stages, following which the product or the right to use it, the service or the work is obtained, as a result of the award of a public procurement contract.

The contracting authority is obliged to plan public procurement contracts, which are to be concluded as a result of public procurement procedures, in compliance with the principles of ensuring competition, efficiency, publicity, non-discrimination and non-division thereof.

The public procurement plan is a useful work tool both for the procurement department and for the financial-accounting department that ensures efficient budget execution (*Nicolescu, 2000, p.219*).

According to the National Strategy in the field of Public Procurement, one of the most frequent problems encountered in the public procurement process is the lack of proper substantiation of internal opinions and the clear separation of functions with responsibilities in its implementation, aspects that can be corrected by using them throughout the process /specific activities, of checklists through which it is possible to ensure the implementation and documentation of compliance with the "4 eyes" principle, which involves the clear division of tasks into two steps: on the one hand, the initiation and on the other hand, the verification, carried out by different people , as well as tracking/verifying compliance and/or quality elements.

The implementation of this principle requires the involvement of at least two distinct people in the process of creating a document, as follows:

1) the person preparing a document uses the available internal tools (such as checklists, operational procedures) in order to exercise self-control, respectively to collect the necessary data/information and analyze/process them, taking into account the applicable legal requirements/good practices in the field; once the respective document is completed, its initiator checks its content by going through the steps/elements included, for example, within the checklists used for this purpose, then signs this document with the mention *prepared*;

2) the second person (the second pair of eyes) is responsible for the overall verification of the respective document, using the same internal tools (checklists in the given example), then signs it with the mention "verified"

Also, the legislation in force on public procurement includes a series of mechanisms (such as the market consultation process before the initiation of the award procedure), rules for publicity and transparency, as well as for communication and transmission of data during the application of procurement procedures award, which lead to an increase in the level of transparency on the specific operations and activities carried out by the contracting authorities within the public procurement process, but which are not sufficient from the perspective of the application of the rules of ethical conduct and integrity in public procurement.

1. REVIEW OF THE SCIENTIFIC LITERATURE

The activities carried out within the public procurement process are often complex, involving the realization of a set of homogeneous and/or complementary duties and tasks that must be exercised, depending on their specifics, through the various organizational structures set up at the level of the contracting authority having in view of the stages of the process established within the legislation on public procurement, the completion of which requires the expertise of a wide range of specialists.

The public procurement system represents the totality of rules and actions related to spending public money in order to satisfy a public interest. The component elements of the system are (*Lazăr, 2010, p.89*):

- regulatory authority;
- contracting authorities;
- economic operators;
- system supervisors.

The institutional component includes all institutions designed to ensure the application of the legal framework, monitoring and increasing the efficiency of public procurement procedures. These include (*Minculete, 2005, p.123*):

1. The Ministry of Finance through: the Public Procurement Agency (P.P.A.) and the Directorate of National Economy Finances, Capital Expenditures and Public Procurement;

2. Financial Control and Review Service;

3. Court of Accounts;
4. State Treasury.

The Ministry of Finance – specialized body of the central public administration responsible for carrying out the function of verifying the procedural aspects related to the process of awarding public procurement contracts.

Public Procurement Agency – specialized administrative authority under the Ministry of Finance. The Public Procurement Agency is located at the center of the Public Procurement System, its role and importance being determined by the main attributions established by law. Being established for the purpose of state regulation, supervision, control and inter-branch coordination in the field of public procurement, the Public Procurement Agency, as a specialized administrative authority, has the following attributions (*Şerban, 2011, p.165*):

- ✓ elaborates and proposes to the Government for approval drafts of normative acts necessary for the execution of this law, elaborates proposals regarding the modification and completion of the legislation on public procurement;
- ✓ coordinates, monitors, evaluates and controls the manner in which contracting authorities comply with public procurement procedures and the awarding of public procurement contracts;
- ✓ draws up, updates and maintains the list of qualified economic operators and the list of prohibition of economic operators;
- ✓ elaborates and implements standard documentation for public procurement procedures;
- ✓ examines and registers the tender documents submitted by the contracting authorities;
- ✓ examines reports on public procurement procedures;
- ✓ examines and registers public procurement contracts concluded following procurement procedures, except for those concluded following the procedure by requesting price offers;
- ✓ requests the re-examination or annuls, as the case may be, the results of public procurement procedures;
- ✓ collaborates with international institutions and similar foreign agencies in the field of public procurement;

The Court of Accounts – is the public authority of the state that exercises the external audit in the public sector, as the supreme audit institution.

Financial control and revision service - is a state control and internal audit body in the public sector, which, within the limits of competence, exercises control over the economic and financial activity of institutions, enterprises and organizations, regardless of the form of ownership and the type of activity, uses

funds from the national public budget and provides internal audit services to public institutions.

The State Treasury - fulfills duties regarding the implementation of the budget system, the administration of the funds accumulated in the Treasury accounts, the financing of expenses within the limits of budget credits and their special destination, the operative forecasting of budgetary and extra-budgetary receipts, their rational management within the limits of the expenses foreseen for the respective period.

Contracting authorities are legal entities under public law and the associations of these authorities.

Economic operator – Any economic operator with entrepreneur status, resident or non-resident, natural or legal person, has the right to participate, under the terms of this law, in the procedure for awarding the public procurement contract.

The foreign economic operator benefits from the same rights regarding participation in the procedures for awarding public procurement contracts that national economic operators benefit from, in the country where the foreign economic operator is resident.

The leader of the public entity establishes and implements a risk management process, which facilitates the efficient and effective achievement of its objectives. The risk management process represents the sum of the activities of (*Stănescu, 1996, p.147*):

- ✓ analysis of the context in which the contracting authority operates;
- ✓ identification, analysis and assessment of risks / threats regarding the achievement of its objectives and estimated results;
- ✓ establishment of measures to manage the identified risks;
- ✓ periodic review and monitoring of progress.

In order to implement an effective risk management, both the hierarchical superiors and the execution staff must be involved in this process. Risk management must start from the organizational objectives (strategic and operational) and facilitate the understanding of the risks and opportunities that can derive from the procurement activity, such as the customary practice (good practices) but also the specific activities carried out can be developed and, respectively, improved in this way so that risks are managed in an efficient and effective manner.

Among the responsibilities of the staff involved in risk management are (*Drăghici, 199, p.197*):

- ➢ developing and updating the risk management framework aimed at the public procurement process to which the contracting authority is exposed (depending on the specifics of its activity object), as well as the risk register;

- monitoring of major changes at the level of risk sources regarding public procurement processes managed by the contracting authority that could affect the achievement of objectives;
- application of risk identification and assessment tools and techniques;
- ensuring that the processes carried out at the level of the procurement function and the methodologies used are effective for managing the identified risks;

The risk management system must be strictly correlated with the control of procurement procedures and take into account all the irregularities that occur at each stage, by analyzing the causes of these irregularities and establishing prevention mechanisms or - where this is not possible - measures to management of the unwanted effects of the detected irregularities.

2. RESEARCH METHODOLOGY

The purpose of the article is to determine how managers from several public institutions in Romania perceive the risks of public procurement procedures from the perspective of the legal framework.

The current legislation establishes a series of general principles of the public procurement process, such as: efficient use of public finances, transparency, liberalization and expansion of international trade, free movement of goods, assumption of responsibility in public procurement procedures.

P1- The principle "Efficient use of public finances and minimization of the risks of the contracting authorities" can be carried out by applying competitive award procedures and using criteria that reflect the economic advantages of the offers in order to obtain the optimal ratio between quality and price.

P2 - The "Transparency of public procurement" principle consists in informing the public regarding the application of the award procedure, and providing access to all information related to the public procurement procedure. The principle of non-discrimination means ensuring the conditions for the manifestation of real competition on the market, regardless of the form of organization, nationality or form of ownership of the future contractor, so that any economic operator can participate in the award procedure and have the chance to become a contractor.

P3 - "Liberalization and expansion of international trade as well as the free movement of goods" implies freedom of establishment and provision of services, mutual recognition and acceptance of: products, services, works legally offered on the market; diplomas, certificates and other documents, issued by the competent authorities of other states; technical specifications, equivalent to those requested at national level. The Equal Treatment principle means establishing and applying

identical rules, requirements, criteria for all economic operators, so that they benefit from equal chances to become contractors during the award procedure.

In order to comply with this principle, the contracting authority must ensure that:

- ✓ the same information is made available to all economic operators, both through the standard documentation and through subsequent clarifications on its content;
- ✓ the minutes of the bid opening meeting are communicated to all participants in the procedure, regardless of whether or not they were present at the opening meeting;
- ✓ qualification/selection criteria are applied identically to all participants;
- ✓ the established evaluation factors allow comparing and evaluating offers objectively

P4 - "The principle of assuming responsibility" consists in the clear determination of the tasks and responsibilities of the people involved in the public procurement process, provided by the legislation in force and the Regulation of the Working Group for Public Procurement, approved by the contracting authority, which ensures professionalism, impartiality and the independence of the decisions adopted during the entire procurement process.

The deficiencies identified in the verification process of procurement procedures financed from structural instruments consist of:

R1 - "Unjustified reduction of deadlines as a result of the publication of a notice of intent": the reduction of the deadlines for submission of offers is operable only in the situation where all the qualification and selection criteria, as well as the award criterion, are included in the content of the notice of intent, also found at the level of the participation announcement. The evaluation factors will be detailed in the notice of intent only to the extent that they are known at the time of sending the notice.

R2 - "Publication of discriminatory, insufficiently detailed or incomplete qualification and selection criteria": the considered qualification and selection criteria must be objective, non-discriminatory and proportional to the complexity and object of the contract and reflect the concrete possibility of the economic operator to fulfill the contract.

R3 - "Choosing an accelerated procedure for awarding the contract": the acceleration of the restricted tender/negotiation procedures with the prior publication of a participation notice can only be carried out if it was not generated by an action or inaction of the contracting authority and if there is a justification of the emergency situation.

R4 - "Rejection of the request to change the deadline for submission of offers, at the request of bidders": among the frequent mistakes that must be avoided is the establishment of the minimum term provided by the legislation in

the field of public procurement for the preparation of offers, for example 24 days, of which a significant period is covered by legal holidays and, although there were requests from the economic operators to postpone the deadline for submission of offers and the opening, the contracting authority did not comply with them.

Based on the purpose of the scientific research, the following objectives were drawn up:

1. Analysis of public procurement procedures from the perspective of the legal framework;

2. Analysis of risks specific to public procurement;

3. Identifying the links between public procurement procedures and specific risks.

Based on studies and theories in the field of specialized literature as well as personal observations, the following hypotheses were formulated that are the basis of scientific research:

*Hypothesis 1***:** There is a strong correlation between P1- Principle "Efficient use of public finances and minimization of contracting authorities' risks" and R2 - "Publication of discriminatory, insufficiently detailed or incomplete qualification and selection criteria";

Hypothesis 2: There is a very significant positive relationship between P1- Principle "Efficient use of public finances and minimizing the risks of the contracting authorities" and R3 - "Choosing an accelerated contract award procedure";

Hypothesis 3: There is a very significant positive relationship between P2 - Principle "Transparency of public procurement" and R1 - "Unjustified reduction of terms as a result of the publication of a notice of intent";

Hypothesis 4: P3 - "Liberalization and expansion of international trade as well as free movement of goods" and R1 - "Unjustified reduction of deadlines as a result of the publication of a notice of intent";

Hypothesis 5: There is a positive relationship between P3 - "Liberalization and expansion of international trade as well as the free movement of goods" and R4 - "Rejection of the request to change the deadline for submission of offers, at the request of the bidders";

Hypothesis 6: Between P4 - "Principle of assumption of responsibility" and R1 - "Unjustified reduction of deadlines as a result of the publication of a notice of intent"

Data collection was carried out between August 2022 ÷ October 2022, with the help of the questionnaire. A total of 312 valid questionnaires were obtained. In the processing phase, processing and analyzing the collected data, the special statistical research software S.P.S.S. was used. (Statistical Package for the Social Sciences), with which the Spearman rho correlation coefficient was calculated;

To validate the hypotheses, we used the most common and by far the most useful, the *Spearman rho correlation coefficient*, with the help of the special statistical research software S.P.S.S. (Table 1).

Table 1 – Spearman rho correlation coefficient values

Correlations					
Spearman's rho		R1 - "Unjustified reduction of deadlines as a result of the publication of a notice of intent"	R2 - "Publication of discriminatory, insufficiently detailed or incomplete qualification and selection criteria"	R3 - "Choosing an accelerated procedure for awarding the contract"	R4 - "Rejection of the request to change the deadline for submission of offers, at the request of bidders"
P1- The principle "Efficient use of public finances and minimization of the risks of the contracting authorities"	correlation coefficient	.911**	.921**	.837**	.823**
	Sig. (2-tailed)	.000	.000	.000	.000
	N	312	312	312	312
P2 - The "Transparency of public procurement"	correlation coefficient	.921**	1.000	.800**	.784**
	Sig. (2-tailed)	.000		.000	.000
	N	312	312	312	312
P3 - "Liberalization and expansion of international trade as well as the free movement of goods"	correlation coefficient	.837**	.800**	1.000	.895**
	Sig. (2-tailed)	.000	.000		.000
	N	312	312	312	312
P4 - "The principle of assuming responsibility"	correlation coefficient	.823**	.784**	.895**	1.000
	Sig. (2-tailed)	.000	.000	.000	

	N	312	312	312	312
**. Correlation is significant at the 0.01 level (2-tailed).					

Source: processing data obtained through SPSS program

Following the analysis of the Spearman rho correlation coefficient, we can observe the following correlations between public procurement procedures and their specific risks:

1. There is a very significant positive relationship between *P1- Principle "Efficient use of public finances and minimization of contracting authorities' risks"* and *R2 - " Publication of discriminatory, insufficiently detailed or incomplete qualification and selection criteria"* (rho=0.92, df =312, p<0.001). From the scatter diagram (Figure 1) it can be seen that the spread of points is relatively limited, which indicates a strong correlation (R^2=0.81). The slope of the scatterplot of results is relatively a straight line, indicating a linear relationship rather than a curvilinear one. It can be stated that Hypothesis 1 has been validated.

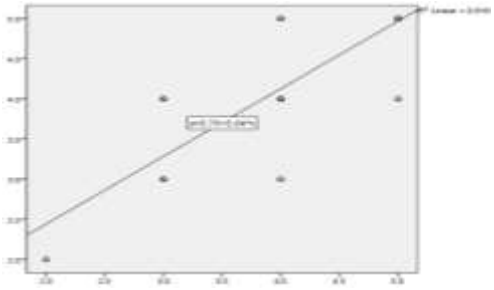

Figure 1 - Scatter plot – correlation between
P1- Principle "Efficient use of public finances and minimization of contracting authorities' risks" and R2 - "Publication of discriminatory, insufficiently detailed or incomplete qualification and selection criteria"
Source: processing data obtained through SPSS program

2. It can be seen from Table 1, that there is a very significant positive relationship between *P1- Principle "Efficient use of public finances and minimizing the risks of the contracting authorities"* and *R3 - " Choosing an accelerated procedure for awarding the contract"* (rho=0.837 , df=312, p<0.001). The scatterplot (Figure 2) reveals that the spread of points is relatively limited, indicating a strong correlation (R^2=0.67). The slope of the scatterplot of results is relatively a straight line, indicating a linear relationship rather than a curvilinear one. In conclusion, Hypothesis 2 is validated.

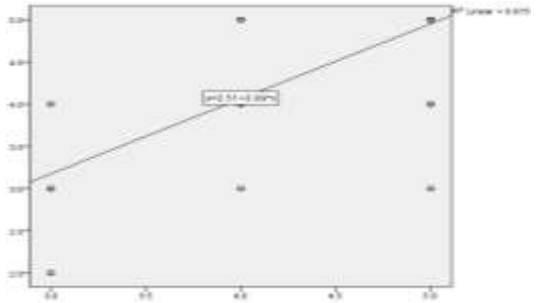

Figure 2 - Scatter plot – correlation between
P1- Principle "Efficient use of public finances and minimization of contracting authorities' risks" and R3 - "Choosing an accelerated contract award procedure"
Source: processing data obtained through SPSS program

3. Between *P2 - The "Transparency of public procurement"* principle and *R1 - "Unjustified reduction of deadlines as a result of the publication of a notice of intent"* there is a very significant positive relationship (rho=0.921, df=312, p<0.001). From Figure 3, the scatterplot reveals that the spread of the points is relatively limited, indicating a strong correlation. The slope of the scatterplot of results is relatively a straight line, indicating a linear relationship rather than a curvilinear one. It can be stated that Hypothesis 3 is fully validated.

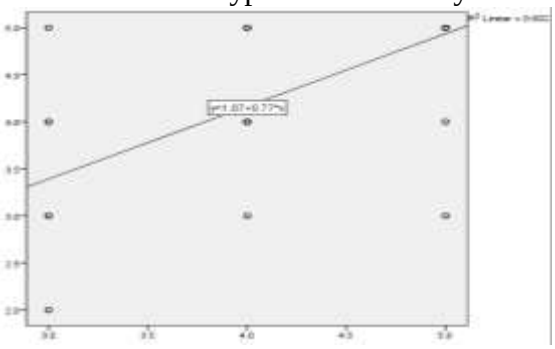

Figure 3 - Scatter diagram - between
P2 - The "Transparency of public procurement" principle and R1 - "Unjustified reduction of deadlines as a result of the publication of a notice of intent"
Source: processing data obtained through SPSS program

4. Analyzing *P3 - "Liberalization and expansion of international trade as well as the free movement of goods"* and *R1 - "Unjustified reduction of deadlines as a result of the publication of a notice of intent"*; results in a very significant positive relationship (rho=0.837, df=312, p<0.001). The scatter diagram (Figure 4) reveals that the spread of points is relatively limited, which indicates a strong correlation (R^2=0.61). The slope of the scatterplot of results is relatively a straight line, indicating a linear relationship rather than a curvilinear one. It can be stated that Hypothesis 4 is validated.

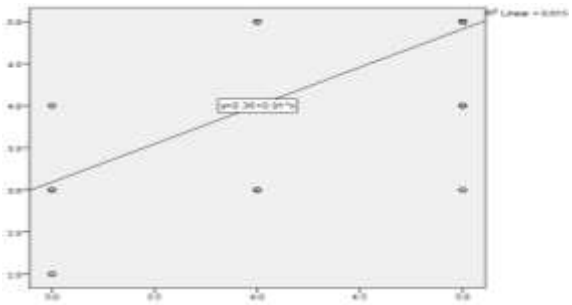

Figure 4 - Scatterplot – correlation between
P3 - "Liberalization and expansion of international trade as well as the free movement of goods" and R1 - "Unjustified reduction of deadlines as a result of the publication of a notice of intent"
Source: processing data obtained through SPSS program

5. Between *P3 - "Liberalization and expansion of international trade as well as free movement of goods"* and R4 - "Rejection of the request to change the deadline for submission of offers, at the request of the bidders" (rho=0.895, df=312, p< 0.001). The scatter diagram reveals that the spread of points is relatively limited, indicating a moderate to strong correlation (R^2=0.54) - Figure 5. The slope of the scatter of the results is relatively a straight line, indicating a linear relationship rather than a curvilinear one - Hypothesis 5 is validated .

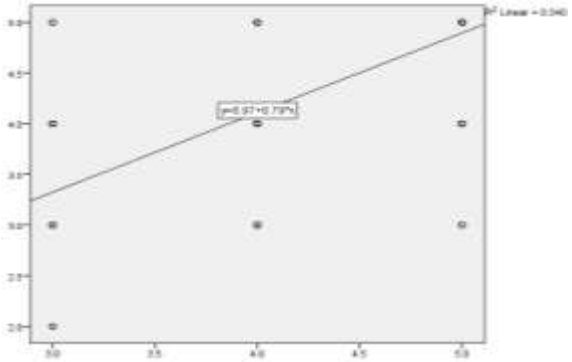

Figure 5 - Scatterplot – correlation between
P3 - "Liberalization and expansion of international trade as well as the free movement of goods" and R4 - "Rejection of the request to change the deadline for submitting offers, at the request of the bidders*"*
Source: processing data obtained through SPSS program

6. There is a very high significant positive relationship (rho=0.823, df=312, p<0.001) also between *P4 - "The principle of assuming responsibility"* and *R1 - "Unjustified reduction of deadlines as a result of the publication of an announcement of intent"* (Table 1). The scatterplot (Figure 6) reveals that the

spread of points is relatively limited, which indicates a moderate to strong correlation (R^2=0.74). The slope of the scatterplot of results is relatively a straight line, indicating a linear relationship rather than a curvilinear one - Hypothesis 6 is validated

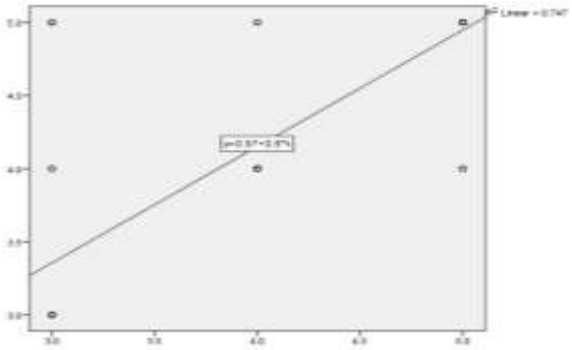

Figure 6 - Scatterplot – correlation between
P4 - "The principle of assumption of responsibility" and R1 - "Unjustified reduction of deadlines as a result of the publication of a notice of intent"
Source: processing data obtained through SPSS program

CONCLUSIONS

Public procurement is a vast field of utmost importance. There is no organization in which procurement is not carried out, starting from procurement for carrying out current activities to organizing or participating in tenders. In particular, there is no public institution whose organizational chart does not include at least one procurement department that deals in particular with the public procurement necessary for the institution.

By analyzing the statistical situation of procurement procedures in Romania, the inefficiency of the use of human resources (purchasers), the need for regionalization in the sense of reducing the number of contracting authorities, a very good efficiency of using the number of available positions of the bidding companies in the electronic catalog and strong links were highlighted , significant both between the number of contracting authorities and the number of offers published in the catalog and between the number of bidders and the number of offers published in the catalog.

Public procurement is one of the activities carried out at the level of public administration, as well as of institutions and enterprises operating in the public sector. The effective application of the legal provisions requires personnel with experience in the field of securing material resources in general and public procurement in particular, public procurement representing a symbiosis between legal and economic.

The concept of public procurement is related to the content of legal relations similar to those of sale and purchase, but appreciated in a very broad

sense and with specific connotations. Public procurement differs from private sector specific procurement (in the sense of purchase, rental, construction contract, etc.) through a multitude of direct and correlative purposes related, in the European Union, to the construction and consolidation of the single market, worldwide, the concern of the World Trade Organization to facilitate cross-border exchanges, and at the state level, the need to ensure a judicious spending of public funds. The researchers of the phenomenon of public procurement have identified, during the evolution of the concept, the most diverse facets, noting that public procurement is not only an instrument that ensures the provision of public services to the members of society, directly or indirectly, but also a way of exercising power public, respectively a means of implementing some public policy options.

The implementation of an effective internal control system at the level of each contracting authority is likely to significantly reduce, from the early stage, the risk of irregularities and errors and will lead to a reduction in the need for external controls. In this sense, the unitary execution of the public procurement process and the making of purchases in an ethical and legal way (ensuring compliance with legal requirements) contribute to increasing the quality of the process as a whole and, implicitly, the results obtained. The finality of this endeavor is represented by the achievement of the key objectives, namely to provide on time the quality products/services/works necessary to fulfill the mission of the contracting authority, within the limits of the approved budget, so that it can achieve sustainable economic performance.

From this point of view, the efforts of the contracting authorities should not only be focused on ensuring compliance but also on the efficiency of the public procurement process, for which the internal managerial control system implemented should not aim exclusively at obtaining the lowest price/cost as a result of the application of award procedures, but of the best value for money.

In conclusion, the public procurement system in Romania must be permanently adapted to the new challenges and changes faced by economic operators, regulatory institutions, control institutions and obviously, the contracting authorities.

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DIGITAL CRIMINALISATION AND MIGRANT SMUGGLING

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Abstract
The present article focuses on deep diving into the following four main aspects: 1. Crime forms evolution versus societal developments
2. Distinctions between cybercriminals and criminals and associations related to digitalisation of crime
3. Software applications and tools enabling organized crime group members to commit various crimes, including migrant smuggling
4. Impact of technology on crime and possible developments.

Key words: *crime forms, cybercrime, cybercriminals, digitalisation, migrant smuggling.*

INTRODUCTION

This aim of this essay is to illustrate the strong interdependencies between crime forms, and in particular cybercrime and migrant smuggling, and the social implications of digitalization. While the digital evolution has given noteworthy benefits to society, it has also raised serious concerns about its bona fide use, especially by criminals.

The digital revolution (called recently as the fourth industrial revolution) *(Namli U, 2021, 1-22),* which started around 1980 with the appearance of the Internet and after of other mobile devices, social networking, big data, and computing clouds, enabled the appearance of the so-called cybercriminals. From communication to manufacturing to how we live our lives, the digital revolution has changed everything. Some opinators consider that we're still in the early stage of the digital era, that has been ongoing for a few decades. As an increasing number of technological devices become interconnected, the full impact of the digital revolution will likely be felt in ways we can't even imagine.

Overall, it can be assumed that organised crime groups (OCGs) are continuously evolving and looking for adapted techniques which may facilitate criminal activities, eluding the vigilance of relevant law enforcement authorities.

1. CRIME FORMS EVOLUTION VERSUS SOCIETAL DEVELOPMENTS

This section deals with the review of the existing sources related to crime types and their evolution, providing a strong foundation for the subsequent analyses and interpretation of the results.

Since the middle of the 20th century, the advent of digital images and audio files led to the development of the digitization process, and the emergence and rapid spread of digital systems resulted in the development of social media, starting with the most well-known[2] that in a very short period of time have managed to connect hundreds of millions of people into billions of real and fake digital identities around the globe. The outcome is that people all over the world, be they students, office workers or business people, can now communicate online and at the same time write, take photos, read, broadcast and get information in real time, on the basis of which they take decisions.

This huge amount of data, the millions of interactions (texts, images, likes, comments, videos, etc.) hangs and is processed every second in the virtual space. All these human relationships, all these connections are made possible by the interaction of billions of terabits of digital information exchanged between digital systems. All these interactions, through the use of the digital network, lead to new ways of approaching human relations, to new ways of buying and transferring services, material or intellectual goods, of conducting various activities or businesses, of protecting an asset or a banking account, of possibly expressing the political opinion, etc.

Aside positive factors that influence social and political life, the development of a digital social environment also has a negative role through the impact created in the development of the underworld. The typology and main modi operandi of offences are continuously changing and the distinctive features of the criminal phenomenon will aim to adapt according to the social interactions of potential victims. It is rather obvious that in line with the new social developments, new ways in which people interact in the online environment, the establishment of new routines in the social life within a community, new crimes and new ways to counter crime will emerge, following the way in which the virtual environment is used to make various payments, the way the human community uses digital information. This tends to be more accurate for organized crime, involving groups with a hierarchical or organizational structure that will try to take advantage of legislative loopholes, by analyzing how they can minimize risks and always looking for new opportunities to maximize their illegal profits.

Various national and international entities with competences in the fight against serious and organized crime categorize crime forms slightly different.

Even if in practice a multitude of crimes can be encountered, based on criminal practice it has been possible to divide illegal acts into five large fundamental categories: „*crimes against a person, crimes against property, inchoate crimes, statutory crimes, and financial crimes*" *(Basit A, 2020, 263- 275).*

However, in this article we choose to elaborate more in detail two (see the highlighted words below) of the main ones described to fall under Eurojust's mandate: CBRN-E (chemical, biological, radiological and nuclear substances), core international crimes, crimes against children, cybercrime, drug trafficking, economic crimes, migrant smuggling, PIF crimes (crimes against the financial interests of the European Union), terrorism and trafficking in human beings *(Kemp Steven, Buil-Gil David, Moneva A, Miró-Llinares F, Díaz-Castaño N, 2021, 480-501).*

2. DISTINCTIONS BETWEEN CYBERCRIMINALS AND CRIMINALS AND ASSOCIATIONS RELATED TO DIGITALISATION OF CRIME

2.1 What is cybercrime?

Some internet security companies define cybercrime as the criminal activity that either targets or uses a computer, a computer network or a networked device.[5] Other noteworthy sources define it „*as the use of a computer as an instrument to further illegal ends, such as committing fraud, trafficking in child pornography and intellectual property, stealing identities, or violating privacy*"[6]. Europol recent reports *(Adhoob M, 2021, 273-275)*, indicate that cybercrime is becoming more aggressive and confrontational. This can be seen across the various forms of cybercrime, including high-tech crimes, data breaches and sexual extortion.

2.2 Cybercriminals versus traditional criminals

If, normally, the criminal can be any person who has committed a criminal act or has been convicted for committing an illegal act, the cybercriminal is that person who, with the help of a digital tool, usually a computer, with the support of an information system, attacks the digital environment.

For increased efficiency, cybercriminals organize themselves in groups, having well-established roles such as: leaders who form the link with criminal organizations, cybercriminals who have specific technical knowledge (of software development, web development, hardware development), to maintain their own IT structures and which by using specialized algorithms create interfaces, spams and phishing schemes that help any person without advanced digital knowledge to easily access the software of an application, people with banking knowledge, haulers, etc. [8]

Obviously, the roles overlap, but the emergence of new challenges and the desire not to be caught, to be the best, transformed specialization within the criminal group an asset. When we talk about new challenges we refer to crackers, known to the general public as hackers. If initially the hacker (grey hat) did not

intend for the activity carried out by him to have bad effects, nowadays the illegal hacker (black hat) has appeared, using his digital skills to identify weak points and infect IT network security systems with viruses.

The illegal hacker aims to gain various advantages by selling his services.

2.3 Does technology make criminal activities easier to commit and more difficult to detect?

While some experts suggest that criminals are generally backward in their choices of techniques and that the real pioneers in using things like communication technology are the police and other agencies of the state, others consider that many types of technological change can facilitate crimes by making detection more difficult and enabling multiple iterations in a shorter period of time. [9]

As it is well known, cybercriminals can carry out an illicit activity both offline (without using the computer) when we refer to leaders, transporters or other persons who practically facilitate or ensure the logistics of the criminal group or online when the crime is committed by connecting to the IT network or social media. In the latter case, the person who commits the crime, using the digital environment, is part of the group of black hat hackers because these people have the ability and are trained to adapt the illegal to daily habits, to the routine that is established within the social group being targeted. We can say that the digital environment influences the community by transforming economic, political, artistic, cultural, financial relations, etc. towards the emergence and support of a digital society. These transformations and connections between the relationships that appear in society also influence the field of crime, creating an interrelationship between the behaviors of social actors, and the connections that appear will influence, according to the principle of action and reaction, the activity within the society.

3. SOFTWARE APPLICATIONS AND TOOLS ENABLING ORGANIZED CRIME GROUP MEMBERS TO COMMIT VARIOUS CRIMES, INCLUDING MIGRANT SMUGGLING

Digital services and tools are more and more used in our daily lives and for a variety of criminal activities, including migrant smuggling. Migrant smugglers and document fraudsters use the benefits of anonymity, availability, and the variety of clients accessible through technology-enabled communication channels, allowing them to hide their real identities and to protect illegal activities from law enforcement eyes.

Particularly interesting for the current period is that the „*global health crisis seems to have triggered a pandemic digital crime, organized and unorganized*"[10].

Human society, as a whole, faced a new situation generated by the organized crime resulting from the lockdown and the restrictions, imposed by

state governments, related to the socialization and movement of people in order to prevent and combat the Covid-19 pandemic. Thus, the organized crime networks moved into the virtual environment.

The Covid-19 pandemic has "affected every aspect of our lives"[11] and decisively influenced the life of human society, the way society uses and will use digitalisation. If the ban on the movement of people was initially a brake for organized crime organizations, the criminal impulse was generated by the virtual environment, by society's need to progress through the use of the Internet. European Union states face "ransomware attacks, known as Denial of Service (DoS) or Distributed Denial of Service (DDoS) attacks, but also online fraud related to digital identity"[12].

Moreover, „*online technologies and social interactions have played a key role in activities such as migrant smuggling, drug trafficking, and terrorism*”**[**13],[14].

In general, criminals tried to take advantage of the situation generated by the restrictions imposed during the Covid-19 pandemic in particular to „*raise prices (justifying this with the greater risks due to the pandemic), and increasingly did so by advertising their online services*”**[**15].

As regards drug trafficking, since meeting and travel bans have been an obstacle to the identification of new drug customers or distributors during the health crisis generated by the Covid-19 pandemic, we state without fail that online communication was the one primarly used between criminal groups [16].

Regarding migrant smuggling, a plethora of advertisements for facilitation services posted on social media confirm that criminal networks use applications like Instagram, Telegram, Facebook, WhatsApp, Viber, etc. to recruit people willing to take huge risks in order to reach their desired countries of destination.

JHA Agencies (Europol) and European Member states have taken steps to block encrypted communications of criminal networks, and more specifically Sky ECC communication service since March 2021[17].

Criminals from the Balkans obviously really trusted the application to be safe, so they exchanged messages on it as if they were ordinary phone messages. They allegedly paid several thousand euros to the Canadian company Sky Global for the coding of their application. However, the US Federal Bureau of Investigation (FBI) seized the site and arrested the company's management early 2021. The company's devices were *specially designed to prevent the police from actively monitoring the communication between members of transnational criminal organizations* according to the US indictment against the company's CEO.

The actions resulted in a large number of arrests, as well as numerous house searches and seizures in Belgium and the Netherlands. American and European services managed to crack the encrypted application Sky, after which, evidence of a series of crimes began to unfold. It is an application similar to Viber

or WhatsApp, only users believed that it was protected. That is why they openly discussed almost all criminal acts via the application.

During 2021, another similar operation resulted with 800 criminals arrested in the biggest ever law enforcement operation against encrypted communication. The US Federal Bureau of Investigation (FBI), the Dutch National Police (Politie), and the Swedish Police Authority (Polisen), in cooperation with the US Drug Enforcement Administration (DEA) and 16 other countries have carried out with the support of Europol one of the most extensiv and sophisticated actions to combat criminal activity. With the help of a company that used devices to encrypt information, criminal organizations in more than 100 countries were targeted.[18].

4. IMPACT OF TECHNOLOGY ON CRIME AND POSSIBLE DEVELOPMENTS

Technological progress changes mindsets, improves technology, production processes and creates the conditions for human development, but at the same time it can create disruptions to social life by using new technological discoveries for illegal purposes. It is clear that the digital environment, cybernetics, the interaction between man and machine, has created the possibility for criminal organizations to lay the foundations for new criminal approaches, much more sophisticated and more difficult to prevent and combat by most law enforcement officers who do not have specialised training in this domain.

The offences of crime organizations cannot be contained in a single pattern, because even a simple crime of theft can hide the interest of the organized crime organization in committing illegal activities in the cyber field. Thus, the theft of a card, identity data or bank accounts can turn into a cybercrime and because of this the frontier between the psychic, physical and virtual dimensions of cybercrime is increasingly difficult to establish.

However, these revolutionary developments do not seem to trigger also the necessary criminological theoretical interpretive framework and to generate modern research hypotheses.

The research on how cyber as a whole influences the activity of the human community and especially criminal activities must focus on the interaction between the online environment and the offline environment because the impact on the criminal world is major.

In addition, studying the impact on the underworld networks could shed more light on the constantly changing modi operandi and help law enforcement authorities to take proportional measures.

Albeit outside the purpose of this paper, hybrid cybercrime and subsequently the hybrid warfare and its various connections, represent some of the topics that are expected to be recurrently addressed in the near future. This is mainly due to the Russian aggression in Ukraine and the instrumentalization of migrant smuggling, as seen at the European-Belarussian land borders.

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CRIMINALISTICS - SOURCE OF CRIME PREVENTION

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Abstract

The article addresses the role that the science of Forensics (Criminalistics) has in the prevention of crime, through the specific analysis of the elements that give it the character of a source of prevention, with reference to its object of study, and in the end, brief conclusions are expressed regarding the impact they have had and have the data obtained from forensic investigations in preventing and combating the phenomenon of criminality, as well as proposals for law ferenda to increase the contribution of information acquired in criminal investigations among the means of prevention.

Key words: *criminal offence, crime prevention, forensic investigations.*

INTRODUCTION

The entire world map is affected these days by the permanent and not necessarily beneficial changes in the economic, social, political and cultural life, changes that have inevitable consequences also on the legal relations of criminal law, to such an extent that the dynamics of human actions against the legal norms of incrimination sees the extent of the criminal offense at the level of a social phenomenon with qualitative and quantitative limits that are difficult to determine.

Contemporaneity knows a worrying evolution of criminality, both nationally and transnationally, by the constant increase in the number of criminal acts, their diversification, the decrease in the age of the participants in the criminal act, but also by increasing the elements of extraneousness and the complexity of the means and methods of committing crimes.

The human community has understood, at least at the level of nations that base their existence and functionality on the principled rules of democracy and the rule of law, that its fundamental social values cannot be preserved if the criminal legal relations of compliance are permanently diminished, and the effects of human conduct that come into conflict with the criminal law are increasingly serious. That is precisely why at the level of states and international bodies more

and more plans, projects and programs have appeared to contribute to the prevention, control, combat or even eradication of certain categories of manifestations of criminal offences.

Prevention, as a phrase in the criminological literature, was defined as a set of non-coercive actions on the causes of crimes with the specific aim of reducing their probability or severity *(M. Cusson, 2006, p. 7).*

The doctrine addresses the complementarity of two forms of prevention, the general and the special *(M. Basarab, 2002, p. 238-239; F.O. Muțiu)*. General prevention is achieved by the provision of the punishment in the criminal law, by the knowledge and adherence of society members to the provision of the respective law and by the fear of punishment or other sanction, context in which the punishment has a pre-criminal preventive role. General deterrence also occurs as a result of the application of concrete punishment to those who have committed crimes, because some people who would have thought of committing a crime refrain because they know how some criminals have been punished. The purpose of special prevention is to prevent the commission of new crimes by those convicted and constitutes the direct purpose of the applied punishment, thus having a post-criminal preventive role.

The new paradigm of the fight against crime, which was imposed, both domestically and internationally, by the need to ensure legal security at the highest level for the recipients of the criminal law, but also by the rigorous observance of fundamental human rights and freedoms in the procedures judicial, highlighted the increasingly important role of scientific instruments, means and methods for the prevention of criminal acts, and among them are, of course, also the means and methods of forensic investigation.

From an epistemological perspective, the relevant legal literature evoked the connection of Criminalistics (Forensics) with other criminal sciences, such as Criminology, Criminal Law, Criminal Procedural Law, Penology or Criminal Policy, as sciences that have a common mediated goal, namely the prevention and combating of the criminal phenomenon *(E. Stancu , 2015, p. 33; A. Dincu, 1988, p. 16; C-tin Mitrache, Cr. Mitrache, 2016, pp. 34-35).*

The most important of the disciplines that research the phenomenon of crime is Criminology, defined as the relatively autonomous social science, auxiliary to the criminal sciences, with a multidisciplinary character, which studies the state, dynamics, legalities, causes and socio-human conditions of crime, as well as the defining features, the mechanism and the functionality of the system of measures to prevent and combat crime and criminality, including the treatment of delinquents *(A. Dincu, 1993, p. 4).*

For its part, Criminalistics (Forensics) was defined by the renowned professor Emilian STANCU as a judicial science, with an autonomous and unitary character, which sums up a set of knowledge about the methods, technical means and tactical procedures, intended for the discovery and investigation of crimes, the

identification of the persons involved in the commission them and the prevention of antisocial acts *(E. Stancu, 2015, p. 28).*

It is already well-known that, just as Criminology answers the question of why a certain crime was committed, the science of Forensics (Criminalistics) answers the question of how the crime was committed, and regarding the scope of intervention measures, Forensics acts preventively by perfecting technical-scientific means and of tactical or methodological rules aimed at establishing the circumstances in which a criminal act was committed, determining the identity of the offender and proving his guilt.

Both from the content of the definition and its object of study, Forensics (Criminalistics) can be considered an important source for the panoply of scientific means to prevent crime, as a negative social phenomenon, so as to effectively contribute to the effort to combat and reduce the level of this scourge.

From the perspective of the main directions of action of the science of Forensics (Criminalistics), which highlights its object and which were highlighted in the doctrine *(E. Stancu, 2015, p. 29),* it can be concluded that this discipline of criminal sciences has an obvious connection with the prevention of the phenomenon of criminality.

First of all, the component regarding the initiation of technical methods intended to investigate the traces of crimes is oriented towards the goal of the criminal process, immediate and mediated, the first being the timely and complete ascertainment of the facts that constitute crimes, so that any person who has committed a the crime should be punished according to its guilt and no innocent person should be held criminally liable, and the second in its contribution to the defense of the legal order, the person, his rights and freedoms, the prevention of crimes, as well as the education of citizens in the spirit of law-abiding.

Secondly, the adaptation of methods from the natural sciences, such as physics, chemistry, mathematics, biology or geography, to the own needs of Forensic Science (Criminalistics), aims precisely at the activities of preventing and combating crimes, by using advanced techniques and technology from other fields in the laborious process identifying the perpetrators of crimes and establishing the circumstances in which the investigated facts were committed.

Thirdly, ensuring a scientific foundation for criminal investigation, by developing tactical rules for carrying out effective criminal prosecution or court acts, is likely to give Criminalitics (Forensics) a major role in inculcating the general idea in society that there is no crime perfect, a major argument that contributes to general and special prevention.

Fourthly, the study of the judicial practice to capitalize on the positive experience, in order to generalize and unify the solutions of the criminal investigation bodies and the courts on the line of criminal justice, can influence the prevention of criminality, by ensuring a high quality of the judicial act, based on a scientific basis, and, as a consequence, of the predictability of the solutions

adopted in similar situations. In this way, the recipients of the criminal law will benefit from the decision-making transparency of the judicial bodies and will be able to analyze with knowledge the advantages and disadvantages of moving to the criminal act, by exercising their free will, the immediate effect being that of inhibiting the people who are in the stage preceding the commission of the crime and who will renounce the execution of the intention to commit a criminal act.

Fifthly, the analysis of the evolution of the way criminal acts are committed can provide answers to the questions regarding the most appropriate measures or procedures to prevent, combat and sanction the perpetrators. The conclusions of such analyzes can constitute starting bases for the realization of situational prevention: security inspections in hot areas or exposed to the risks of committing crimes, marking of goods periodically targeted by criminals, use of electronic surveillance systems, informing vulnerable people or those in risk areas in in order to increase spontaneous surveillance, etc. *(M. Cusson, 2006, pp. 109-129).*

Sixthly, improving the methodology for investigating various types of crimes, especially serious ones, such as those against life, patrimony, national security, public safety or related to corruption and organized crime, envisages the desire of the judicial authorities of a prevention oriented towards its maximum optimization. In a society based on the rule of law and in which criminal justice is constantly scientific, developed until the formation of a true routine of the actors involved in the relevant procedures, the level of legal security will tend to restrict the possibilities of the manifestation of antisocial behaviors, and such legal reality will be like a cornerstone for the prevention of crime and criminality.

Corroborating the highlighted aspects, it can be concluded that all the directions of action deriving from the object of Forensics (Criminalistics) compete to ensure both the prevention and combating of the criminal phenomenon, by ensuring a scientific-applicative nature of this frontier science.

Each of the components of the unitary science of Criminalistics (Forensics) - technique, tactics and methodology - is tributary to the mediated goal of criminal sciences, regarding the prevention and combating of crimes.

1. PREVENTION THROUGH TECHNICAL-SCIENTIFIC MEANS

The technical-scientific investigation of the crime scene or the on-site investigation is one of the evidentiary procedures with a significant role in gathering evidence in the criminal process. The development of technical means and the adaptation of tools used in other fields of knowledge serve to obtain advanced technologies with the help of which the identification of persons and objects that are causally related to the commission of an antisocial act becomes much easier.

Even if the desired goal of eradicating crime cannot be achieved in today's heterogeneous society, the evolution of forensic technical and scientific means is

an important factor for the prevention of criminality, precisely by ensuring the scientific, objective and certain possibilities to discover crimes and prove above all reasonable doubt the guilt of those who committed them. If during the pioneering period of Forensics, the technologies available to criminals were often one step ahead of those available to law enforcement authorities, today this advantage has faded, sometimes to the point of annihilation or even shifted the balance at the expense of criminals. We can mention here the modern means and methods of discovery, recovery and forensic exploitation of traces and material means of evidence, such as traceology, dactyloscopy, forensic genetics, forensic ballistics, biometric identification methods, special means of technical surveillance.

The contribution of Forensics (Criminalistics) in preventing the falsification of identity documents, banknotes and other payment instruments or works of art can be appreciated as salutary, by discovering and analyzing the methods of falsification, followed by the dissemination of the results of forensic expertise to the decision-makers related to the issuance or the management of these documents or values, so that any attempts at counterfeiting or fraud can be discovered without delay.

It is already an indisputable reality to prevent the commission of crimes against patrimony by using tools from forensic kits, such as making forensic traps, by impregnating them with fluorescent substances in places where the probability of theft or embezzlement is high (storage rooms, safes, means for the transport of values, etc.).

2. PREVENTION THROUGH TACTICAL MEANS

The tactical rules for planning and organizing the criminal investigation can contribute both to the general prevention of crimes, and especially to special prevention, by creating conditions that lead to a decrease in the possibilities of recidivism among convicts.

In order to prevent and combat criminality, in the evolution of Criminalistics, scientific methods of criminal registration were launched and successfully used, starting from the bertillonage-type records from the end of the 19th century and continuing with the judicial photographs, the files of the police units relating to fingerprints, spoken portraits, stolen and unfound objects, currency counterfeits, different types of footwear drawing profiles, then with Automated Fingerprint Identification System (AFIS databases), missing persons registration and corpses with unknown identity, the registration of serious cases with unidentified perpetrators, the records of criminals from the criminal record and currently reaching the records in forensic genetic databases or the mode of operation.

Capitalizing on the positive experience of the judicial bodies involved in the execution of criminal justice, the prevention and combating of crime were

enshrined in legislation, the legal norms enacted having a strong forensic-applicative character, through the creation of national and interconnectable databases at the regional or global level.

In this regard, Law no. 290/2004 regarding the criminal record (M. Of. no. 586 of June 30, 2004), in the content of which it is expressly stipulated that the record of the criminal record is made for the purpose of preventing and combating the acts provided for and punished by the criminal law, as a means of operative knowledge and identification of persons who have committed crimes against the person and his freedom, patrimony and, in general, the rule of law. The criminal records keep records of individuals and legal entities convicted or against whom other criminal or administrative measures have been taken according to the Criminal Code, as well as those against whom procedural-criminal measures have been ordered. The registration of natural persons is also done dactyloscopically, by taking digital and palm impressions, necessary for the fingerprint identification of the registered persons and the exact knowledge of their legal situation.

Another pertinent example is Law no. 76/2008 (M. Of. no. 289 of April 14, 2008) regarding the establishment of the National System of Judicial Genetic Data, for the prevention and combating of certain categories of crimes that seriously affect the fundamental rights and freedoms of the person, especially the right to life and to physical and mental integrity, as well as for the identification of bodies with unknown identity, missing persons or persons who have died as a result of natural disasters, mass accidents, murder or acts of terrorism. This normative act establishes the conditions under which biological samples can be taken from certain natural persons or from traces left at the scene of the commission of crimes, in order to determine the genetic profile, as well as the conditions under which the data can be processed, the manner in which it is verified and compares genetic profiles and personal data, with the aim of excluding people from the circle of suspects and identifying the perpetrators of crimes of high gravity, establishing the identity of people - victims of natural disasters, mass accidents and acts of terrorism, carrying out the exchange of information with the other states and combating cross-border crime, identifying participants in the commission of crimes, preventing and combating acts of a sexual nature, exploiting some people or minors.

Also, Law no. 118/2019 regarding the automated national register regarding persons who have committed sexual crimes, exploitation of certain persons or against minors (M. Of. no. 522 of June 26, 2019), was developed precisely for the purpose of preventing and combating acts of a sexual nature, exploiting some people or minors, provided for and punished by the criminal law, as well as to avoid the risk of recidivism in this category of criminals known by the phrase "sexual predators".

3. PREVENTION THROUGH METHODOLOGICAL MEANS

Considering its unitary character, Forensics (Criminalistics) works together in its three dimensions, technique, tactics and methodology, to achieve its object. Incorporating the rules and particularities of research specific to the typology of crimes, forensic methodology in turn contributes to the achievement of the mediated goal of criminal sciences.

The purpose of crime prevention can be discerned from the way in which the principles underlying the criminal investigation are structured according to the category of criminal facts or events with criminal relevance, principles that evoke the scientific nature of criminal investigation. Thus, in the case of investigating a suspicious death, the intervention of the judicial bodies in the process of establishing the legal diagnosis of the person's death, as a non-violent or violent death (homicide, suicide or accident), imprints a deep preventive character of such an investigation, since finding out the truth by concretely establishing the circumstances in which the victim's death occurred and the possible identification of the perpetrator has the nature of ensuring both general prevention, through the speed and certainty of bringing the possible perpetrator to criminal responsibility and the warning of other potential criminals, as well as the special one, by tempering people who have been involved in crimes against bodily integrity and preventing them from moving to a much more serious level of crime against the person, such as murder.

The existence of police databases, which are used by investigative teams to verify traces from the criminal field, such as those with papillary impressions, genetic profiles, modus operandi or ballistics, as well as performing comparative analyzes necessary for identification, as methodological rules in research serious crimes, are sure benchmarks of crime prevention actions.

CONCLUSIONS AND PROPOSALS OF LEGE FERENDA

Although it is, indisputably, an open topic for endless debates, it can be stated that between Criminalistics (Forensics) and the prevention of the phenomenon of crime there is an indissoluble link, since in its historical evolution, this science of factual situations in the criminal process, as defined by its founder, Hans Gross, has more than sufficiently proven his ontological contribution to the understanding of how antisocial acts are committed, so that their authors can be identified through methods established and verified in judicial practice.

The conclusion that can be drawn from this analysis can only be that, both by definition and by the directions indicated by its object, Forensics (Criminalistics) contributes fully to the prevention and combating of crime and criminality, constituting a source of general and special prevention.

Each of the three unitary components of this autonomous forensic science has multiple valences in the complex crime prevention action, both from a technical, tactical and forensic methodological perspective.

By lege ferenda, it would be required that the legislator, in a broad sense, at national, regional or even global level, achieve a unitary approach to the crime prevention system, so that the operational databases can become interoperable, both horizontally, as well as vertically, by ensuring the least limited cooperation between law enforcement bodies. Such a perspective requires, perhaps, a much higher level of international cohesion than the one currently existing, but the first step could be the uncensored internal cooperation between the decision-makers of each level of social life, and all the energies of the actors involved in preserving social harmony should be focused towards the common goal of legal security of the community.

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PREVENTION OF TRAFFICKING IN HUMAN BEINGS AT THE NATIONAL AND INTERNATIONAL LEVEL

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Abstract

Trafficking in persons has become a category of crimes that increasingly concerns the authorities with powers in the field of combating acts of an antisocial nature, but the shock wave that this type of criminal acts produces is of a much greater amplitude, causing social disturbances, psychological-behavioral, economic including financial, with a harmful impact on the defense system of national and international public order and safety.

Key words: *human trafficking, exploitation of minors and young people, prevention of criminal acts, organized crime, organized cross-border criminal groups.*

INTRODUCTION

The world of the 21st century is in constant motion, ever sharper and wider, and everything unfolds at a dizzying speed that cannot be compared to any previous historical period. Modern man wants more and more from the environment, from his peers and even from himself, not infrequently easily crossing material, moral, cultural, psychological barriers or even beyond those limits that education and respect towards your fellows compels you to respect them.

The same behavioral deviations occur right before our eyes and in the field of exploitation of man by his peers, the interest being a petty and reprehensible one, namely that of increasing one's own material benefits, pursuing personal or group interest, the influence and rise of certain groups of organized crime.

1. SECTION

In this context of the alarming increase in the exploitation of people, the Communication from the Commission to the European Parliament, the Council,

the European Economic and Social Committee and the Committee of the Regions regarding the EU Strategy on combating human trafficking for the period was adopted at the European Union level on April 14, 2021 in Buxelles 2021-2025 which stipulates that "Trafficking in persons is a serious and complex crime, which especially women and children fall victim to. It brings huge profits to criminals, while causing enormous suffering to victims and high costs to our society. Despite progress over the past decade in strengthening the Union's response to human trafficking, any vulnerable person remains at high risk of becoming a victim of human trafficking. Human trafficking has consequences for the fabric of society, the rule of law and sustainable development in EU Member States and our partner countries"

All countries competing through legislative or other measures to prevent and combat human trafficking, agree that the effectiveness of the fight against this scourge can only be manifested through close cooperation and collaboration of all national and international institutions and bodies that have such attributions, including by adopting common fighting strategies based on international cooperation in criminal matters and not only.

But in order to achieve an effective prevention in the field of human trafficking, an in-depth analysis is required on the way in which all the actions and movements of the members of organized criminal groups are carried out. This analysis starts from the identification of the environments of origin of the possible victims and the enabling factors, the analysis of the ways in which they are recruited through various methods (physical or moral coercion, the loverboy method, promises of a better life, etc.), transport and/ or the transfer of the victim, the operations of handing over and receiving the victim between the recruiter, the transporter, the host and finally the exploiter, the identification of the way or rather the ways in which the victims are exploited (sexual exploitation, through work, through determination to commit acts antisocial etc.), the benefits made by traffickers through exploitation and last but not least, the transfer of money or other benefits to members of organized crime groups, including the ways of "laundering dirty money" and injecting these benefits into the economic circuit of the countries of origin or existence of members of organized crime groups.

All these activities represent true sources of information regarding the implementation of strategies to prevent the commission of such criminal acts, but at the same time, the activities to combat human trafficking by identifying organized crime groups that have such concerns. And when we mention these aspects, we must take into account the whole range of informative-operative activities that lead to the identification, destruction and prosecution of traffickers, as well as the mediatization of such cases, mediatization that can either deter potential criminals or increase attention and caution from potential victims.

One of the main institutions with responsibilities in the field of human trafficking prevention in Romania is the National Agency Against Human

Trafficking, which in September of this year, elaborated and presented a brief analysis of the evolution of the phenomenon of human trafficking recorded in our country, analysis in which states that:

"Human trafficking cannot be reduced only to its criminal dimension, being in reality much more than that, i.e. a particularly complex social phenomenon, the result of the emergence of multiple realities and dynamics (social, economic factors, labor migration , globalization, educational factors, degree of social impunity, degree of information, etc.).

The first half of 2022 brought to the fore the refugee crisis in Ukraine and the need to take all measures to protect them, including eliminating the risk of becoming victims of human trafficking. According to the existing data at the national level, there was no case of human trafficking among migrants with protective measures on the territory of Romania or in transit. Suspicions of human trafficking were reported but which, following the investigation by the competent bodies, were not confirmed."

However, for an outline of the means and methods of preventing human trafficking, I propose a brief analysis of the main generating causes and modes of operation of this type of crime, which can implicitly lead to an identification of possible levers and preventive actions.

So:

- *identification of the environments of origin of the possible victims and the favoring factors.*

A very important role in this process is played by the local authorities of the environment where the possible victim lives permanently or for a period of time and earns his living or not. The sphere of local authorities can include administrative authorities from town halls, those with duties to maintain public order, those with an educational nature, respectively education and training units, staff from units aimed at the health of the population, including authorities that carry out activities of a spiritual educational nature such as the church . All of these, during the exercise of their duties, can compete in a real way to identify cases of people in financial and educational difficulty, in a situation of school dropout or non-frequenting of a form of education and culture, of temporary or permanent family abandonment, of single-parent or broken families, of children or young people who are homeless or left to grow up, educate and supervise under the care of grandparents, children whose parents are away working abroad, or other similar situations that may represent favorable conditions for the recruitment of victims of child trafficking or even adults.

- *analysis of the ways in which victims are recruited through various methods (physical or moral coercion, the loverboy method, promises of a better life, etc.)*

Such an analysis highlights, on the one hand, the vulnerabilities (physical, material, emotional, spirit of adventure) to which the potential victims

of human trafficking are exposed and the ways in which these vulnerabilities can be removed or diminished, and on the other hand, the mode of operation used by members of organized crime groups, which can lead to the design of strategies to fight against them and ultimately lead to the destruction of such groups and the prevention of potential victim recruitment.

- studying the ways in which the victim is transported and/or transferred from the environment of origin to the destination, where she is to be exploited

Such a study presents very important elements regarding the criminal connections of the members of the organized criminal group, being able to establish the persons who have criminal connections in the field of illegal transporters, of those at the border crossing points involved, of the hosts engaged in such antisocial activities, or of those involved in ensuring the victim's arrival at the destination. All these actions are coordinated and directed by criminals who are located on a higher level in the pyramid of the organized criminal group and who in turn lead to the top of the pyramid's command and action.

- carrying out the operations of handing over and receiving the victim between the recruiter, the transporter, the host and finally the exploiter

Each of these operations is carried out in different conditions and environments, between different people, who usually have knowledge of the criminal nature of the activities they carry out. The activities take place either on the territory of the victim's place of origin, or in the border area, or at the place of accommodation or shelter of the victim before the actual exploitation activity has started. Such an analysis provides important data with reference to the place of origin of the victim, the route or routes followed, the criminal connections, the means of transport used (land, air or sea), the place of destination and the mode of operation used by the criminals.

- identifying the way or rather the ways in which the victims are exploited (sexual exploitation, by work, by determination to commit antisocial acts, drug cartels, organ trafficking or computer crimes, etc.)

As a rule, these complex operations are carried out on the basis of interstate cooperation and collaboration for the destructuring of the entire criminal network and involve concerted actions of the authorities that are specifically responsible for combating cross-border criminality, including illegal migration.

- the benefits made by traffickers through exploitation

From this perspective, an assessment of the dimensions of the phenomenon is required to establish its degree of complexity and the area of territorial coverage, often there are situations where the members of the criminal group belong to several states. Also, an intense collaboration between the institutions with attributions in the economic-financial field is necessary to establish the size of the benefit obtained from criminal activities, the method of appropriation of these benefits (especially money), their transfer to the country or

countries where investments will be made and the people involved in these processes and mechanisms.

- *the ways of "laundering dirty money" and injecting these benefits into the economic circuit of the countries of origin or existence of members of organized crime groups.*

The discovery and study of this mechanism presents very useful data for documenting the entire criminal activity of the criminal group, the methods used and the persons involved, the aim being the unavailability and confiscation of goods, money or other values originating from or related to the crime, but also that of establishing the amount compensation for exploited victims in the judicial process.

CONCLUSIONS

If two decades ago, human trafficking was a crime that was mainly aimed at obtaining financial benefits resulting from the sexual exploitation of young women, later the area of exploitation expanded in many directions, including exploitation through work, begging, but also through coercion when committing various acts criminalized by the respective criminal law, thefts, involvement in drug production, transport and distribution networks, recruitment and transport networks of emigrants, or involvement in groups with concerns in the field of crimes involving radioactive materials or computer crimes.

In order to reduce these trends but also to counter the phenomenon of human trafficking, the authorities around the world are focusing more and more on preventing and combating this phenomenon, by adopting their own measures specific to a certain state or by concerted measures at an international or global level.

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GLOBAL CRIME PREVENTION

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Abstract

Crime has risen dramatically in recent decades and its costs have followed. States are spending ever-increasing amounts on health and property, as well as on police, investigative procedures, courts, and prisons. According to a recent observation, crime control absorbs a considerable percentage of the gross national product (GNP) in developed countries and much higher in less developed countries.

However, these expenditures have had relatively little impact on the crime rate and the rehabilitation of criminals, with the relatively high number of recidivists increasing exponentially.

As crime resists efforts to combat it, the interest of legal experts has gradually shifted to innovative methods of prevention rather than punishment. Several studies have shown that crime prevention can significantly reduce the number of crimes, as well as reduce their costs.

Key words: *crime, prevention, recidivism, strategies, young people.*

INTRODUCTION

So, crime in public places can be reduced by using civilian guards - recruited from the unemployed - and installing video surveillance circuits. In addition, young people from disadvantaged backgrounds are less likely to be arrested when they receive vocational training and are encouraged to complete their education.

"A growing body of literature shows that crime prevention works and can be more effective and less costly than traditional punitive approaches," said Mr Pino Alaarchi, Executive Director of the United Nations Office for Drug Control

and Crime Prevention. "These strategies are important not only for reducing conventional crime but can also protect young people from those who recruit for organized crime," he noted[1] .

Crime prevention strategies werehigh on the agenda of the 10th United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held in Vienna in April 2000. Particular attention will be paid to crime prevention, to new challenges in this field and to the prevention of organized crime.

1. CONTENT

Crime prevention was also the focus of a joint workshop organized by the United Nations Center for Crime Prevention and the International Center for Crime Prevention, a non-governmental organization based inMontreal (Canada) and affiliated to the United Nations. The International Centre for the Prevention of Crime was set up by several countries to collect information and examples of good practice in crime prevention from around the world.

Delegations represented at the Congress will examine two important approaches to crime prevention that have been explored over the past two decades: social prevention and situational prevention.

Social prevention aims to eliminate problems that can lead a young person to crime, such as lack of parental supervision, poor primary education or poor physical or mental health. The community helps by teaching young people to obey the law, building relationships between local police and the community, and setting up drop-in centers for unemployed young people or voluntary treatment programs for young drug addicts. *(E. O'Hara, 1970, pp. 3-4).*

This strategy has achieved amazing results. According to the International Center for the Prevention of Crime, a four-year program from 1989 to 1993 in five American cities, the Quantum Opportunities Program, funded extracurricular activities for youth from disadvantaged backgrounds, including homework assistance., peer-to-peer training and community service, which reduced arrests by 71%. Every dollar invested in the program saved about $3.68 in social benefits and other government-funded programs such as youth counseling and unemployment insurance *(L. Cârjan, M. Chiper, 2009, p. 14.).*

A two-year program, from 1980 to 1982, in Ottawa, Canada, provided children (ages 5 to 15) in a low-income family housing group with free activities such as swimming, judo, classical dance, scouts and

[1] https://www.unodc.org/unodc/en/about-unodc/speeches/speech_2000-06-26_1.html accessed on 01.06.2022

competitive games. This project reduced crime by 56% and saved $2.67 for every $0.17 invested in the program *(L. Ionescu, D. Sandu, 2011, p. 2.).*

"Partnerships" with local authorities, police or businesses have also been been successful in reducing crime. In Sydney (Australia), police have joined forces with key stakeholders in car theft, notably drivers, manufacturers, insurance companies, repairers, and local authorities, to implement a comprehensive public education program and preventive measures to limit the possibility of theft, such as safer parking. This process has reduced car theft by 25% in one year *(N. Volonciu, 2000, p. 28).*

Situational crime prevention uses modern technology, surveillance, and architecture to ward off potential criminals. This method has led to a strong growth in security and private policing companies, increased surveillance by residents or non-police professionals, and widespread use of technical assistance such as CCTV and cameras *(L. Cârjan, M. Chiper, 2009, p. 14.).*

Some situational prevention projects have attempted to influence urban planning and architecture to reduce break-ins and burglaries, including retreats. Others have worked to identify crime "hot spots" in urban areas or to help victims, including victims of domestic violence or burglary, avoid reoffending. *(E. Stancu, 2004, p.23).*

This strategy has been successful in preventing a wide range of crimes and is now part of official crime prevention policy in several European countries such as the UK, the Netherlands and France.

In the UK, a project involving council officials, police, social workers, and the university was launched in 1986 with the aim of ending crime in the Kirkholt working-class housing estate in Rochdale. Project organizers set up a neighborhood watch program to surround burglarized homes and encourage residents to upgrade their locks and locking systems, as well as get rid of gas or electricity meters. coin-fed electricity (to reduce the amount of readily available change) *(J. Nepote, 1983, p. 2).*

By the end of its third year, the Kirkholtprogramme had led to a 75% drop in thefts. The money earned by reducing gas or electricity meter losses and reducing theft of cash and goods has covered the costs of the program. In addition, the program saved $3.84 for every dollar invested during policing, prosecution, probation, and detention *(L. Ionescu, D. Sandu, 2011, p. 2).*

The Kirkholt Program and other successful crime prevention programs persuaded the UK government to pass the Crime and Disorder Act in 1998, which sees local authorities, police, and other organizations, including social services, education, probation and child protection services and the courts, jointly establish community safety strategies. The government has earmarked about $450 million for a three-year program that targets, among other things, domestic burglary and violence, family and youth issues and policing. *(E. O'Hara, 1970, pp. 3-4.)*

"Developing countries are slow to invest in successful strategies," says Irwin Waller, Director of the International Centre for the Prevention of Crime. However, he notes that the limits of their budgets prevent developing countries from making similar expenditures when crime prevention is urgently needed there. "If the UK is investing $450 million, you are saying it is essential that the international community also invests in crime prevention in African or South American cities in the throes of violence," he said.

Crime prevention is an increasingly popular means of fighting organized crime. Key strategies include countering the lure of criminal groups through social and cultural programs in schools or the media, increasing efforts to deter juvenile delinquency and reducing opportunities for organized crime by limiting illicit markets. For example, health projects or information campaigns can reduce illicit markets by reducing the demand for drugs or sexual services *(LeClère, 1974, pp. 11-12; C. E. O'Hara, 1970, pp. 3-4.)*

The United Nations Development Fund for Women (UNIFEM) has launched several projects to raise awareness among governments and the public about the consequences of sex trafficking of women and girls. "We need to break the silence and taboos around this issue to raise awareness and prevent trafficking in women and girls," said UNIFEM Executive Director Noleen Heyzer.[2]

One project focused on educating girls and staff in remote orphanages in Russia about the risks of trafficking in women. The orphanages encourage employers to hire from among their residents who are required to leave the institution by the age of 17. However, according to Ms Heyzer, many of these "employers" are in close contact with transnational traffickers.

The project has already yielded positive results. "The orphanages are working hard to vet the recruiters and the girls themselves are being warned about possible trafficking," she added.

Another UNIFEM project, based on case studies of Nepali women and girls who have been lured into prostitution through deception, has produced a fictional film revealing the entire network of traffickers from Nepal to the brothels of Mumbai. The film, which premiered in New Delhi (India), will be shown in Nepali villages and major cinemas across South Asia.

Other strategies could prevent organized crime from entering the legal economy. We could, for example, combat smuggling through an

[2] https://www.un.org/development/desa/pd/sites/www.un.org.development.desa.pd/files/unpd-cm7-2008-11_p06_unifem.pdf accessed on 01.06.2022

international product marking system and reduce the profits of criminal groups through tougher legislation. n on money laundering. Greater transparency in the public service could help control corruption *(C. Bulai, A. Filipaș, C. Mitrache, 2001, p.123).*

The forthcoming Convention on Transnational Organized Crime (see Summary Sheet No 1) together with its three additional protocols against trafficking in human beings, especially women and children, against the smuggling and transport of migrants and against the illicit trade in firearms encourages governments to use such prevention strategies. The new convention, which will provide legal support for prevention, will also be discussed at the 10th Congress, and is expected to be presented for adoption at the Millennium Assembly later this year[3] .

CONCLUSIONS

Despite various projects demonstrating that crime prevention achieves positive results, many obstacles and ethical disagreements remain. Critics suggest that situational prevention has its own dangers, turning society into a "besieged fortress" where people barricade themselves in their homes.

Companies do not agree to bear the costs of certain measures. Some businesses refuse to apply theft prevention measures on the grounds that they risk discouraging spontaneous purchases. Insurance companies find it difficult to verify questionable claims because it's cheaper to pay them all off with minimal checks.

The lack of public funding, which is generally used to build the criminal justice system rather than prevent it, is another major obstacle. Although spending on prevention and communities has increased over the past two decades and child development issues are receiving more attention, research funding continues to be severely lacking.

It will be necessary for the application of modern crime prevention techniques such as transnational organized crime, crimes against migrants and tourists and cybercrime. These types of crime are likely to grow rapidly as trade goes global, business travel and tourism expand, and traditional borders open.

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THE CONSTITUTION – THE SUPREME SOURCE OF ROMANIAN LAW?

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Abstract

The purpose of this article is to conduct an analysis of the dynamics between the principle of constitutional supremacy and the principle of priority application of European Union law. Starting from a question and still asking questions, this article is intended to be a preamble for debates:, what is the difference between priority and supremacy?", "does the European Union have good reasons to be concerned about certain decisions pronounced at national level?", "is there a need for a reinterpretation of the normative hierarchy?"... For some of these questions I will try to answer, but for the rest, at this moment, the answer would / could be uncertain or non-existent.

Key words: *Constitutional supremacy; priority principle of Union law; Constitutional Court; CJEU.*

INTRODUCTION

Is the Constitution the supreme source of Romanian law? At first glance, the question seems candidly expressed, but in essence, precisely by formulating the title under the configuration of a query, we want to draw attention to some "insecurities" that at least at the moment create problems of interpretation. Because of this, it is necessary to do a report between the principle of constitutional supremacy and the principle of priority of European Union law in this situation.

The basis of the Treaty of Lisbon was the desire for prosperity and development. In other words, the past of the European Union shows us nothing but this strong desire to ensure balance and cooperation[1], but in this continuous process of evolution and adaptation, at some point it seems that this cooperation

[1] https://drept.unibuc.ro/documente/dyn_doc/publicatii/revista-stiintifica/Pascu%20Anca.pdf A. Pascu under the coordination E.S. Tănăsescu, The priority of European law in national law – once again current, site visited on 29.09.2022.

has turned into an interdependence. Interdependence which is somehow beginning to be felt as an intrusion into the national order and the independence of the state, especially on the basis of the case-law of the Court of Justice of the European Union *(I. Boghirnea, E.N. Vâlcu, 2009, pp. 253-258),* which over the time has issued decisions in favour of the priority application of Union rules and principles over constitutional regulations themselves.

It is interesting to note that among law specialists the views are divided, At times reaching controversial findings, and even in the context in which a good part of the doctrine inclines to find that the principle of priority of Union law cannot contradict or disprove the supremacy of the Constitution, The recent case-law practice of the Court of Justice of the European Union has brought a slight destabilization with regard to these beliefs *(T. Avrigeanu, 2010, p.76).* Thus, through a decision issued by it, the judges at national level have the possibility to stop applying the decisions of the Constitutional Court of Romania to the extent that they contravene Union law, without risking their disciplinary liability. The attention is drawn to the application of the case-law of the Constitutional Court relating to criminal procedure rules applicable in the field of fraud and corruption, decisions which are enforceable in breach of Union law, in particular the provisions concerning the protection of the financial interests of the Union, the value of the rule of law, the guarantee of independence of judges, As well as the principle of the supremacy of EU law[2], but in the regulation of Article 147 paragraph (4) of the Constitution of Romania it is specified precisely that these decisions of the Constitutional Court are generally binding having power only for the future, their failure to comply with them attracting the disciplinary responsibility of the judge who does not implement them.

1. THE RELATIONSHIP BETWEEN THE PRINCIPLE OF PRIORITY APPLICATION OF EUROPEAN UNION LAW AND CONSTITUTIONAL SUPREMACY

Clarifying the dynamics between these two principles is an essential aspect, but for this to be done effectively, it is necessary to analyze the difference between "priority" and "supremacy". In the Romanian legal doctrine, supremacy is considered beyond a principle, a quality of the Constitution, which places it at the top of the political-legal institutions of a state-organized society, making it the source of all regulations in the economic, political, social, legal fields *(I. Muraru, E.S. Tănăsescu' 2005, pp. 62-63; M. Grigore and all., 2011, pp 305-309).* From a strictly legal point of view, the supremacy of the Constitution expresses its position of over ordering within the system of law *(F.C. Kund, 2006, p. 13),* implicitly, the entire system of law is ordered by the Constitution, which essentially implies the compliance of all other categories of normative acts with it

[2] Press Release nr. 230/21, Luxemburg, 21 December 2021. https://curia.europa.eu/jcms/upload/docs/application/pdf/2021-12/cp210230ro.pdf , site visited on 29.09.2022.

(I. Muraru, E.S. Tănăsescu' 2005, p. 67). Moreover, the distinction between the two notions is ensured by the very Constitution of Romania, which in the content of Article 1 paragraph 5 regulates the fact that, in Romania, the observance of the Constitution, its supremacy and laws is mandatory", whereas the principle of priority of European Union law is found in Article 148, alin 2 , as a result of accession, the provisions of the constituent treaties of the European Union, as well as other Community regulations of a binding nature, shall take precedence over the contrary provisions of national laws, in compliance with the provisions of the Act of Accession.

In order to explain the situation as clearly as possible, the Constitution is recognized as the "fundamental law of the state", it is one of the main forms of expression of national sovereignty and the identity of a state because the Constitution contains the basic principles of its organization. fundamental rights and duties of citizens of that state. The Romanian State by virtue of its sovereignty and as an independent entity joined the European Union on 1 January 2007, It thus had to take over and transpose at national level rules of Union law and to pursue their proper application in practice in order to align with the principles of the Union. This is what the Union treaties designate as the "principle of loyal cooperation", in order for the Union mechanism to function effectively and to limit as much as possible the inconsistencies in ensuring efficiency, a compromise was necessary, thus Romania partially cedes its sovereignty, As a form of diminishing the autonomy of the will following the accession to the European Union.

However, this situation must not be interpreted as a loss of state identity, the priority of Union law being precisely on the basis of national sovereignty, implicitly of the constitutional supremacy which expressly recognizes this principle. In this regard, the literature states that in the internal legal order the legal act by which Romania joined the European Union has legal force inferior to the Constitution and constitutional laws, but superior to the organic and ordinary laws *(M. Andreescu, A. Puran, 2018, p. 289)*, a rather controversial point of view in the doctrine.

A second stage, important to analyze, is how the dynamics of principles have evolved over time, but also an interpretation of how doctrine maintains so different views in relation to them. Until the entry into force of the Charter of Fundamental Rights of the European Union, implicitly of the Reform Treaty, also recognized as the Treaty of Lisbon on 1 December 2009, there was no system for guaranteeing fundamental rights, This is why constitutional regulations were referred to in the member states of the European Union.

With the evolution and development of the European Union and the principle of priority of Union rules, it strengthens its "power" mainly by way of jurisprudence, emblematic in this respect being the Costa C case Enel. In that case, the Court of Justice of the European Union has taken a firm position limiting

the ability of national governments to introduce laws in conflict with the Treaty on European Union[3]. As a brief presentation of the case, IN 1962, ENEL (Ente Nationale per l Energia Electrica) was formed in Italy by nationalizing the process of electricity production and distribution. An Italian citizen who was a shareholder of the electricity company opposed the measure and in protest stopped paying his bills *(E. Vâlcu, 2012, pp.24-25).* The electricity company sued him for non-payment, with the Italian citizen claiming that nationalization would be a breach of Union rules, he appealed to the Court of Justice, and the latter granted him justice on the grounds that, by virtue of the partial transfer of sovereignty, a unilateral, subsequent law, was passed on to the Court of Justice. incompatible with union objectives cannot prevail[4]. At least at that time such a decision produced rumor at the level of the Italian State because it objected by its finding to a decision previously given by the Italian Constitutional Court, thus opposing the principles of national constitutional law.

Other similar cases followed this case, such as Simmenthal I, Simmenthal SpA or Simmenthal II, in which the judges reached the following conclusions: "The national judge, having the role of applying the provisions of Community law within his competence, is obliged to ensure the full effect of those rules, leaving, if necessary, unenforceable by its own authority, any contrary provision of national law, without having to require or wait for its prior removal by law or any constitutional procedure *(E. Vâlcu, 2021, p. 3-4).* These decisions have been a powerful picture of how the European Union has evolved, Strengthening their position and, moreover, they do not come in the form of undermining national authority or at least not so should be regarded as their purpose is to make national rules and case law more efficient and to associate them with the governing principles of the Union, in other words, to function well together we need a common vision, if our visions do not coincide, we will not be able to work together to achieve our common goals and interests.

Another important aspect to note in practical terms, interference between European Union law and national law arises, in particular, when there are contradictions between legal rules belonging to legal systems *(M. Andreescu, A. Puran, 2018, p. 284)*, or these contradictions are rare. The explanation lies in how each state at national level understands to rally to the principles and norms of the Union. It is necessary to speak of the Union regulations that are part of the category of legally binding acts, which have the role of legislative uniformity being mandatory for all the states in the European Union. Union directives are intended to complement the legislative minuses these are binding only in terms of the outcome and require national transposition into those types of national legislation that satisfy the requirements of clarity and legal certainty *(I.N Militaru,*

[3] https://www.avocatoo.ro/blog/costa-v-enel-c-6-64, M. Constantinescu, 30.09.2022.
[4] Idem.

2017, pp. 136-142; I.N. Militaru, 2010, pp. 22-28). The decision under Article 288(4) of the Treaty of Lisbon is binding in all its elements, and if specific recipients are indicated therein it becomes binding only on them, decisions are thus interpreted differently depending on whether its recipients are member states or individual recipients. When addressing one or more Member States, they behave like a directive, and in the case of private recipients who may be natural or legal persons, they behave like a regulation.

2. INTERVENTION OF THE COURT OF JUSTICE OF THE EUROPEAN UNION ON DECISIONS GIVEN BY THE CONSTITUTIONAL COURT OF ROMANIA

In order to have a thorough understanding of the way of interacting between national and Union jurisprudence, I considered it appropriate to present a relatively recent situation in practice, a situation which I will treat more as a case study, either because the national doctrine has not reached a generally accepted point of view, and given the complexity of the issue, I do not think that such a point of view will be reached anytime soon. even the fact that I in the novice position do not allow myself a point of view that I consider satisfactory, so I will treat the situation as a mere observer as objectively as possible.

The preconditions of the case are in view of the High Court of Cassation and Justice of Romania, which had to rule on cases concerning tax evasion, corruption and influence trafficking, especially in relation to the management of European funds[5]. The Constitutional Court, being notified, drew attention to the unlawful composition of the panels in which the cases were judged, thus annulling the decisions given by the High Court of Cassation and Justice. In addition to these cases, the situation of the Bihor Tribunal is added, which in the face of a previous decision of the Constitutional Court on the limitation must exclude part of the evidence available in certain cases of corruption and influence trafficking[6]. In this context, both the High Court and the General Court have requested the opinion of the Court of Justice of the European Union, although their approach has raised numerous points of view in the literature. Several issues have been raised: Can judges at national level leave the decisions of the Constitutional Court unenforced without being disciplined? Are MVCs mandatory in such situations? The CVM is the Communication and verification Mechanism which for Romania requires a regular check in support of the improvement of the judicial and administrative system. National courts want to draw attention to a potential risk that the Constitutional Court's decision may pose in the fight against corruption, especially given that these decisions are binding and applicable for the future.

[5] Press release nr. *230/21,* Luxemburg, 21 December 2021.

[6] https://www.bihorjust.ro/doua-dosare-aflate-in-pronuntare-la-tribunalul-bihor-repuse-pe-rol/ A. Laboș, site visited on 2. 11.2022 .

The Court of Justice of the European Union has considered that MCV is mandatory in all its elements for Romania[7] and the fact that judges at national level have the possibility to stop applying the decisions of the Constitutional Court to the extent that they are contrary to Union law, without the risk of their disciplinary liability. On the other hand, the Constitutional Court expressed that this decision can only be implemented as a result of the amendment of the Constitution, which cannot be made by law[8]. However, the importance of the decision at national level is undeniable, with the doctrine positioning itself mainly on two "barricades". Specialists in the field of EU law who consider that the application of Union rules and decisions is a priority, especially by supporting these claims on the previously stated case law in which the European Union has strengthened its position even in relation to the national constitutions of the Member States On the other hand, specialists in the field of constitutional law who consider that decisions given at Union level cannot, at least not in a direct way, cause amendments or oppose the Constitution, because such a fact would produce a national hazard. There are also stated opinions that tend to bring these discussions to a balanced position starting from the finding that in this process of adapting and developing cooperation relations, naturally, the situation is very different. There will also be some strong interventions by the European Union on national law issues, even at constitutional level. All the more so insofar as these issues concern issues which have the potential to undermine Union principles.

Beyond this brief presentation, there remain numerous discussions and viewpoints that determine polemics even at the time of the article, especially against the background of new controversial issues and decisions taken by the Constitutional Court. Personally, I am aligning myself with a balance position and I believe that much more free discussion on this subject is needed to understand the impact on the practical level. The fluidity and the accelerated pace of evolution of social, economic, and legal realities make it increasingly difficult and illusory to enunciate a generally accepted point of view that has absolute value.

CONCLUSIONS

As far as I can see, at least in part, some of the issues I have tried to raise in my article remain unresolved to the end. The Constitution is the fundamental law of the state and even after accession to the European Union when the state has ceded a part of legislative sovereignty, from the point of view of a good part of the doctrine, in the normative hierarchy, the Constitution occupies the upper position being a form of expression of national identity, The Union regulatory regulations occupy a secondary place even by virtue of the cooperation between the Member States and the European Union. Decisions given at Union level shall

[7] Decision of May 18, 2021, the Association of "Judges of Romania" https://curia.europa.eu/juris/liste.jsf?num=C-83/19&language=ro . site visited on 01.11.2022.
[8] https://www.ccr.ro/comunicat-de-presa-23-decembrie-2021/, site visited on 01.11.2022.

be deemed not to have an impact on the amendment and opposition to constitutional regulations. On the other hand, the doctrinaries that lean in favor of EU law regard with circumspection the foregoing, especially on the basis of the case-law of the Court of Justice of the European Union. However, I believe that my article fulfills its purpose for which it was made, that of determining debates, because only by having discussions can we find solutions that are probably somewhere in a balance position.

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CRIME – BETWEEN CONCEPT AND DEFINITION IN THE EUROPEAN UNION

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Abstract

The present paper presents itself as a comparison between criminal legislation that exist within the EU territory, as well as a theoretical analysis of some criminal law institutions which entails reverberations in the criminal procedural law as well. But these follow-ups go beyond these aspects.

The theoretical steps that were assumed by this paper also knows profound practical implications, thus going beyond the abstract realm of theory and into practice, proving once again how important it is to posses the neccesary knowledge when it comes to compared law and not only that, but also the importance of that knowledge.

The legislator cannot and should not remain indifferent regarding the signaled situations alongside this paper thus imposing the need to straighten, where neccesary, the impossible or contradictory situations.

Key words: *member states, crime, criminal code, criminal procedural code, institution.*

INTRODUCTION

The European Union is a unique project worldwide in regards to administrative organization, uniqueness that finds its foundation, among other things, in the way the EU is organised and functions. This is one of the outcomes of the Treaty of the European Union (the TEU) and the Treaty of the Functioning of the European Union (the TFEU). Thus, on one side, there are common visions of the member states that the TEU defines as "common values" [art. 2 of the TEU states that "*The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These* ***values*** *are* ***common*** *(*n. a. – M.S.) *to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men*

prevail"], accepted at a European level by all the European states, both that are member states and that want to become member states and, as such, they apply to become member states, and, on the other hand, each member state is sovereign regarding the politics that it sees fit and that are in accordance with its own principle of opportunity, the treaties (the TEU and the TFEU) stating that there are exclusive competencies [art. 2 parag. (1) of the TFEU], shared competencies [art. 2 parag. (2) of the TFEU] and backup competencies (M. Patraus, 2018, p. 64]. Thus, the EU does not present itself neither as a federation of states (https://dexonline.ro/definitie/federa%C8%9Bie), nor a confederation of states (https://dexonline.ro/definitie/confedera%C8%9Bie/definitii). However, it cannot be stated, without being wrong, nor the fact that there is no collaboration or cohesion between the Member States, especially since the EU gained judicial personality [ever since the Treaty of Lisbon came into force, that modified the previous EU treaties The Treaty of Lisbon | Fact Sheets on the European Union | European Parliament (europa.eu)], the Member States politics being constantly guided towards the same goals, circumstance that is specific rather to a federation or a confederation than to a republic or a monarchy.

One of the union principles that present a great interest in my opinion is the one that outlines the Judicial system within the inner borders of the EU territory. This is highly relevant hence it sends important signals within the entire social spectrum, thus possessing the knowledge of the conduct to be followed in a certain timeframe is necessary (if not essential, these aspects becoming real through legal relations which include the commodities that can be converted into money and, sometimes, even one's freedom) in order that those to which the legal norm addresses can adapt their conduct to the judicial norms that apply to each and every circumstance.

1. CRIME WITHIN THE EU BORDERS

Regarding the crime hierarchy within the EU, as well as the idea that any such antisocial action requires an adequate punishment the EU Member States are unanimously in their decision.

However, in regards to the sanctions that should be applied to a person that committed a crime or the way that the sanctions should be individualised, as a legal institution is different from one Member State to another. Thus, circumstances that some legal institutions and criminal law norms that seem alike apply in a different manner, as well as those different applications in some Member States have different outcomes than in other Member States. So, there are Member States that have, within their criminal legal system, a definition for the crime, the definition that each Member State provided for this fundamental institution being, in my opinion, the core from which those Member States started creating their own criminal politics; other Member States limit themselves by stating that the crime is the offense that is inserted within the criminal law [art. 17

parag. (1) from the Austrian Republic Criminal Code that states *"The crime is the offense inserted in the criminal law and is punished by life in prison or more than 3 years of prison"*], emphasizing mainly on the offenses that are crimes and describing them; finally, there are Member States that do not offer a definition for the crime, but it stands out from the way the criminal legislation is applied within its borders. As an example, the criminal legislation of certain Member States such as Cyprus, Finland, Denmark or Croatia do not know a definition for the institution of the crime, rather than it stakes out from the way they created their criminal politics.

Romania is one of the Member States that have (and use) a definition for the crime. Romania is a Member State since the 1st of January 2007. So, according to art. 15 parag. (1) from Act no. 286/2009 regarding the Romanian Criminal code (published in the Official Journal of Romania, no. 514 since 24.07.2009), considering the changes that occurred meanwhile up to present day, *"the crime is the offense inserted within the criminal law, committed with guilt, that cannot be justified and can be imputed to the person that did it".* When first encountering this definition, one might say that the definition provided by the Romanian legislator does not have the character that it would be able to rise any issues whatsoever, the fact that the crime must have these essential traits is a given, otherwise the offense is not a crime, but a different form of illicit. However, following this, I will try to demonstrate that this definition, that is offered by the Romanian legislator is, in fact, a very complex one, and that complexity is due to the effects that it produces and the conditions that it is tied to. Reminder, the Romanian Criminal code is in force since the 1st of February 2014.

2. THE CRIME FROM THE ROMANIAN'S LEGISLATOR POINT OF VIEW

As shown above, art. 15 parag. (1) in the Romanian Criminal code offers the definition of the crime and it does so by stating the crimes essential features, the article's marginal name being *the essential features of the crime.* In the existing relevant literature, the authors unanimously accept the thesis regarding that *(Mirișan, V., Domocoș, C. A., 2019, p.113),* if one of the essential features is missing [there is a debate whether there are 3 or 4 essential features *(for a comparative analysis, please consult Mirișan, V., Domocoș, C. A., 2019 p.113, on one hand and Udroiu, M., 2018, p. 83,* where the second author makes an analysis regarding the reason he opines that guilt should not be considered an essential feature of the crime)], the offense is not a crime. From my point of view, the essential features of the crime are 4, not 3, because I consider that the legislator is pointing out each and every one of them. Moreover, from the way they are stipulated by the law, in my opinion they can't be only 3. From here onward, a few important aspects emerge that, in order to be better understood, must be pointed out, and those are:

a) if the offense is not inserted in the criminal law, it is not a crime [this is a result from the interpretation "*on the contrary*" of the 1st thesis from art. 15 parag. (1) from the Romanian Criminal code]; worth mentioning, here, would be that the Romanian legislator also defines what is to understand whenever the "*criminal legislation*" syntagm is being used, in art. 173 Romanian Criminal code, meaning "*by <<criminal legislation>> is to be understood any injunction with criminal characteristics encountered within organic laws, emergency ordinances or other legislative Acts that, when were adopted, were legally equal to the law*", so, for the 1st condition to be met is necessary that the offense (specifically) to be committed in such a manner that it folds perfectly to the abstract model inserted by the legislator within a criminal law (in the sense offered by the art. 173 of the Romanian Criminal code, thus not only the crimes that are to be find within the Romanian Criminal code); if the offense, specifically, does not exist, it will be a one of the grounds that will prevent the setting in motion of the criminal action against one or the impossibility for it to be exercised against one, according to art. 16 parag. (1) let. a) of the Romanian Procedural Criminal code.

b) if the offense is not committed with the guilt established by the law, it is not a crime; this premise is because of the art. 15 parag. (2) corroborated with the text found in art. 16 parag (1) the Romanian Criminal code. Art. 16, in the parag. (3) – (5), continues by explaining what is one to understand, from a criminal law perspective, when reading intent, by mistake, in how many parts they are divided, as well as what is one to understand through exceeded intention; so, if the committed offense is inserted within the Criminal law, but it is not committed with the guilt established by the law [direct/indirect intent, mistake (when the law establishes that is the case) or exceeded intent], it is not a crime;

c) if there is any of the justifying reasons provided by the law, the offense is not a crime; this is something that the Romanian Criminal code states specifically in the art. 18 parag. (1); that means that if a person committed a offense inserted in the criminal law, with the guilt established by the law, but it was committed in a circumstance provided by the justifying reasons special/general justifying reasons), that offense is not a crime; the general justifying reasons can be found in the Romanian Criminal code, and the special ones can also be found in other criminal laws.

d) if there is any of the non-imputability reasons provided by the law, the offense, even if it is inserted in the criminal law, committed with the guilt provided by the law and in an unjustified manner, it will not be a crime, circumstance that is inserted in art. 23 parag. (1) Romanian Criminal code.

An important note needs to be made here: even though both the justifying reasons and the non-imputability reasons mean that the offense committed is not a crime, the justifying reasons are causes that exert upon the offense, while the non-imputability ones exert upon the offender with one exception, the fortuitous case, that is, just as the justifiable reasons, a cause that exerts upon the offense.

Because this paper is not about to analyze the required steps that need to be made in order for an offense that occurred by mistake or a temptation to commit such a deed is a crime, I will resume it only to the purposes of pointing them out when needed, in order to better understand some of the things that make the subject analysis of this paper. Thus, the Romanian criminal law reveals that the attempt, [as shown in the art. 33 parag. (1) of the Romanian Criminal code] as well as the offenses committed by mistake [as art. 16 parag. (6) of the Romanian Criminal code reveals] are to be punished only if they are provided so/stipulated as such by the law, the rest of the offenses having as an established ground rule that they are committed with (direct/indirect) intent. As such, by using the "*on the contrary*" interpretation method, in regard with these legal provisions ensues is possible to exist [and actually exist, the relevant literature showing important aspects in this matter *(Bodea, R., Bodea, B., 2018, p. 198, as well as Udroiu, M., 2018, p. 244)*] offenses inserted within the Romanian Criminal code, committed by mistake, that are not crimes.

The Romanian Criminal code also defines, among other things, what should one understand when they encounter "*committing a crime*" throughout the entire criminal law, in art. 174 of the Romanian Criminal code as "*the committing of any of the offenses that the law punishes as a consumed crime or as an attempt, as well as the participation of one when committing them as a co-author, an instigator or an accomplice*".

In the doctrine, as well as in the Romanian Constitutional Court's jurisprudence, has been shown, in a legally fashion, that the law is to be understood and applied as a whole, and not in an isolated manner, by fractions, taking into consideration only some aspects, or only some legal institutions. As such, by example, in a case however, the Romanian Constitutional Court's Decision no. 265/2014 (regarding the fact that art. 5 of the Criminal code is presumed to be unconstitutional) states that the more favorable criminal law is the one that **as a whole** (n. n. – M.S.), proves to be more favorable for the accused and not the application of laws following one another by autonomous legal institutions. But this principle also exerts from art. 1 parag. (5) of the Romanian Constitution that states "*in Romania, the abiding of the Constitution, its supremacy and the laws is compulsory*" (the Romanian Constitution). By giving efficiency to the Constitutional provisions, the legal paragraphs stated above must also be read throughout art. 4 parag. (1) in the Romanian Criminal Procedural code according to which "*any person is to be considered innocent till their guilt is established through a criminal definitive decision*", art. 550-552 Romanian Criminal Procedural code showing the cases in which a verdict stated by the criminal courts becomes definitive. Following the same train of thoughts, art. 103 parag. (2) of the Romanian Criminal Procedural code reveals that "*when taking a decision regarding **the existence*** (n. n. – M.S.), *of the crime as well as the guilt, **the Court*** (n. n.) *issues a motivated verdict (...)*". From the legal texts above, in

my opinion, results that it is up to the Court to decide whether there is a crime or not, and when making that decision, the Court must have as a ground rule the evidence that legally exist within the file. As such, I consider the Court as being the only one that has legal competence (and not other judicial agents/organs) to decide whether an offense is a crime or not through its existence, on one hand, as well as when it comes to establish if there is a guilt provided by the law when the offense occurred, on the other hand. This decision belongs only to the Court, and it concerns both the existence of the crime and the existence of the guilt the offender had when committing it; basically, if the committed offense was not committed with the guilt provided by the law [the way that art. 16 parag. (1) in the Romanian Criminal code demands], it is not a crime. This means that the other judicial agents, meaning the prosecutor, the rights and freedom judge, the preliminary Court judge can't decide regarding the existence/inexistence of a crime, thus they can't talk about the concept of a "crime" as a whole, that has all 4 essential features; they may be able to talk about the "offense provided by the criminal law" concept, or the "criminal case regarding an alleged crime" that is the purpose of that cause. This means that, before a definitive decision issued by the Court exists, one cannot say, without making a mistake, that a person committed a crime, because one of the essential features is missing and that is the guilt, that is established only by a legally invested Court. Even more so, we need to add that the Romanian legislator both offers a definition and reveals the types of ruling recognized by the Romanian Criminal Procedural code within the art. 370, the starting point in this matter being that all the rulings (in the sense offered by the Romanian legislation) are issued by the Court, which implies that no other judicial organs can (legally) issue that act. In other words, the prosecutor can't issue a ruling (in the sense provided by art. 370 Romanian Criminal Procedural code) regarding a cause that they have, this being an attribute reserved only for the Courts. The prosecutor, however, can issue other acts that they have competence to issue. Nonetheless, a prosecutor will never be able to (legally) issue a ruling. This paper is not about an analysis regarding the differences between the document issued by the Court and those issued by the prosecutor's office and so I will not pursue this matter, the doctrine explaining very well (in my opinion) the subject in the matter. Besides, art. 286 parag. (1) in the Romanian Criminal Procedural code stipulate that "*the prosecutor orders upon the documents (...) and provides a* ***solution*** *to the cause, by issuing an* ***ordinance*** (n. n. – M.S.) *if the law doesn't stipulate otherwise."* From this text follow a few consequences: mainly, the prosecutor doesn't get to determine whether the offense was a *crime* or not, because, in this stage, as shown above, I think that there is no crime, meaning that not all 4 (or 3, depending on perspective) essential features are met; then, the prosecutor doesn't get to decide regarding the crime, but *provides a solution* for the causes in which they are legally invested; finally, the document issued by the prosecutor's office is an ordinance, not a ruling.

Likewise, according to art. 1 parag. (2) Romanian Criminal code, "*no person can be criminally sanctioned for an offense that was not inserted in the criminal legislation at the time it was committed*". This is a recognition of the Latin adage "*nulla poena sine lege*" within the Romanian Criminal code. The Romanian Criminal code distinguishes between punishments (art. 53), educational measures (art. 115) and safety measures (art. 108), all of these being sanctions that can be applied to the persons that committed a crime or an offense provided by the Criminal code, the three possible sanctions representing 3 different ways to establish a criminal penalty for a person, sanctions that apply different, in accordance with several criteria. In art. 2 of the Romanian Criminal code, it is shown that "*the Criminal law sets the **punishments*** (n. n. – M.S.) *and the educative measures that can be taken against the persons that committed **crimes*** (n. n. – M.S.), *as well as the safety measures that can be taken against the persons that committed **offenses stipulated by the Criminal law*** (n. n. – M.S.)". This legal text stands by the idea that not every offense stipulated by the Criminal law is a crime. It also sends the message that the safety measures can be taken against a person that did not commit a crime, but only an offense inserted within the Criminal law, which implies the existence only of the 1st essential feature, and not of all 4. Moreover, art. 107 parag. (3) state that "*the safety measures can be taken against the **offender*** (n. n. – M.S.), *even if a punishment does not apply*". Thus, in order for a safety measure to be taken against offender, the 1st essential feature of the crime is all it takes, the legal text above implicitly making the distinction between offender and criminal.

1. SOME CONTROVERSIAL ASPECTS REGARDING THE DEFINITION OF THE CRIME ALONGSIDE THE ROMANIAN CRIMINAL CODE AND CRIMINAL PROCEDURAL CODE

1.1. The crime, in accordance with the waiving the penalty institution and the postponing the application of the penalty institution

In the relevant doctrine it is claimed that neither the waiving the penalty institution *(Udroiu, M., 2018, p. 450)*, nor the postponing the application of the penalty institution *(Udroiu, M., 2018, p. 461)*, are not, in fact, convictions. When claiming this thesis, it is brought to the public attention, among other legal texts, the text stipulated in art. 82 parag. (1) of the Criminal code that states, "*the person towards the waiving of the penalty was established is not the subject of any lapse, prohibition or incapacity that could result from the committed crime*", provision that can also be found inserted in art. 90 parag. (1) Criminal code. However, I consider that, like the Czech Republic legislator [Subdivision 2, section 46, parag. (3) from the Criminal code of the Czech Republic], if that was really what the Romanian legislator wanted, for more clarity regarding the text, this would have been the formality under which the text would have been stipulated. In order to support this thesis, both art. 8 parag. (4) from the Act no. 24 since 27.03.2000

regarding the legislative technic norms for development of the normative acts (published in the Romanian Official Journal no. 260 from 21.04.2010) updated, that show that "*the legislative text must be clear, fluently and intelligible, with no grammar difficulties and dark or obscure passages (...)*" and the legal provisions above, hence the legislator did not assume such a thesis. This situation, in my opinion, leads to the conclusion that the legal text in art. 82 parag. (1) stated above is unclear and has obscure passages, thus making it hard for one to understand whether this really was the legislator's intention or not.

Therefore, according to art. 80 parag. (2) in the Criminal code, "*it cannot be applied the waiving of the penalty institution if:*

a) the criminal has suffered ***another*** (n.n.–M.S.) *conviction, except (...)*".

As stated above, in the relevant doctrine regarding this matter, it is claimed that neither the waiving of the penalty, nor the postponing of the application of the penalty does not constitute convictions. Both regarding the waiving of the penalty as well as the postponing of the application of the penalty, the legislator shows that if, during the surveillance term it is discovered that the person had committed yet another crime [case in which, in my opinion, considering the essential features of a crime stipulated in art. 15 parag. (1) in the Criminal code, the Romanian legislator wrongfully suggests the idea that there must be a definitive conviction regarding this second crime that he mentions, meaning, in fact, the first crime on the time axis], for which a punishment was established (in regards to the institution of waiving the penalty)/ a conviction to prison was set (in regards to the institution of postponing the penalty) (…), the waiving/postponing is cancelled, therefore applying, for each case, the legal provisions concerning a contest of the crimes, relapse or intermediate plurality of crimes [for more information, please consult the provisions offered by art. 82 parag. (3) in regard to the waiving, or art. 89 parag. (1) in regard to the postponing, both articles from Act no. 286/2009 regarding the Romanian Criminal code, published in the Official Journal of Romania no. 510 since 24.07.2009, updated].

Concerning the Romanian grammar, when one uses a construction resembling the one used by the Romanian legislator as showed above "*another*", it presumes that both elements involved have the same significance, the two elements have the same value. Basically, the action determined by the verb used repeats itself. Specifically, by the way that art. 80 parag. (2) let. a) is edited, when the text makes a reference to the criminal, that he must have suffered **another** (n. n. – M.S.) conviction, in my opinion, the legislator establishes the judicial regime that this legal institution has and that is that the waiving of the penalty is yet another form of conviction, even though its effects are not similar to a conviction. Following the same train of thoughts, art. 8 parag. (4) of the Act no. 24 since 27.03.2000 regarding the legislative technic norms for developing the normative acts, that were stated above. In the same register are also listed the provisions offered by art. 25 of the Act. No.24/27.03.2000, that states "*in the frame*

regarding the foreseeable legislative solutions, an explicit configuration of the concept and notions used in the new regulation must be achieved, that have a different meaning than they usually have, thus ensuring the correct understanding of the notions used and the misinterpretations to be avoided", but the Criminal code does not define in any other way the phrase "*the criminal suffered another conviction*" which leads us to the conclusion that this phrase must be understood the way it is understood in the common language and not in any special way. The situation is the same in regards to art. 83 parag. (1) let. b) from the Criminal code provisions.

It is also true that the Romanian legislator does not explicitly stipulate that waiving the penalty is not a conviction, however I think that is not abundantly clear that it is a conviction, which materializes in confusions when interpreting it.

But let's go back to the provisions of the art. 80 Criminal code for a moment, because I consider that the legislator does not establish the effects that the waiving of the penalty has, but rather it determines its judicial character. If one of the conditions in which the waiving of the penalty is not possible is that the criminal should not have **another** (n. n. – M.S.) previous conviction, this translates to the fact that the waiving of the penalty is yet a conviction. On the same register, I consider right to remind now that there are also other EU Member States that have within their criminal legislation the waiving institution, but within their legislation, their national legislator stipulates without a shadow of a doubt that waiving the penalty is not the equivalent of a conviction [alongside the Czech Republic's Criminal code provisions, there are also the provisions regarding the same matter in the Slovakian Republic's Criminal code provisions as well, in art. 40 parag. (2) of the last-mentioned Criminal code].

At the same time, one must not forget that the waiving of the penalty, the postponing of the penalty, as well as the suspension of the execution of the penalty institutions are a materialization of the principle of opportunity (Udroiu, M., 2018, p.449) that the Court in entitled to when establishing a verdict in regard to a cause that is brought to justice, under the provisions of the law. Nonetheless, there are also EU Member States that have not inserted within their Criminal legislative codes the institutions mentioned above. As an example regarding this matter, I'd like to point out that Belgium, Cyprus, Estonia, Italy, Luxembourg and so on, none of these Member States' Criminal laws are acquainted to the criminal legal institutions of waiving the penalty or postponing the penalty.

Art. 396 parag. (3) of the Romanian Criminal Procedural code states that waiving the penalty is determined by the fact that *the Court finds, beyond any reasonable doubt, that the offense exists, it is a crime* ***and*** (n. n. – M.S.) *it was committed by the offender,* ***under the provisions of the art. 80-82 of the Criminal code*** (n. n. – M.S.). A few aspects need to be clarified here, in my opinion. Thus, first of all, as a result of analyzing of all the evidence existing on the file, the Court, at this pending moment during the trial, *finds* that the *offense* (n. n. – M.S.)

exists, thus the finding of a crime is made moments before a decision is made regarding the case; in another manner of speaking, the Court, as a result of administrating of all the existing evidence within that file, finds that the offense exists, afterwards the Court determines that that offense exists based on the evidence administered by the judicial organs; slightly different put, at this moment of the trial, the offense of which the offender is accused exists within its materiality; follow, that this offense, that exists, **is a crime** (n.n. – M.S.); as shown above, in order for an offense to be considered a crime, the essential features of a crime must be met cumulatively as stated by the art. 15 of the Criminal code, that is that the offense should be inserted within the Criminal legislation, to be committed with guilt, of an unjustified manner and non-imputable to the person that committed it. I consider this to be the key moment in which the Court decides whether the offender is guilty or not guilty by the committing the offense he stands accused of; thirdly, ***the offense was committed by the offender*** (n. n. – M.S.); it is asked from the Court to establish the casual relationship between the offense, on one side, under the self-implied condition for the offense to be inserted within the Criminal legislation and the author, meaning the offender, on the other side; if the Court finds, based on the administered evidence up until before the moment of the pronouncing the decision that the offense was committed by the offender, will issue a verdict in that direction; if not, the verdict issued will be acquittance or stopping of the criminal trial based on what the evidence indicate; then, all of these things must be find by the Court, ***beyond any reasonable doubt*** (n. n. – M.S.), which means, among other things, that it must be established by a non-bias and an independent Court.

These conditions must be fulfilled cumulatively, which results from the circumstance that the legislator used when conceiving this grammar construction of the art. 396 of the Criminal Procedural code the simple coordinating conjunction "and" (in the Romanian grammar, the word "and" can be understand in various ways; for a brief analysis of what they are, please visit https://www.academia.edu/8203811/CUVINTE_CU_VALORI_MORFOLOGICE_MULTIPLE). The major point of interest of art. 396 parag. (3) from the Criminal Procedural code regarding this paper, in my opinion, is the phrase "*under the provisions of art. 80-82 from the Criminal code*", phrase through which, basically, the legislator underlines the importance of the abovementioned articles.

Another worth-mentioning aspect I consider to be the provisions offered by art. 81 parag. (1) from the Criminal code: "*(1) When pronouncing the waiving of the penalty, the Court applies a warning to the criminal*". I think this syntagm is extremely useful because it basically empowers the concept that the waiving of the penalty seems rather like a conviction than anything else. Moreover, even if it is not stipulated as a criminal sanction, I think that the warning that art. 81 states about that is to be applied to the criminal can also be framed in the criminal sanction category, but this sanction can only be applied when the criminal and the

crime fits into the conditions stipulated by art. 80-82 from the Criminal code, the legislator strictly limiting the possibility of applying it when a waiving is set. If the waiving of the penalty is to be applied to a person, and, as such, a warning is applied to that person, one cannot say, without making a mistake, that the waiving of the penalty is not resembling with a conviction because, I consider that the Court does not apply warnings to innocent people, but to persons whose guilt was proved to the Court; at this moment during the criminal trial, the discussion is not about the effects that the principle of opportunity can have regarding the fact that waiving of the penalty is matching that principle, but merely a comparison between waiving the penalty as a criminal legal institution, on one hand, and other criminal institutions, on the other hand; sustaining the same idea, the Romanian legislator uses the word "criminal" in the phrase "*the Court applies a warning to the criminal* (n. n. – M.S.)".

But a criminal is a person that committed a crime, not an offense inserted within the Criminal law. A criminal is not to be mistaken to a suspect or to an accused person, because the last two are steps taken during the unfolding of the criminal process. The essential features of a crime are the above-mentioned ones; thus I think it is not possible to apply the waiving penalty criminal institution to an innocent person, art. 396 parag. (3) and (4) from the Criminal Procedural code stating, basically, the conditions that need to be fulfilled in order for the waiving of the penalty or postponing of it can be enforced.

On the same register, the Romanian legislator stipulates that in the matter at hand the discussion is about a criminal, not an offender, the criminal being the person that committed a crime, whilst the offender is a person that committed an offense, whether is a criminal one or not is yet to be established by the Court. Also, the phrase "*waiving to the penalty*" is not explained anywhere within the Criminal code, which can only mean that it has the same meaning that is has when using the common language. As so, *ubi lex non distinguit, nec nos distinguere debemus.* Thus, I consider that in order for the Court to be able to apply the waiving of a penalty, firstly, it must be set, and then, after it was set, if the cause fits within the boundaries set by the legislator in order for the waiving of the penalty to be applied, the Court should apply it; if not, in my opinion, a rename of the marginal name given for the section must be enforced.

I consider that both waiving the penalty and the postponing of the penalty, are, in fact, convictions, because, although a criminal sanction was not established to the person in the matter, that is due to the application of the principle of opportunity by the Court, on one side, and to the mercy of the judge, on the other hand, the person tried not being an innocent person (in order for the Court to be able to pronounce the acquittal), but rather a guilty one, from the evidence within the file resulting that the person is guilty and not innocent. Only the objective and subjective conditions stipulated in art. 80-82 (regarding the waiving of the penalty) or 83-90 (concerning the postponing of the penalty) in which the offense

was committed, as well as the way the judge sees fit to act upon the principle of opportunity lead to the materialization of the criminal institutions stated above to the detriment of a conviction, from the administrated evidence resulting that, as stated in art. 396 "*the Court find, beyond any reasonable doubt, that the offense exists, it is a crime and it was committed by the offender*".

Art. 80 parag. (1) of the Criminal code shows that the Court "*can decide*" to wave the penalty under certain circumstances. In this case, I think that there is not a contradiction with the Criminal Procedural code, but rather a special judicial norm, that is derogatory from the general one. As stated above, the conditions for waiving a penalty are both objective and subjective ones *(Udroiu, M., 2018, p. 450)*. But returning for a moment to the provisions of art. 396 from the Criminal Procedural code, it stipulates in parag. (1) that "*the Court determines in regard to the accusation that is brought to the defendant by pronouncing (...)*" and then continues to explain what conditions are to be met in order for the Court to be able to pronounce a conviction [parag. (2)], waiving the penalty [parag. (3)] postponing the penalty [parag. (4)], acquittance [parag. (5)] and the termination of the criminal trial [parag. (6)]. What can be easily noticed is that there is a perfect overlap up to a point between the conditions that are to be met when the Court is to pronounce a conviction, on one hand, and when is to pronounce the waiving of the penalty and the postponing of the penalty, on the other hand. Thus, "*if the Court finds, beyond any reasonable doubt, that the offense exists, it is a crime and it was committed by the offender*" represent the similarities among the 3 legal institutions, similarities that can be found within the parag. (2) – (4) of the 396 art. Of the Criminal Procedural code, the difference being made by the phrase "*under the provisions from within art. 80 – 82 from the Criminal code*" when it comes to the waiving of the penalty, whilst for the postponing of the penalty, the phrase "*under the provisions from within art. 83 – 90 from the Criminal code*"; regarding the legal institution of the conviction, there are no such sending.

Likewise, if we are to refer to the moment that we are during the criminal trial, that being before the Court had the chance to pronounce itself regarding the cause in which it was invested, a special relevance I consider the phrase "*the Court determines in regard to the accusation that is brought to the defendant by pronouncing*" to have. Thus, I consider that at this moment in the timeframe allocated for the criminal trial, the legislator uses "*accusation*" and not "*decision*", "*defendant*" and not "*criminal*", "*the Court*" and not "*the judicial organs*", as well as "*the Court determines*" and not "*the Court finds*", thus resulting that it did not existed up to that moment (this being the moment in which it comes into existence and the Court being the one that decide regarding it), one cannot bring into discussion, without making a mistake the term "*crime*", because it lacks, as shown above, one of the essential features of a crime, mainly, the guilt of the person responsible.

1.2. The crime, in comparison with other legal institutions within the Romanian Criminal code and Romanian Criminal Procedural code

In accordance with what was stated above, there are numerous legal texts alongside the Criminal code and the Criminal Procedural code where, in my opinion, in a misfortunate manner, the legislator uses "*crime*" instead of "*offense inserted within the criminal legislation*", "*criminal case*" or any other resemblant construction. As an example, I'd like to remind some of them: art. 35-42 from the Criminal Procedural code, where the legislator states about the different competences of the Courts. According to art. 35 parag. (1) from the Criminal Procedural code, "*the Court judges as a first-degree court all the crimes, except the ones that are given, by law, to other courts*". However, as shown above, as a result of the fact that the Romanian legislator assumed the essential features of a crime in art. 15 parag. (1) of the Criminal code, the Court cannot judge a crime, because when the word "*crime*" comes up to the table, according to the provisions of the Criminal code, the 4 essential features of a crime already are in place, meaning an offense inserted within the Criminal law, committed with guilt, unjustified **and** (n. n. – M.S.) imputable to the person that committed it.

Nevertheless, by the time the court is invested to rule upon the case, one cannot also have the ruling of that court, without violating the right to a fair trial. According to the Romanian language rules, the word "and" means more than one thing. In my opinion, here, "and" is used as a simple coordinating conjunction. This means that if one of the elements given within a succession of elements is not met, then neither is the outcome; this is also why the 4 essential features of a crime must be met simultaneously, otherwise, the offense cannot be a crime. Likewise, as shown above, art. 4 from the Criminal Procedural code states that until a person is declared guilty by a court in a definitive manner, that person is to be considered not guilty. In other words, a person against whom there isn't any final verdict cannot be criminally sanctioned without violating his/her fundamental rights. There is also a wide judicial practice that stands by this thesis. I think that, when the legislator uses the word "crime" (as well as any other word, for that matter) throughout the entire legislation should manifest constancy and contradictorily and to assume the coexistence of all 4 essential features.

Also, art. 103 parag. (2) from the Criminal Procedural code states that the court is the one to decide whether the crime exists or not, as well as the defendant is guilty or not for committing it. I think that, just the way that the crime is the only basis for the criminal responsibility to be triggered, so is the fact that the court is the only one that can state regarding the existence/nonexistence of one's guilt. So, I think that not even when the offense is tried by the first Court there can't be a crime committed, because one of the key elements is missing, that of the establishment of guilt of the accused person by an independent and objective court, legally invested with the ruling upon the case.

To be noted here is the fact that parag. (2) of art. 35 states that "*(2) The Court is solutioning other criminal cases, **too***" in this parag. the legislator making, thus, a distinction between "criminal cases" and "crimes". Following the same logic, parag. (3) of art. 36 from the Criminal Procedural code makes the same distinction regarding, however, the competence of the Law Court, art. 37 parag. (2) makes this difference according to the military Law Court, whilst art. 38 parag. (4) does it regarding the Court of Appeal.

Not even at the beginning of the Appeal, after a judgement had been delivered regarding the case (more precisely, a sentence), could one say, without mispronouncing himself, that the trial can be grounded on a crime (however, one could argue that it was based on a certain criminal case that implied investigating whether the alleged crime had been committed), given the fact that formulating and submitting the appeal suspends the execution of the penalty when there is no definitive sentence to stipulate on the existence/inexistence of guilt.

We find it necessary to restate the fact that neither being considered a suspect, nor being considered a defendant is not to be mistaken with being considered a criminal. In some cases, not even being a convict equals being a criminal, because it is possible for the decision of conviction issued by the Court or the trial court to be appealed, resulting in the juxtaposition of two statuses: that of a convict (due to the judgement delivered by the Court/trial court) who ought to be considered innocent (hence, not a criminal), because, at this point during the trial, there is no definitive judgement regarding the case, and, implicitly, regarding the innocence/ guilt of the person.

Only when the judgement is or becomes final (according to the legislation that regulates this issue), could one argue that the state of being convicted equals the state of being a criminal, this being the exact moment when it was proven, beyond a reasonable doubt, that "*the offense is a crime and was committed by the defendant*", as art. 396 of the Criminal Procedural Code, for an appeal calls for a new judgment on the legal background. According to art. 77 of the Criminal Procedural Code, "*a person in respect of whom, from the data and evidence existing in a case, there exists a reasonable suspicion that they committed an offense stipulated by the criminal law, is a suspect".* This legal text underlines that a suspect is someone in whose case the prosecution continued, based upon the current evidence and data administered up until that point during the trial, but in whose case an independent and impartial court has not delivered a judgement on the crime, on the essential features of the crime, whether it is a crime or not (a consequence of the phrase: an act stipulated by the criminal law*).*

As we have already mentioned, we argue that *crime* does not equal an act stipulated by the criminal law, for the latter is one of the essential features of the first. Thus, at this point of the trial, one cannot appeal to the existence of a crime, only to the existence of an offense inserted within the criminal legislation. Moreover, according to art. 82 of the Romanian Criminal Procedural Code, "*a*

person against whom criminal action was initiated becomes a party to criminal proceedings and is called a defendant"; therefore, the evidence administered by the judicial agents give a person the status of suspect in a case. Then, art. 48, using unfortunate wording, states: "*When the jurisdiction of a court is established based on the capacity of a defendant (...) even if the defendant, after having committed the crimes*"; or, as we have previously shown, we argue that a defendant could not have committed a crime, for, when one talks of a crime, one must have all 4 essential features fulfilled, including guilt, in the form stipulated by law, upon which a final judgement of a competent and legally vested court must have been delivered.

But, at the point of the trial art. 48 refers to, the guilt of the defendant has yet to be established, hence the capacity of a defendant, not of a convict (that would be equal to the capacity of a criminal, as we have shown before). Moreover, we argue that a crime (as the Romanian Criminal Procedural Code defines this institution) can no longer be tried (with a few exceptions), the guilt having already been established through a definitive sentence.

Establishing an act in a penal cause as a crime, in my opinion, means solving of the penal action by the Court of Appeal during the penal process. When one is said to have been committed a crime, according to Romanian legislation, one's guilt ought to be established, or the presumption of innocence is infringed upon.

Following the same pattern (in my opinion, contradictory), the Romanian legislator, in art. 62 par. (1) of the Romanian Criminal Procedural Code, shows that: "*Ship and aircraft commanders have the jurisdiction to conduct bodily or vehicle searches and to inspect objects held or used by perpetrators (...) and in respect of crimes committed on such ships or aircrafts*" (n.n. – M. S).

We argue that, if at the beginning of art. 62 par. (1) the legislator correctly uses the term *"perpetrators"* due to the lack of meeting the essential features of the crime (at this point of the process – the moment the commanders take note of the act, the term perpetrator being used correctly, for there is focus on the act, not on the crime), the latter thesis of par. (1) wrongly makes use of the term "crime". Given the previously shown circumstances, the term "crime" leads to a contradictory conclusion: does art. 62 par. (1) refer to a perpetrator or to an criminal? Can there be a committed crime when the act is discovered by the ship and aircraft commanders? Are they competent in the matter of establishing the guilt/ innocence of a person so that they could deliver a definitive judgement?

The way in which the Romanian legislator states the cases in which the prosecutor or, as applicable, the court can decide upon offering the vulnerable witness status is not shielded from criticism. Thus, the stipulations of art. 130 par. (1) of the Romanian Criminal Procedural Code show: "*The prosecutor or, as applicable, the court may decide to grant the status of vulnerable witness to the following categories of persons: a) witnesses who suffered a trauma as a result of*

*the **committed crime** or of the subsequent behavior*" (n.n. – M. S.). I reaffirm that at this time during the process (witness hearing – gathering of evidence to establish the guilt or innocence of a person) one cannot discuss of the existence or inexistence of a crime, and thus the wording chosen by the Romanian legislator is incondite: the crime, as a penal law institution, cannot exist before the establishment of the existence or inexistence of all its essential features, not just some of them.

Moreover, art. 157 par. (1) of the Romanian Criminal Procedural Code shows that "*a home search or a search of goods found in a residence may be ordered if there is a reasonable suspicion that a **person committed a crime**"* (n.n. – M. S). Again, at this point of the trial, one cannot accurately talk of a crime, for the home search takes place before the court delivers a definitive judgement on the case.

This type of approach (in my opinion, scarce) of the institution of the crime made by the Romanian Criminal Procedural Code can be found in other stipulations throughout the Romanian Criminal Procedural Code, for instance: art. 159 par (12), art. 161 par. (1) letter g), art. 162 par. (1), art. 170 par. (1) and so on.

Art. 293 of the Romanian Criminal Procedural Code offers a definition regarding the criminal crime "in the act". Thus, par. (1) shows that "*a crime is "in the act" when found at the moment it is being committed or immediately after commission*", and par. (2) shows that "*also considered "in the act" is a crime whose **perpetrator**, immediately after commission, is chased by the public order and national security bodies, by the victim, by eye-witnesses or public outcry, or displays signs that justify probable cause to suspect they **have committed the crime**, or is caught close to the crime scene carrying weapons, instruments or any other objects of a nature to implicate them in the crime*" (n.n. – M.S).

I argue that a crime, as it is defined by art. 15 and 16 of the Criminal Code, cannot be "in the act", for, as we have shown in this paper, the essential features of a crime are not met in that time and space, for the moment an crime is committed cannot physically coincide (in my opinion) with the moment of the delivering of a definitive judgement on the case.

I believe that an opposite hypothesis would render ineffective, among others, the stipulations of art. 3 of the Romanian Criminal Procedural Code and all its inherent consequences.

CONCLUSIONS

The European Union, according to the stipulations of the union treaties, has exclusive competence to legislate in certain social areas. In other areas, this competence is divided. Justice is not one of the areas where the European Union has exclusive competence, but a divided one [art. 4 par. (2) letter j), TFUE]. Thus, where the Union does not intervene through normative acts with the force of law, the member states have absolute freedom in legislating [art. 2 par. (2) TFUE]. In

the aforementioned cases, the competence to legislate comes to the member states, namely to the Romanian state, given the fact that the European Union has not issued normative compulsory documents regarding the issues debated in this paper.

The examples where the Romanian legislator wrongly used, in the Criminal Code and the Criminal Procedural Code the term "crime" are numerous, and this paper aims, among other things, at emphasizing that these misused terms exist, not at exhaustively presenting them.

Given the aforementioned discrepancies, I argue that there is a need for alteration throughout the whole Romanian legislation regarding the institution of the crime, regarding the other institutions, as well as in other cases where the intervention of the ferenda law is necessary, so that the addressees of the law could adapt their behavior according to the existing legal stipulations. In my opinion, the criminal investigation bodies' use of the term "crime" before the court delivers a definitive judgement amounts to a pre-pronunciation with regards to the existence of guilt (meaning that it exists) as one of the essential features of the crime, which undoubtedly leads to a breach, in the procedural acts made by the judicial organs (with the exception of the Court of Appeal) of the presumption of innocence as both an internal and an external principle.

Thus, I believe that an intervention in the legislation is required, either one that focuses on the essential features of the crime (changing them so that the discrepancies underlined by this paper would no longer exist), or one that focuses on making punctual changes to the other institutions, agreeing to what a crime is by definition; such a change ought to be made so that criminal legislation is in accordance to the stipulations of Law 24 from 27.02.2000 regarding legislative technique norms.

Another equally efficient (although more intrusive, in my opinion) possibility would be the intervention of the Union legislator in this area (given the existence and significance od a divided competence in this field). The implications of this latter possibility would be major, bearing consequences that I think should be carefully analyzed before being coming into effect. On the one hand, a cohesion between the member states could be established (thesis assumed by the member states), but, on the other hand, the sovereignty of the member states would drastically diminish which could lead to the materialization of a federation or confederation of states.

The legislation must be known and understood in its entirety, but this entails, among other things, clarity, predictability and quality. If the law is unclear or ambiguous, it generates difficulty in understanding it, and thus it generates disobedience. Nonetheless, respecting the supremacy of the law in a democratic society is absolutely compulsory, or the concept of "state law/rule of law" becomes devoid of meaning.

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THE STRUCTURE AND THE PURPOSE OF CREATING EUROPEAN POLICE OFFICE (EUROPOL)

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Abstract

The purpose of creating Europol was to improve police cooperation in the field of organised crime at international level.

Europol's objectives are to improve the effectiveness of the competent services of the Member States and cooperation in preventing and combating terrorism, drug trafficking and other serious forms of international crime where there are indications that a criminal structure or organisation exists and where two or more Member States are affected by these forms of crime in a way which, by reason of the scale, seriousness and consequences of the offences, requires joint action by the Member States.

***Organised crime** can essentially be defined as that international criminal segment to which relate illegal activities, capable of seriously affecting certain sectors of economic, social and political life in two or more countries, carried out by various methods and means, in a constant, planned and conspiratorial manner, by associations of individuals, with a well-defined internal hierarchy, specialised structures and self-defence mechanisms, in order to obtain illicit profits at particularly high levels. Two main characteristics of the concept of organised crime emerge from the definition:*

a. The degree of social danger of the illegal activities carried out by this criminal segment can seriously affect certain sectors of economic, social and business life.

b. The constant, organised, planned and well-conspired conduct of these criminal activities carried out in several States.

Key words: *organised crime, Europol, liaison officers, Europol computerised intelligence gathering system, etc.*

THE STRUCTURE AND THE PURPOSE OF CREATING EUROPEAN POLICE OFFICE (EUROPOL)

INTRODUCTION

1. EUROPEAN POLICE OFFICE (EUROPOL)[1]

The purpose of creating Europol was to improve police cooperation in the field of organised crime at international level.

Europol's objectives are to improve the effectiveness of the competent services of the Member States and cooperation in preventing and combating terrorism, drug trafficking and other serious forms of international crime where there are indications that a criminal structure or organisation exists and where two or more Member States are affected by these forms of crime in a way which, by reason of the scale, seriousness and consequences of the offences, requires joint action by the Member States.

Areas of competence, short, medium and long term:

- illicit drug trafficking;
- illicit trafficking in nuclear and radioactive materials, including the offences defined in Article 1(1) of the New York Convention on the Physical Protection of Nuclear Material (3 May 1980) and those referred to in Article 197 of the Euratom Treaty and Directive 80/836/1980 respectively;
- illegal immigration channels, including actions aimed at facilitating the international illegal residence or employment of persons in the territory of the Member States contrary to the regulations and conditions applicable in the Member States;
- Trafficking in human beings, i.e., in essence, acts whereby a person is subjected to real power in order to induce them, using violence or threats, or a relationship to manipulate them in order, in particular, to subject them to exploitation through prostitution, sexual exploitation and violence in relation to minors, or involving trade in children; trafficking in stolen vehicles, in the sense of theft or hijacking of cars, trailers, lorries or semi-trailers, buses, motorcycles, agricultural vehicles, construction site vehicles and detached parts of the aforementioned vehicles.
- Money laundering and related offences, meaning all offences listed in the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime, signed in Strasbourg on 8 November 1990.

1.1. Functions of Europol

- facilitating the exchange of information between Member States;
- collecting, collating and analysing information and intelligence;
- communicating, without delay, to the competent services of the Member States, information concerning them and links established between criminal offences;

Cuza, Bucureşti, 2003,pag.27-30.

[1]SeeHurdubaie I.,TroneciV.,România în Interpol,Ed.M.I.,Bucureşti 1998,pag.79.

● facilitating investigations in the Member States by forwarding all relevant information to the above units;

● managing the collection of computerised information relating to:

- persons who, under the national law of the Member State concerned, are likely to have committed or participated in an offence relevant to Europol's competence, or who have been convicted of such an offence;

- persons in respect of whom certain serious acts committed justify, in relation to national law, a presumption that they will commit offences relevant to Europol's competence;

- persons who may be called upon to testify in the course of investigations into the offences in question or in subsequent criminal proceedings;

- persons serving as contact points or accompanying persons;

- persons who could provide information on the offences under consideration;

● another separate set of functions, which aim to improve, through the national units, the cooperation and effectiveness of the competent services of the Member States, in the light of Europol's objectives respectively:

- the enhancement of specialised knowledge which is used in the investigations of the competent services, previously;

- defined, and the deployment of investigation advisers;

- providing strategic insights to facilitate and promote effective and efficient use of available national resources for operational activities;

- the preparation of general status reports on activities;

● assisting Member States through advice and research in the following areas:

- training members of the relevant services;
- organisation and equipment of these services;
- crime prevention methods;
- technical and scientific police methods and methods of annihilation.

1.2. Structures involved in the performance of Europol's general functions and the specific functions of these structures

EUROPOL		
Structural elements of	*a)Board of Directors*	***Europol Bodies***
Europol, proper	*b)The Director*	
	c)Financial Controller	
	d)Budget Committee	
	e)Staff	***- the director***
		- deputy directors
		agents
National Units		

Liaison Officers	
National Supervisory Authorities	
Joint Supervisory Authority	- *Appeals Committee*
	- *Secretariat*

1.3 Europol bodies and staff

(a) Management Board:

- composition: one representative of each Member State, with one vote, who may be replaced by an alternate member with the same rights;
- powers:

- participate in furthering Europol's objectives;
- defines, by unanimity, the rights and obligations of liaison officers at Europol;
- decides unanimously on the number of liaison officers that Member States may send to Europol;
- ensures the preparation of implementing rules on files;
- participates in the adoption of the rules governing Europol's relations with the Member States;
- unanimously define the arrangements for the index system;
- approves, by a two-thirds majority, the instructions for the creation of files;
- may take a position on the comments and reports of the Joint Supervisory Body;
- shall examine the matters over which the Joint Supervisory Body exercises its competence;
- regulates the details of the control of the lawfulness of requests to the information system;
- participate in the appointment or dismissal of the Director or Deputy Directors;
- checks that the Director regularly carries out his duties;
- participate in the adoption of the Staff Regulations;
- participate in the drafting of agreements and
- adopting decisions to protect secrecy;
- participates in the establishment of the budget, including the establishment plan;
- unanimously adopts the five-year financial plan;
- unanimously appoints financial control and supervises its management;

(b) The Director of Europol shall have the following responsibilities:

- to perform the tasks conferred on Europol;
- day-to-day administration;
- management of staff;
- drafting and proper implementation of Management Board decisions;
- preparing the budget, the establishment plan and the financial plan for

the implementation of Europol's budget;

- management before the Management Board - participates in the work of the Management Board;

- representing Europol.

c) Europol staff

The Director, Deputy Directors and employees of Europol shall carry out their duties with a view to achieving Europol's objectives and functions, without seeking or accepting instructions from government, authorities, organisations or persons outside Europol. [2]

1.4 National units to fight cross-border organized crime

They are police structures created or designed by each Member State, with the following main tasks:

- To provide Europol, on its own initiative, with the information and clarification necessary for it to carry out its functions;

- To respond to Europol's requests of information, clarifications and advice;

- To keep the information and clarifications up to date;

- To exploit and disseminate, in accordance with the national law of its own state, the information and clarifications necessary for the competent services in its own country;

- To address requests for advice, information, clarifications and analysis to Europol;

- To transmit the information stored in the computerized collections to Europol;

- To ensure compliance with the law, in each exchange of information with Europol.

a.Liaison officers

They are experienced personnel, from the police structures of the 27 EU member states, specialized in the fight against organized crime, with the following missions:

- To represent the interests of the national units within the framework of Europol;
- To contribute, under precisely defined conditions, to the exchange of information between the national units represented and Europol:

- transmitting Europol information, provided by the national units;

- communicating information from Europol to their own national units;

- cooperating with Europol agents in the transmission of information and advising them with the analysis of the information, concerning the home member state;

[2] Vezi I.P.Filipescu,A.Fuerea,Dreptinstituţional comunitar european,EdituraActami,Bucureşti 2000,pag.98.

- To proceed among themselves, to the extent deemed necessary, to the exchange of data from the national units and to coordinate the measures that come from the data exchange.
- To consult, to the extent deemed necessary, various files;
- To take technical and organizational methods, at their level, in order to ensure the security and confidentiality of the date, which falls within Europol's jurisdiction.

The national surveillance authority, designated by each Member State, responsible with supervising, in full independence and in compliance with national law, the legality of personal data, in the circumstances of their consultation and transmission to Europol, regardless of form, and that the rights of the individuals are not affected by the access of national units or liaison officers to the contents of the information systems and index systems of the Member State concerned. To this end, the national surveillance authorities:

-have access to the offices and files of the officers, sent by the Member State, represented next to Europol;

-controls the activities of the national units and the liaison officers, regarding the fulfillment of their mission, to the extent that those activities target the protection of personal data;

-comply with the requests from any person, addressed to these national surveillance authorities, to ensure that the introduction and transmission of personal data, to Europol, in any form, as well as any consultation of said data by the Member States, are done in a lawful manner.

b. Europol 's computerized information collection system

Structure	*a)The information system*
	b)The activity files
	c)The index system

a) The information gathering system is the one created and managed, in order to fulfill the Europol's functions and the one powered by the Member State through their national units and liaison officers, in compliance with their national stipulations, as well as the ones powered by Europol, through the data provided by third-party countries or courts or resulting from the analyses carried out, the content of which refers to:

- The person, as previous defined in the treatment of Europol's duties, who are either likely to have committed or participated in the commission of any of the offenses within the competence of Europol, or have been convicted of such offenses, or are grounds for presuming such offenses, respectively the following indications, exclusively:

- surname, birth name, first name or, if necessary, nickname or provisional name;

-date and place of birth;

-nationality;

-sex;

- other elements, if necessary, to establish the identity and, especially, particular physical signs, objective or unalterable[3];

- The crimes, alleged acts and the places of their commission;
- The means used or susceptible to be used;
- The services treated and the number of their files;
- The suspicion of belonging to a criminal organization;
- The convictions already given for offenses relevant to Europol's competence;
- Additional information about the person and their previous offenses.

b) The activity files for analysis purposes are the files created for each analysis project, defined as the assembly, processing and use of date to support the criminal investigation and involving the establishment of an analysis group, closely associated with analysts and other designated Europol staff, by Europol's management, as well as liaison officers and/or experts from the Member State, who is the source of information or are subjects to analysis.

The contents of the files include the data relating relevant information to Europol's competence and common to them, intended for specific analysis activities and relating to:

- Persons who are either likely to have committed or participated in the commission of such offenses or have already been convicted of any of them, or who, in relation to whom, there are grounds on the basis of which they are presumed to have committed such offenses;
- Persons who may be called to testify in the criminal investigations carried out on the crimes considered or on the occasion of subsequent criminal proceedings;
- Persons who serve as contacts or are accompanying;
- Persons who could provide information on the crimes considered.

The creation of each automated personal data file is carried out on the basis of an creation instruction, subject to the approval of the Board of Directors and indicates:

- The name of the file;
- The objective of the file;
- The categories of persons targeted by the data the file will contain;
- The type of data and, possibly, the strictly necessary data, among which those listen in art.6, paragraph 1 of the Convention of the European Council from 28.01.1981, relative to the automated process of personal data;
- Different types of personal data that allow access to the entire file[4];

[3]SeeP.Tărchilă ,M.Ioja,op.cit.pag.166

- Transfer or introduction of stored data;
- The conditions under which the personal data stored in the file will be able to be transmitted and to which recipients, after which the procedure;
- The data verification periods and the duration during which they are stored;
- The way of establishing the reports[5].

The data is introduced in these files in the following way:

- By the national units, at the request of Europol or on its own initiative;
- Supporting clarification which appear to be necessary for Europol and which are provided to Europol at its request or on its own initiative, by:

- the European Communities and bodies governed by public law, established on the basis of the Treaties of establishment[6];
- other public law bodies set up within the European Union;
- bodies existing under an agreement between two or more Member States of the European Union;
- third-party countries;
- relevant international organizations and public law bodies of this nature;
- other organisms governed by public law, which exist by virtue of an agreement between two or more states;
- Interpol;

- Data accessed under the right to interrogate other information systems, with reference to personal data obtained by Europol under other conventions.

c)The index system represents the system of indexing the data stored in the activity files for analysis purposes at the level of Europol, constituted by it, on the basis of the ways defined by the Management Board, whose purpose is to allow to know whether or not information is stored.

Essential points in the logic of the theme

- the eficiency of the cooperation of the specialised institutions of the 27 member states of the eu, for the prevention and the fight against terrorism, drug trafficking and other serious forms of international crime

- the institutionalised cooperation has as common foundation the liaison officers, members of the specialised institutions that fight against international crime and the use of a common collection and exploration data system

CONCLUSIONS

Europol's objectives are to improve the effectiveness of the competent services of the Member States and to cooperate in preventing and combating terrorism, drug trafficking and other serious forms of international crime, for which there are indications that a criminal structure or organization exists and

[4]See Stancu E.,op.cit.pag.477.
[5]See Pitulescu I.,op.cit.pag.376.
[6]SeeHurdubaie I.,Tronici V.,op.cit.pag.489.

whether two or more Member States are effected by these forms of crime in a manner which, by the extent, gravity and consequences of the offenses, requires joint action by the Member States.

The fields of competence, short, medium and long term:

- *Illicit drug trafficking;*
- *Illicit trafficking in nuclear and radioactive materials, including the offenses defined by Art.1 Paragraph 1 of the New York Convention on Physical Protection of Nuclear Material (May 3, 1980) and, respectively, those referred to in Art.197 of the Eurotom Treaty and in the Directive 80/836/1980;*
- *Illegal immigration channels, including actions aimed at facilitating, internationally, of the illegal stay or employment of persons, in the territory of Member States, against the regulations and conditions applicable in the Member States;*
- *Human trafficking, respectively, par excellence, acts by which a person is subjected to real power to determine them, using violence or other threats, or a relationship to manipulate them, in order to subject them o exploitation through prostitution, sexual exploitation and violence in relation to minors, or targeting children trafficking, stolen vehicles trafficking, with the meaning of theft or hijacking of cars, trailers, trucks or semi-trailers, buses, motorcycles, agricultural vehicles, construction vehicles and spare parts, from the vehicles previously invoked;*
- *Money laundering and related offenses, including all offenses listed in the Convention of the European Council on Laundering, Searching, Seizing and Confiscating of the Proceeds from Crime, signed at Strasbourg on November 8 1990.*

The main functions of Europol include

- *Facilitating the exchange of information between Member States;*
- *Collecting, assembling and analyzing information and clarifications;*
- *Communicating, without delay, to the competent services of the Member States, the information concerning them and the links established between criminal acts;*
- *Facilitating the investigations of the Member States, by providing the relevant units with all the relevant information in this regard;*
- *Managing the collections of computerized information regarding:*

- Persons who, according to the national law of the Member State concerned, are likely to have committed and offense or participate in an offence, falling within the competence of Europol or who have been convicted of such an offence;

- Persons for whom certain serious acts committed, according to national law, justify the presumption that they will commit offenses relevant to the competence of Europol;

- Persons who may be called to testify on the occasion of investigation carried out on the considered crimes or on the occasion of subsequent criminal investigations;

- Persons who serve as contact points or are accompanying[7];

Persons who could provide information on the offenses considered.

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FIGHT AGAINST SEXUAL ABUSE AND ONLINE EXPLOITATION OF CHILDREN – KEY PRIORITY AT THE EUROPEAN UNION LEVEL

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Abstract

We are experiencing a period full of physical and virtual uncertainty and insecurity, the Covid-19 period being a milestone regarding the increase of the phenomenon of sexual abuse and online exploitation of children. The wide accessibility of technology creates the opportunity for offenders to commit such crimes on children. Protection of children against any form of violence or abuse is a key priority at the European Union level, aiming at fighting the online and offline abuse on children, including production and diffusion of materials showing abuses on children, such as online sexual exploitation of children. In this regard, the European Union efforts aim at creating a specific legal framework in order to make easier for the Member States to detect and report the cases of online sexual abuse, to prevent such situations, and to support the victims. Thus, the Commission wants to clarify the role that the online service providers should have in order to protect the children. The main problem identified is the scarce reporting of such crimes, and therefore, the impossibility of identifying the victims.

Key words: *sexual abuse, sexual exploitation, legal framework, European Union, children.*

INTRODUCTION

A widely spread phenomenon with devastating consequences especially on the child`s psyche, is the online and offline sexual abuse on children, that can have extremely different forms. The latest years of the humanity as a consequence of the Covid-19 period, when we all experienced uncertainty and insecurity, have shown that we are witnessing an increase in sexual abuse cases. Studies show that, being confined at home, makes Internet become a valuable source of information and socialization. The increased digitization of society as a strategy to face the Covid19 pandemic may have significantly exposed

citizens to privacy risk violations, especially children. *(Lobe B., Velicu A., 2021, pp. 27-33).*

Confinement at home implies big challenges for children safety online and offline, such challenges including social isolation, lack of peer and mentor support, increased time online, anxiety, stress and other mental health impacts. There are strong indications there has been an increase in the number of cases of child sexual abuse, particularly in relation to material accessed and distributed on the surface web and in peer-to-peer networks, but also related to activities on dark web forums. *(Europol, Exploiting isolation, 2020, pp. 4-12).*

Children are the victimised category mostly exposed to online approaches and sexual allurement, their protection against such crime-related manifestations proving to be inefficient. Adopting in 2011 the Directive on combating the sexual abuse, sexual exploitation of children and child pornography did not have the expected result, although some Member States transposed its contents into the national legislation, considering as offences the deeds representing the sexual abuse and sexual exploitation of children, and also the materials containing sexual abuse of children. In 2020, as a result of the legislative gaps identified, it continued with adopting the Strategy for a more effective fight against child sexual abuse, a key instrument in combating online and offline child sexual abuse. To complete this document, they adopted the EU Strategy on the rights of the child, bringing consolidated measures to protect children against all types of violence, including online abuse.

The social reality is pretty dramatic, as the use of internet, of informatic technology and of communications, has become a concern at world level, not only for children, but also for offenders. The online and offline protection of children is seriously threatened, which makes it an EU priority.

1. SEXUAL ABUSE AND SEXUAL EXPLOITATION OF CHILDREN. ONLINE AND OFFLINE MANIFESTATIONS

Sexual abuse and sexual exploitation of children are among the most serious forms of violence against children. The Council of Europe Convention on the protection of children against sexual exploitation and sexual abuse *(Lanzarote, Spain, 25 October 2007)* specifying in this regard the sexual abuse, child prostitution, child pornography, participation of children in pornographic shows, sexual corruption of children and allurement of children for sexual purposes.

Therefore, they take into account fighting and combating sexual exploitation and sexual abuses committed against children, protection of rights of children who are victims of sexual exploitation and sexual abuse, and also promoting cooperation at national and international level against sexual exploitation and sexual abuses committed against children.

The European Commission makes sustainable efforts to reach the objectives provided in the Lanzarote Convention, ratified by all Member States,

taking legislative measures and or other types of measures in order to prevent any form of sexual exploitation and sexual abuse of children.

The sexual abuse and sexual exploitation of children can cover many factual ways, both offline, by practicing sexual activities with a child or making the child take part in child prostitution acts, and online, the offenders using different strategies, more and more often by means of Internet. The online child sexual exploitation can involve any form of sexual abuse, which supposes the use of information and communication technologies with the view of obtaining an advantage, a benefit or a promise in this regard. Thus, web cameras, smartphones, different platforms of social communication or other online platforms (Skype or Messenger-type ones), different webpages dedicated to online games, any of them representing means by which the children can be coerced to take part in sexual activities.

Such online behaviours are:

- online viewing with children subjected to sexual abuse;
- sexual abuse by means of web cameras (”live streaming”) – video broadcasting in real time of sexual abuse of children;
- online allurement of the minor child for sexual purposes (activity known as ”grooming”) – which involves a series of crimes, such as prostitution, child pornography or child trafficking;
- involvement of the child in sexual activities or in sexual actions or behaviours, such as pornographic show in the virtual space;
- online sharing of materials containing child sexual abuse (”online sharing”).

Hence, the forms of sexual abuse or sexual exploitation are extremely diversified, they suppose a wide range of practical methods, meant to have an impact on the physical and mental health of children. Here, we also have the materials of sexual abuse, in terms of the Commission, by ”online sexual abuse of children” one should understand not only the dissemination of the materials known as being sexual abuse of children, but also the dissemination of new materials, not confirmed as such ”as yet”, by an authority *(European Commission, Proposal for Regulation, 2022, pp. 11-12)*. By ”the material containing sexual abuses of children” one should understand any type of material representing child pornography or pornographic show and that can be disseminated by using the hosting or interpersonal communication services *(Directive 2011/93/UE, p.7).*

At present, the companies operating in the technology are those facilitating, by means of their platforms, the cases of child sexual exploitation and child sexual abuse. The Internet is a favourable ground for offenders who become more and more experienced, using the benefits of encryption thoroughly for crime-related purposes. Although the purpose of this technology is to ensure the confidentiality of information and the security of communications, at the same time, they facilitate the access of offenders to safe channels to share illegal

materials. Thus, the use of encryption and anonymisation technologies make the identification of the authors of crimes even impossible. The new EU rules in matters of fighting this type of crime mainly have in view today the obligation of the suppliers to report such cases, prevention of child sexual abuse and granting support to victims *(European Commission, Proposal for Regulation, 2022, pp. 31-32).*

2. ABUSIVE USE OF ONLINE SERVICES FOR CHILD SEXUAL ABUSE – A SERIOUS THREAT AT THE EUROPEAN UNION LEVEL

At present, at the European Union level, there is no homogenous legislative framework towards which the Member States could relate to in the fight against the forms of sexual exploitation and sexual abuse of children. The safety in the online environment represents the premise of initiatives at European level. The actions voluntarily carried out by the online service agencies regarding the tracking, reporting and removal of such illegal material did not manage to have an optimum result, which is a premise for the Commission efforts to stand guarantee for a safe online environment.

Recently, they have adopted a legislative act aiming at a unique market for digital services, including unitary rules ghat should be respected by all the online agents who offer their services on the unique market, regardless of being resident within the European Union or outside it *(EU Regulation 2022/2025, pp.2-3).* By these rules, they want to ensure a better visibility of online platforms, to remove the illegal content and, thus, to ensure an effective protection of the fundamental rights of all the online users. In this regard, they establish tasks for online content suppliers who offer go-between services (internet access suppliers), hosting services (cloud or web services), online platforms (online markets and software application stores) and very big online platforms which present significant risks concerning the dissemination of illegal contents.

For the first time, we have a common set of rules regarding the obligations and responsibilities of the suppliers from the entire unique market, that the Commission wants to complete with specific provisions about child online sexual abuse. This problem represents a serious threat at the European Union level, and there is a need for a consolidated action at the level of all States in order to ensure the improvement of prevention.

Thus, we justify the reason for which the Commission launches a legislative proposal regarding a new legislative act with a view to prevent and fight the child online sexual abuse, the goal being the protection of children against some repeated abuses, prevention of online recurrence of such materials, investigation of crimes related to such phenomenon, bringing the offenders to justice and especially granting support to victims. By this legislative instrument, they establish actual obligations for the online content providers, that could be used inappropriately for online child sexual abuse, to track, report or remove from

their services the materials containing child sexual abuses, namely *(European Commission, Proposal of Regulation, COM (2022) 209 final, pp. 44-67):*

- *Obligations to asses and soften the risks* – the hosting services providers and the interpersonal communication service providers, identify, analyse and assess, for each service they offer, the risk of its use for online child sexual abuse; also, the providers should take reasonable measures of softening, adapted to the identified risk, to reduce such risk to a minimum. Concretely, such risks suppose the dissemination of materials containing child sexual abuses or allurement of minors for sexual purposes, phenomenon known as ”grooming”;

- *Obligations of specific tracking, based on a tracking order* – in case there is evidence of a significant risk that a service be used for online child sexual abuse, they will issue a tracking order by the competent court of law or by the independent national authority from the respective Member State; the orders are limited in time and aims at a certain type of content within a specific service. Thus, the hosting service provider or the interpersonal communication service provider found under the jurisdiction of the respective Member State, should take concrete measures to track down the online sexual abuses of children within its service.

- *Obligations to report* – any information indicating eventual online sexual abuses of children within a service, should be transmitted by means of a report by the provider of such service, to the European Union Centre.

- *Obligations to remove* – when they identify materials containing sexual abuses of children, a removal order will be issued by the competent court of law or by the independent national authority from the respective Member State, requesting the hosting service provider to remove one or more materials containing child sexual abuses or to deactivate the access to such material.

- *Obligations to block* **–** based on a blocking order, an internet access service provider, being under the jurisdiction of the respective Member State, is requested to take reasonable measures to prevent the users to have access to materials known to contain child sexual abuses.

Digitalisation has been booming lately, when the Covid-19 pandemic certified the benefits of digital technology which, in such a context, represented the only way of access to education for children. Hence the concern of the Commission to improve the digital services adapted to age and to make sure that every child is protected and respected in the virtual environment, by adopting a new European strategy for a better internet for children *(European Commission, BIK+,COM/2022/212 final).*

Thanks to this instrument, the children are offered the competences and instruments necessary to surf the digital environment safely and trustworthily. Thus, they want the active involvement of the sector of activity aimed, i.e. to assume the appropriate role in creating a safe digital and age-adapted environment for children, according to the European Union rules.

3. THE EU CENTRE TO PREVENT AND COMBAT CHILD SEXUAL ABUSE AND TO SUPPORT THE VICTIMS

Prevention is the main course of action in the fight against sexual exploitation, as the competent authorities can intervene only when the phenomenon of abuse or exploitation has taken place. Establishing a clear and homogenous legal framework regarding the prevention and combating the online child sexual abuse, should have in view that the protection measures established should not violate the fundamental rights of the children. At the same time, they should take into account the rights and interests of all the persons involved, both providers and users, meaning that the unitary rules established by the Commission regarding the assessment and softening of risks, should be meant to ensure the legal security of such providers, who have the responsibility to track down, report and remove any form of abuse from their services.

Accomplishing such responsibilities will be achieved by means of an European Centre to prevent and combat child sexual abuse and to support the victims, operating as an independent expertise centre. Establishing such a Centre aims at simplifying the procedure regarding tracking down and reporting the child sexual abuse cases, because, at present, the investigations regarding abuses are achievend by means of the national centre in the US, named National Center for Missing and Exploited Children, thus hindering the investigation of crimes and the granting of support and assistence to victims.

By this initiative of the Commission, the service providers will have the possibility to send the notifications directly to this Centre, making the entire procedure efficient and operative *(European Commission, Proposal for Regulation, 2022, pp. 3-4).* They are the main actors and the most capable of tracking down the eventual online child sexual abuses within the services they provide or manage.

By its activity, the purpose of the EU Centre is to support the member States in the fight against child sexual abuse, collecting data and generating statistics, in this respect:

- has the possibility to collaborate with the law enfforcement agencies, making sure that victims are identified and receive assistance as soon as possible;
- offers supprt to societies by ensuring a unique data base in the European Union, regarding the materials known to contain forms of child sexual abuse;
- forms a control mechanism – aiming at not having erroneous withdrawals or abusive uses of the search instruments to report legitimate contents;
- coordinates and facilitates the removal of the materials containing forms of online child sexual abuse, and also the deactivation of the access to such materials;
- supports the member States in establishing prevention disciplinary measures in order to reduce the frequence of sexual abuses of children within the

EU, considering the different weaknesses of the children, according to age, sex, development or other specific circumstances;

- provides information to decision makers at national level and at EU level, regading the gaps in matters of prevention and the possible sollutions to solve them;

Thus, the Centre has the possibility to identify the legislative gaps and, at the same time, the best practices within the European Union and outside it, bringing an important contribution to the activity of the Commission, by offering concrete and real data that would contribute to the prerequisite of an adequate policy in fighting against child sexual abuses.

4. PREVENTION MEASURES AT THE LEVEL OF THE MEMBER STATES

At present, the Member States did not succeed in fully enforcing the Directive on child sexual abuse *(Directive 2011/93/EU)*, respectively those provisions regarding the establishment of some prevention programmes. That is why the Commission makes efforts to establish a prevention network, to facilitate the exchange of good practices and to support the Member States in establishing some prevention measures, that is to reduce the frequency of child sexual abuses within the European Union.

Their focus is on the necessity to strenghten the cooperation at the level of the Member States, and on the support and development of the national capacities to align the technological evolution, as the cases of child sexual abuse escalated at the same time the Covid-19 pandemic broke up. We need top technical capacities in order to efficiently fight against sexual abuses involving digital materials, and at the level of some Member States, there is not any possibility to identify the materials containing forms of child sexual abuse, in order to locate the victims or the authors of the crimes, or to carry out in darknet or in the peer-to-peer networks, as the personnel has no knowledge or the necessary technology. The Commission militate in favour of implementing undercover online investigation techniques at the level of all Member States, so that the law enforcement authorities have the capacity to efficiently infiltrate within the online criminal groups in order to get to know the offender profile.

There are on-going prevention programmes, but their efficiency was not underlined through visible results, that is why the Commission works actively at a prevention network that should contribute to the improvement of the capacities of the Member States in order to fight child sexual abuses more efficiently.

The main element of prevention is the knowledge of the offender profile, especially the knowledge about the potential offender, which supposes a subjective analysis before committing the crime, then during the procedural stages and eventually in the sentencing stage, and post-sentencing respectively. The prevention programs are considered as an important contribution for a resilient and effective approach to fight against child sexual exploitation both in the

cyberspace and offline, and to raise main stakeholders' awareness to the issue *(Di Gioia R., Belay, L., 2018, p. 11)*. In this regard, the prevention network will consider:

- a tight communicate on between researchers and practicians, by ensuring permanent feedback;
- an enhanced attention for the prevention programmes meant for the authors of crimes and for the persons who are afraid that they could commit crimes;
- the concrete understanding, through substantive researches, of the process by which a person gets to commit crimes; identification of the risk factors and of the triggering factors;
- launching and supporting awareness campaigns – mass media campaigns and training courses based on models of "good practices" – and here we have the organisations working with children, such as the professionals from all the sectors that work with children, including the law enforcement authorities and the legal system, when the minor victims are involved in criminal investigations;

Offering children knowledge and information on specific prevention, for them not to face the abuse – information regarding the way of using the Internet safely, and also regarding some illegal behaviours; children should have access to safe channels, accessible and compliant with their age, in order to be able to report the cases of abuse without any fear.

CONCLUSIONS

The online and offline sexual abuse and sexual exploitation of children represent one of the most serious crimes, being able to cause irremediable traumas in terms of long time physical, mental and social consequences.

A sexual abuse photographed and filmed can produce long time dramatic effects leading, by perpetuation, to trauma. Sharing such images falls under some successive criminal manifestations, by their viewing, which can jeopardize the life to a private life. In this regard, prevention is extremely important and needs to have a starting point right in the technologic environment which makes possible the sharing of such images and videos.

Also, informing the children regarding some inadequate behaviours and regarding the possibility to report the abuses, by safe channels, is the prerequisite for fighting such phenomenon. They have to take into account the circumstances and needs of each category of children, according to their weaknesses, those disabled children or migrant children or trafficked children being more exposed to abuse.

All the instruments at the level of the European Union militate for the well-being and the best interest of the child, as fundamental values to be promoted, with no discrimination, by all Member States.

Focusing on prioritizing such values, these legal instruments, in their contents, refer to important matters regarding the protection of children against sexual abuses: protection and assistance measures of the victim children and their families, establishment of intervention programmes, common procedural rules regarding the investigation, tracking and judging the person who committed crimes, treatment of sexual offenders, creation of a data base allowing the registration and storing of information on offenders, measures of international cooperation to prevent and fight crimes, and also establishment of a monitoring mechanism of the way in which their provisions are implemented by the other state parties.

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PROCEDURAL ASPECTS REGARDING SMUGGLING'S CRIME

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Abstract

For romanian's judicial authorities, smuggling's crime investigation is and will be put to the test by the ingenious ways of evading the customs obligations applied by the people who commit such an illegal act and who often prove difficult to detect.

Although the smuggling's crime prosecution and trial is not carried out in the framework of a special procedure, I appreciated that it is necessary to analyze, through the lens of cases from judicial practice, the ways of notifying the investigators regarding the commission of such an act, the methods and the techniques used for the collected evidence administration proveding crime's commission, the preventive measures taken, the civil action initiated, as well as the trial phase, whether the criminal investigation was completed with the notification of the court through the indictment, or by concluding a plea agreement.

Key words: *smuggling crime, criminal liability, evidence, judicial expertise, competence.*

INTRODUCTION

Smuggling crime is prosecuted and tried according to the rules of ordinary criminal procedure, meaning no special formality for a criminal investigation file, the competent authority does it on her own initiative, and the competence to carry out the criminal investigation belongs to the criminal police investigators.

The criminal prosecution, regardless of the quality of the person, if the crime of smuggling has entered into the purpose of an organized criminal group, belongs to the Directorate of Investigation of Organized Crime and Terrorism (DIICOT).

Even if the prosecution and trial for smuggling crime does not require special procedure application, due to the manner of committing this crime, an

analysis is required from the perspective of judicial practice of the activities carried out by the judicial authorities for this crime investigation.

1. ASPECTS REGARDING SMUGGLING CRIME PROSECUTION'S

Smuggling crime's criminal investigation object is to gather the necessary evidence regarding act existence's, the identification of the persons who committed the crime, the establishment of criminal liability, in order to determine whether or not it is necessary to order go to court.

According to code of criminal procedure provisions's of the, the criminal investigation includes three stages: the fact investigation that begins with the start of the criminal investigation, pursuant to art. 305 para. 1 cpp, the person investigation, which begins with the moment when it is ordered to continue the criminal investigation against the suspect and the stage of solving the case by the prosecutor, which differs depending on the way in which the criminal investigation file was instrumented. thus, in cases where the prosecutor oversees the criminal investigation, the beginning of this phase is marked by the receipt of the file with a proposed solution from the criminal investigators, and in cases where the criminal investigation is carried out by the prosecutor, the limit between the last two stages is marked by the end of the administration of evidence. *(M. Udroiu and others, 2020, p. 1696).*

In judicial practice, complaint was not a way to notify the criminal prosecution investigators with a smuggling crime, considering that the romanian state is the person who suffers an injury by committing this crime, criminal prosecution investigators represent the state and they act ex officio regarding the commission of such an illegal action.

On the other hand, a common notification method in judicial practice is the criminal case dismissal as a result of the prosecution of a person for whom criminal responsibility has been established and that the criminal prosecution is complete, and, subsequently, the registration of the dismissed case pending to the competent prosecutor's office in order to continue the criminal prosecution for the facts and persons against whom there was insufficient evidence.

As a rule, the competence to carry out the criminal investigation in smuggling crime case's belongs to judicial police investigators under the coordination and supervision of the prosecutor attached to the court competent to judge the case in the first instance. Pursuant to art. 325 of the Code of Criminal Procedure, the prosecutor attached to a higher court can order the case to be taken over from a lower hierarchical prosecutor's office.

If the smuggling crime is part of an organized criminal group, the competence to carry out criminal investigation activities belongs to DIICOT. *(art. 11 din Ordonanța de urgență nr. 78/ 2016).*

Criminal prosecution conduct

The criminal investigation is started with regard to the deed in all cases where the criminal prosecution investigators has been notified in a legal manner, immediately after receiving the notification, including in the situation where the perpetrator is indicated in the notification or is known.

The legislator considered that this regulation is necessary so that no person can be accused of committing a crime solely on the basis of a report, no matter how serious it is, for the formulation of an accusation against a person, it is necessary to administer evidence, so the creation of a framework for their administration, by starting the criminal investigation in rem. *(M. Udroiu and others, 2020, p.1725)* [*].

Evidence administration's techniques

Amoung smuggling crime evidence administration's we mention:

• conversations and telephone communications interception's based on technical surveillance mandates;

• video surveillance, audio and photography in the ambient environment of people based on technical surveillance mandates;

• locating and tracking, by means of technical means such as GPS, the vehicles used in the activity of cigarette smuggling pursuant to technical surveillance mandates;

• the entry into private spaces, respectively into cars and into a building belonging to the defendants, about which there were data and information that some investigated persons meet in it, in order to establish the method of operation, to activate or deactivate technical means used for the execution the measure of technical supervision based on technical supervision mandates, all of which are issued by the judge of rights and freedoms and extended, at the request of the case prosecutor;

• uploading images captured by the surveillance cameras from the toll stations regarding the tracked means of transport.

The use of technical surveillance methods and means are essential in smuggling crime case's, given the novel ways of hiding contraband cigarettes in modified and adapted means of transport, so as to give the appearance of legal transport of fluids or other substances in the form of powder for which the means of transport were intended from the factory, as well as in paper rolls, industrially made, so that for their discovery it was necessary to use tools such as: chainsaw, flex.

At the same time, because there are many people who commit such acts, who are organized on management, intermediary, transport, storage, distribution levels and who use a large number of telephone stations, as well as a slang language during conversations and telephone communications transmitted only through written messages so that the persons involved cannot be identified.

Another means of managing the evidence in smuggling crime investigation's is the technical-scientific assessment which is carried out either by the Travel Document Expertise and Forensic Departments within the Ministry of Internal Affairs, or by the National Fiscal Administration Agency (ANAF).

The technical-scientific findings, materialized in findings reports, differ according to the objectives to be met.

Thus, on the one hand, in judicial practice, it was established that the main objective to be achieved by the Criminalistics Department is that of ascertaining the technical changes that have been made to certain means of transport to ensure the illicit transport of excisable products, namely that the entire amount of cigarette was inserted inside the trailer on the two doors from the back side. The tarpaulin of the trailer being intact, sealed, tied with a cable that was passed through all the eyes specially provided for tying. On the other hand, ANAF must establish the damage caused to the Romanian state as a result of the introduction on Romanian territory of goods for which customs duties have not been paid.*(Decizia penală nr. 32 din 10/01/2022 - Curtea de Apel Craiova).*

The technical-scientific finding is also the basis for carrying out an expertise, for example a financial and accounting expertise, which will establish, based on the conclusions of the technical-accounting finding and the objections formulated by ANAF, whether the defendant caused damage to the state budget by the way in which it registered supply expenses from companies, what this damage consists of and what is its amount.*(Decizia penală nr. 3621 din 30/06/2004 - Înalta Curte de Casaţie şi Justiţie - Secţia Penală).*

Preventive Measures

Criminal procedural measures are coercive institutions that can be ordered by the criminal judicial authority for the proper conduct of the criminal process and ensuring the achievement of the object of the actions exercised in the criminal process. According to art. 202, para. 4 of the Criminal Procedure Code, preventive measures are detention, judicial control, judicial control on bail, house arrest and preventive arrest.

Regarding smuggling crime, the Romanian judicial authorities order the detention of the person caught in the act for 24 hours, after which they formulate a proposal for preventive arrest as a result of the detention, aspects that will be analyzed through the lens of judicial practice.

Detention

Detention is a preventive measure that can only be if there is evidence from which there is a reasonable suspicion that the suspect or defendant has committed crime smuggling, the measure of detention should be proportional to the nature of the facts for which the person in question is being investigated and necessary in order to carry out in good conditions of all the activities necessary for a complete criminal investigation, of avoiding the suspect or defendant's evasion

or preventing the commission of another crime, as well as that there is no reason to prevent the initiation of the criminal action.

In judicial practice, for the act of the defendant who owned and sold cigarettes that must be placed under a customs regime, knowing that they come from smuggling and who, during the search his home, found cigarettes from those previously owned and sold, in based on art. 404 para. (4) lit. a) C. proc. pen the court deducted the duration of detention and pretrial detention from the imposed penalty.*(Decizia nr. 31 din 13/01/2022 - Curtea de Apel Suceava).*

Preventive Arrest

Smuggling crimes, either in the basic versions (simple or assimilated), or in the qualified version, are punishable by imprisonment for more than 4 years, and letting those who commit such acts at liberty present a concrete danger to public order, in relation to the nature of the social values protected by the incriminating text, the consequences produced and the special impact such facts have among civil society.

This concrete danger to public order is determined both by the person of the defendants, who organized and planned the commission of these acts and which, in the current socio-economic context, experienced a particular magnitude, as well as by the disturbance that would occur in the community by letting the them in the current conditions.

The smuggling offenses provided by the customs code come to sanction the violation of social relations related to the customs regime, which aims at the special protection of customs clearance operations, the protection of public trust in customs transport or commercial documents and last but not least, the violation of those social relations regarding the proper conduct of economic-financial activities, the realization of which requires the honest fulfillment by taxpayers of the obligations deriving from the executed commercial operations.

In judicial practice, it has been held that the social danger also results from the magnitude of cigarette smuggling and the fact that the area of action of the defendants is the eastern border of the European Union, which before joining the Schengen area would must be secured. In this sense, the Romanian legislator understood not only to tighten the penalties for such acts, but to introduce new sanctioning regulations for all categories of illegal activities in the field related to smuggling and that the preventive arrest of the defendants is required. *(Decizia penală no. 468/R of 14/12/2010 Tribunalul Vaslui).*

In addition, in another case, the court held that the conditions for taking the measure of preventive arrest are met, the court taking into account the nature and concrete way of committing the crimes, when the defendants, under the cover of darkness to ensure the success of the criminal activity, they did not voluntarily obey the signal of the police bodies to stop the cars for control, it being necessary to follow them by the police crews, followed by the abandonment of the cars, it being necessary for the police workers to make use of the weapons and

ammunition provided for the arrest and immobilization of the defendants, the large amount of cigarettes transported and the large value of the damage caused. *(Decizia penală nr. 1618 din 05/12/2018 - Curtea de Apel București).*

Therefore, the attempt of the defendants to evade, at any risk, the pursuit of the police investigators only shows the contempt and disregard they show for everything that means state authority, legality and normality.

If the Romanian authorities did not react firmly against these citizens who commit crimes with the aim of getting rich, as is the case above, the conditions would be created for this circumstance to be interpreted as a more than obvious encouragement for all Romanian citizens to act in a similar way because they will not suffer anything, which is unacceptable.

2. CIVIL ACTION

In judicial practice, the court found that the elements of tortious civil liability are met in the person of the defendants brought to trial, for which solutions of conviction were pronounced, for smuggling crimes. Regarding the values of the contraband cigarettes, according to the established brands, and in the case of non-identification of the brands, according to the estimate requested by the civil party, the court held that the value of the cigarettes was established based on the provisions of art. 30 para. 1 and para. 2 lit. a, art. 31 para. 1 and art. 214 of EEC Regulation no. 2913/1992 of the Council establishing the Community Customs Code, art. 142 para. 1, art. 150 of EEC Regulation no. 2454/1993 of the Commission establishing provisions for the application of EEC Regulation no. 2913/1992.

For the cigarettes that were not identified and seized during the criminal investigation, the value of the damage was calculated by including the customs value of the cigarettes, according to art. 277 of Law no. 86/2006 on the Customs Code, to which are added the amounts due in the form of customs duties, excises and value added tax, and in the case of those that have been identified and seized and are to be subject to confiscation, the amount of the damage was calculated consisting of the amounts due in the form of customs duties, excise duties and value added tax. *(Decizia penală no. 31 of 13/01/2022 Curtea de Apel Suceava).*

In judicial practice, the question arose as to whether the person convicted of the crime of corruption for facilitating the introduction of contraband goods into the country, for which he received a bribe, pays together with the smugglers, the damage caused to ANAF as a result of the evasion of customs duties for the goods that have smuggled. *(I. Neagu and others, 2021, p. 125).*

We believe that it is necessary to oblige the persons convicted of corruption to pay jointly and severally with the persons who committed the crime of smuggling, the damage caused to the consolidated budget of the state, because part of the profit obtained as a result of the non-payment of customs duties for the

goods that were the object of smuggling belongs to and those who facilitated this illegal act.

With regard to the damage caused by the commission of the crime of smuggling, the question was whether or not its payment constitutes a mitigating circumstance provided for in art. 75 paragraph 7 letter d of the Criminal Code.

Both in specialized literature and in judicial practice, it is appreciated that the crime of smuggling, although it is not provided as an exception to the application of the legal mitigating circumstance regulated by art. 75 paragraph 7 letter d of the Criminal Code, is part of the wider range of crimes against the state border of Romania. *(V. Pușcașu și C. Ghigheci, 2021, p. 81).*

3. MATTERS REGARDING SMUGGLING CRIME TRIAL

The trial is the procedural activity carried out before the judicial authority with jurisdictional powers, activity during and with the help of which the case is investigated, evaluated and resolved, in a word, the conflict of law deduced before it is judged. Unlike the criminal prosecution phase, which is characteristic of the criminal process, the trial is the central and most important phase in the complex of criminal procedural activities.*(V. Dongoroz, 2003, p.125).*

The trial phase begins, in the case of the joint procedure, from the date of the definitive stay of the conclusion by which the preliminary chamber judge resolved the preliminary chamber procedure by the solution to start the trial. In the case of the special plea agreement procedure, the trial phase begins on the date the court is referred to the plea agreement concluded between the defendant and the prosecutor. The trial phase comprises two distinct procedural stages: the first instance trial and the appeal trial. During each procedural stage, incidental issues can be discussed which, in turn, are subject to a double degree of jurisdiction, the resolution of the issue in the first instance and the appeal stage. *(M. Udroiu and others, 2020, p.1868)* [*].

In the following, we will analyze from the perspective of the two procedures for starting the trial, the incidental issues encountered in the judicial practice that have as their subject cases deduced from the trial regarding smuggling crime .

Plea agreement court notice

The plea agreement is an element of negotiated justice, constituting the official document drawn up, legally, between the prosecutor and the defendant, by which he understands to recognize the facts for which he is being investigated and consents to a punishment and a method of individualization of it and, from which, it follows that the criminal investigation is completed and that the criminal investigation file will be submitted to the competent court.

Thus, in the case of the crime of smuggling, the criminal action was initiated against the defendant and the legal classification of the crimes charged against the defendant was changed from the crimes of forming an organized

criminal group, in the form of membership, and smuggling, in the assimilated form, the defendant who she was assisted by a lawyer, being heard in the presence of the defender, she admitting the accusations and accepting the legal framing of the facts and the punishment established by the legislator is a maximum of 15 years in prison. *(Decizie penală nr. 33/A din 12/01/2022 - Curtea de Apel Bucureşti).*

The plea agreement was concluded, concluded in writing by the prosecutor and the defendant, approved in advance and in writing by the superior hierarchical prosecutor, the court finds that the evidence administered during the criminal investigation results in sufficient data regarding the existence of the facts and the defendant's guilt. In the case, under the aspect of the crime of forming an organized criminal group (in the manner of joining), the court found that the defendant's membership in the criminal group is not only determined by the fact that she committed a singular act of assimilated smuggling, but the defendant was concerned with maintaining the clandestine activity of selling contraband goods. Thus, according to the court report, the defendant was intercepted while drawing the attention of a person regarding the presence of gendarmes near the location where contraband goods were sold, in which context the interlocutor showed that he drew the attention of another people about the presence of the authorities, so that the illegal activity of the group is not detected. Moreover, while the undercover investigator was in front of the space where contraband cigarettes were sold, several people bought contraband cigarettes from the defendant. In addition, on another occasion, another defendant calls the defendant to deal with the sale of contraband cigarettes. All these aspects prove that the crime of joining a criminal group has its own individuality, the rules of the competition of crimes being applicable.

The defendant had a position of recognizing the deed and its legal framework, she did not challenge the evidence administered during the criminal investigation and, as it follows from the statement given to the prosecutor and from the plea agreement signed during the criminal investigation, she agreed to a sentence of 9 months in prison for the crime of forming an organized criminal group (in the manner of joining) and a sentence of 2 years and 3 months in prison for the crime of assimilated smuggling.*(Decizie penală nr. 33/A din 12/01/2022 - Curtea de Apel Bucureşti).*

In judicial practice, the court of appeal has to resolve the appeal against the sentence of the trial court by which it rejected the plea agreement, on the grounds that the directions operated by the case prosecutor regarding the completion of the legal classification of the smuggling offense exceed the limits imposed by the procedure provided by art. 278 C.p.p.

In this sense, the Court, taking into account the nullity regime applicable in the case, considered - contrary to what was held by the first court - that the corrections made by the case prosecutor do not lead to the rejection of the

recognition agreement as illegal, noting, first of all, that the legal classification was not changed by a material error rectification decision, but there was a prior order to change the legal classification, the material error correction being issued in connection with this procedural act.

Secondly, the appellate court assessed that the provisions of art. 367 para. (2) and (5) C. pen. were detained because the crime in question is punishable by a penalty of more than 10 years, and the defendant not only admitted the imputed facts, but also the fact that she described in detail the way the criminal activities were carried out at the place called the pawn shop, coordinated by other people involved and indicated the participants in the commission of the crimes apprehended in his charge, facilitated the prosecution of the members of the criminal group investigated in the case.

Therefore, the ordinance correcting the material error took into account exactly the factual situation retained in the ordinance by which the change of legal classification was ordered, this aimed at the complete legal classification in relation to the data of the case.

Compared to what was stated above, we appreciate that by correcting the material error, according to those ordered by the criminal investigation body, there are no provisions that attract absolute nullity, only the conditions of relative nullity can be analyzed, but obviously, the defendant did not suffered no procedural injury, according to art. 282 of the Penal Code, as long as, in the presence of the chosen lawyer, he signed the subsequent act of correction and completion of the plea agreement, insisting on the admission of the plea agreement, as it results from the conclusions formulated in support of the appeal stated in the case.

Inquisition court notice

The notification of the court with the indictment represents the analysis of the entire evidentiary material administered during the criminal investigation phase, from which it follows that the factual situation retained is correct, being proven with the help of the evidence administered in the case.

In judicial practice, with the resolving any criminal case, the rule regarding the preventive measures taken against the defendants is to judge them in freedom state and, with the exception, only when the situation requires it, in detention.

In resolving this request, the end of the indictment was used, in which, among other things, in the charge of the defendant investigated for committing the crimes of constituting an organized criminal group, qualified smuggling and bribery, it was noted that a disjunction was made with respect to the material documents committed during the month of September 2009, in which the participation of the defendant is also noted and that there are data from which it is necessary to maintain the detention, so that the defendant does not have a behavior that influences the further smooth running of judicial activities in the trial*.(Decizia penală No. 494/R/ of 12/11/2009 Curtea de Apel Oradea).*

We agree with maintaining the detention, because any of these illegal acts, viewed independently of the concrete acts of the case, are of particular gravity, each time requiring a firm reaction from the competent state institutions to create a climate of safety and trust, essential for any state proper function.

CONCLUSIONS

In conclusion, although the crime of smuggling does not require the initiation of a special investigation and trial procedure, but the manner of committing the act, have as a consequence the predominant use of some ways of notifying the state authorities regarding the commission of such an act, of using of techniques and methods of evidence administration.

It was also noted that release presents a concrete danger for public order, this being proven by the particular gravity of these facts, by the fact that people who cooperate in a network, including with other people, investigated in separate cases, even and state bodies, the great damage caused to the state budget, the circumstances and the concrete way of organizing and committing the crimes, including by applying a plan of measures, with different meeting places, use of different cars, different phone numbers for communication, for not to be discovered and by the audacity of the defendants to commit such acts, which, carried out over certain periods of time, constitute an illicit but easy means of obtaining material benefits.

From the documentation of the criminal activity of the defendants who commit such acts, it was realized that the full criminal investigation can only be carried out by carrying out some activities that involved the administration of evidence that is difficult to administer, being determined by their dangerousness.

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BRIEF CONSIDERATIONS REGARDING THE SUPREMACY OF THE UNION REGULATION IN RELATION TO NATIONAL ACTS

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Abstract

The European Union is an international integration organization in the sense that we constantly retain requests from some European states for accession. The EU is not an international organization in the classical sense, departing significantly from the terminology established by international law. So, we are in the presence of an autonomous governance, with individual rights and powers. In this sense, the member states have given up part of their legislative sovereignty in favour of the Union in order to jointly exercise the prerogatives deriving from this transfer. Also, the European Union is based on sources of law that give rise to a legal system distinct from the systems of the member states, characterized by its supremacy in relation to the latter.

The present study aims to address the issue of the supremacy of the Union law system, in relation to the national law, with special reference to the supremacy of the main source derived from the Union, the regulation, in relation to the sources of the national legal order.

Key words: *supremacy; union legal order; sources of union law; CJEU; national acts.*

INTRODUCTION

As the specialized doctrine holds, the European Union is a superstate governance characterized by the fact that it is based on its own legal order. The Union legal order or Union law system has the following characteristics:

- *It is a supra-state order* in relation to the national legal order, its main objective being the unification of the national regulations of the member states *(T. Avrigeanu pp. 70-84)*, an objective which, although designed at the union level, is carried out at the level of the member states, as the case may be by adopting internal measures for the application of a Union regulation or by ensuring the transposition of a Union directive or decision into the system of internal law.

- It is *an autonomous legal order (I.N. Militaru, 2011, pp.87 et seq.)* in relation to the national legal system but integrated into the latter. What does it mean? It means that the Union law system is based on its own sources of law classified in the specialized literature as primary legislation *(see in this sense, I. Boghirnea and all. 2011, pp 333-342)* and secondary or derivative legislation (constituted by union legislative acts with binding legal force, these being regulations, directives, decisions, adopted by the union co-legislator - Commission, Parliament- Council through a legislative procedure as the case may be, ordinary or special, to which one added the union acts without binding legal force (opinions and recommendations).

- It is a *supreme legal order* compared to the national legal system. *(M. Grigore and al., 2011, pp 305-309).*

1. THE SUPREMACY OF THE UNION SYSTEM IN RELATION TO THE NATIONAL LEGAL SYSTEMS OF THE MEMBER STATES

The supremacy of the union system was established for the first time at the jurisprudential level by the reference Decision of the Court of Justice of July 15, 1964. Thus, in its Decision, the Court of Justice, currently referred to as the CJEU, established the supremacy of the law of the European Economic Community, currently the Union European "on the national laws" of the member states. In the Court's decision, it was also specified that the direct effect of the creation of the EEC consisted in the fact that the member states transferred their powers to adopt legislative acts and thus limited their legislative sovereignty. Therefore, it is mentioned in the considerations of the decision that the member states cannot adopt national laws that contradict the legislation of the European Union without calling into question the very legal basis of supranational governance. If, however, the states do so, the Union legislation should prevail over the laws before the national courts.

The Court also clarified in its jurisprudence subsequent to Costa v. E.N.E.L. the scope of the supremacy principle.

In this sense, it is noted that the principle of supremacy:

(i)- applies to all binding Union acts, regardless of whether they represent primary legislation (remember, the treaties), secondary legislation (regulations, directives, decisions, etc.) or jurisprudence of the CJEU *(N.E. Hegheş, 2019, pp. 131- 138).*

(ii)- refers to all national acts regardless of their nature (laws, government ordinances, etc.), regardless of whether they are issued by the legislative or executive power of a member state

(iii) includes provisions of a national constitution that contradict Union law. In this regard, we recall the Court's decision in Case 11-70, where in point 3, the court orders that no rule of national law, including a decision of the constitutional court, can contravene European Union law. Also, in the judgment

pronounced in Case 314/08, point 85 states that the pre-emption of Union law implies the obligation of the national court to apply supranational law and to leave the contrary national rules unapplied, even in the conditions where there is a decision of the national constitutional court given in support of national norms.

Last but not least, at the jurisprudential level, through the Decision of December 21, 2021 issued by the Court of Justice of the European Union, it was decided that the Constitutional Court in Romania is obliged to comply exactly with the Union law and in the event that it issued a decision which in the view of the Romanian national judge violates EU law, it can leave the decision of the constitutional authority in Romania unapplied.

Thus, at paragraph 246 of its reasoning, the CJEU reaffirmed the specificity elements of the union system, as they were established in the Judgment pronounced in the case of Costa v. E.N.E.L. Specifically, the Court ruled that an order was created through the Treaty concerning the European Community legal system proper to supranational governance, the result of the agreement of the signatory states of the treaty, as a result, no singular state measure can prevail over the union system which, although autonomous, is integrated into the national legal systems, since, in such a hypothesis, one wouldn't be able to achieve the standardization of national legal systems. In the same sense, paragraph 248 of the reasoning of the CJEU mentioned above also provides.

Also, within the same decision, it is mentioned that through the constitutive treaties, a system specific to the communities is born, as a consequence, from the moment of the accession of an applicant state, the Union law becomes priority and binding both for the acceded state and for its national courts (paragraph 245); The European Union Treaty is considered a constitutional charter (paragraph 247), thus explaining the functionality of the principle of supremacy of supranational law over national legislation (paragraph 250).

Within the framework of Declaration no. 17 regarding the pre-emption of Union law accompanying the Treaty on the functioning of the European Union**:**

(i) the principle of the supremacy of supranational law over national domestic law has been reaffirmed, thus it is stipulated that the constitutive and subsequent treaties, as well as the secondary legislation adopted by the union co-legislator, have priority over national law, as provided by the jurisprudence of the CJEU'

(ii) was mentioned that although it is not expressly provided for in the treaty, it is an essential union principle. In support of this thesis, the jurisprudence of the CJEU states that the supremacy of supranational law is its primary principle. So, currently, although the pre-emption is not inserted in the reforming treaty, it will not in any way modify the existence of the principle and the existing jurisprudence of the Court of Justice of the European Union. We conclude that, due to its originality, based on its own and independent legal sources, the Union

law cannot be opposed to national provisions without the question arising to what extent the legal foundation considered at its establishment is still maintained.

2. SUPREME REGULATION - SOURCE OF UNION LAW

European Union legislation is classified into primary legislation and secondary legislation. The primary legislation, also known as the primary source of the Union law system, has in its composition *(a) the constituent treaties of the three European Communities (b) the subsequent or amending treaties of the constituent treaties of the European Union, (c) the treaties of accession to the supranational governance (d) the protocols annexed to them, (e) additional agreements amending certain sections of the founding treaties, (f) the Charter of Fundamental Rights, (g) the general principles established by the Court of Justice of the European Union (see for more details A Fuerea, 2006, pp. 27 et seq.)*

Secondary legislation of the European Union is the body of legislation based on the EU treaties. The legal acts of the European Union can be found in article 288 of the TFEU, so the text of the article provides that the institutions of the Union can adopt legal acts based on the powers conferred by the treaties. Specifically, according to the provisions of the above-mentioned article, it is the Union normative act that is characterized by generality, having a mandatory content and being directly applicable in the national legal order. As for the directive, it is considered to have a direct but conditional and limited effect in the sense that it must be transposed into the legislation of the recipient state, the competent authorities determining the manner of transposition.

Last but not least, when we discuss the union decision, it is imperative to identify that they can be, as the case may be, member states or individuals.

Article 289 of the reform treaty makes the distinction between acts that have undergone a legislative process and acts without a legislative process. As regulated by the previously mentioned article, *legislative acts* are legal acts that go through an ordinary[1] or special[2] legislative procedure to which are added the acts adopted at the citizen's initiative or at the indication of the European Central Bank or at the request of the Court of Justice of the European Union.

[1] "The ordinary legislative procedure consists in the joint adoption by the European Parliament and the Council of a regulation, a directive or a decision, on the proposal of the Commission". See in this regard paragraph (1) of Article 289 of the TFEU in conjunction with the provisions of Article 294 of the TFEU. According to Article 297 of the TFEU, legislative acts adopted in accordance with the ordinary legislative procedure must be signed by the President of the European Parliament and by the President of the Council.

[2] "The adoption of a regulation, a directive or a decision by the European Parliament with the participation of the Council or by the Council with the participation of the European Parliament constitutes a special legislative procedure". See in this regard paragraph (2) of Article 289 of the TFEU. Legal acts adopted in accordance with a special legislative procedure must be signed by the president of the relevant institution.

BRIEF CONSIDERATIONS REGARDING THE SUPREMACY OF THE UNION REGULATION IN RELATION TO NATIONAL ACTS

Based on Article 290 TFEU, the Union co-legislator has the power to delegate to the European Commission the authority to adopt the so-called delegation acts with the role of amending the non-essential issues of the legislative act.

The implementing acts are adopted by the European Commission under the conditions of Article 291 of the TFEU when it is necessary to adopt uniform measures in order to apply mandatory Union acts

Union regulation. According to art. 288 paragraph 2 of the reform treaty, the regulation is the Union normative act that is characterized by generality, having a mandatory content and being directly applicable in the national legal order, so we can highlight the following characteristics:

The regulation has general applicability and as a result this feature differentiates the Union norm from the Union's secondary legal instruments.

The Regulation becomes applicable starting from the date mentioned in its text and when the text does not provide, it becomes applicable starting from the twentieth day after its publication in the Official Journal of the European Union.

With a view to the uniform application of the Union legislation in the national systems, *the content of a regulation is mandatory for them, as a result* the contrary national provisions remain unapplied. In the same approach, we specify that in the specialized literature it has been opined that no member state is allowed to apply incompletely or selectively the provisions of the Union regulation.

The regulation has direct applicability in national systems. From the moment of its entry into force, the regulation is an integral part of the legal systems of the member states.

However, we cannot fail to mention that there are situations in which, for a correct and complete application of a Union regulation, it is necessary to adopt some national - internal - measures for the application of the Union rule, the latter of which can take the form of a law, of a government ordinance, etc. (O.G. no. 8/2019) We exemplify in this sense, the provisions of article 29 of Regulation (EU) 2017/1939 which stipulates that when a crime within the competence of the EPPO is apprehended, which is punishable by a penalty of at least four years in prison, the delegated European prosecutors have the power to take or request, as the case may be, investigative measures such as, for example, searches, confiscations, interceptions, etc. The mentioned measures may be subject to conditions of consistency with domestic law in situations where domestic law contains applicable limitations regarding certain persons or qualities possessed by them. In the situation of a legislative interference as specified above, can the supremacy of the Union regulation still be supported?

The answer is also this time an affirmative one. Our belief is supported by the fact that whenever the Romanian legislator draws up a national act in the sense of the above-mentioned, he does it eminently on the basis of the provisions inserted in the very content of the Union regulation that disposes in this sense, so

that the internal norm does not add or modifies but clarifies within the limits conferred by the text of the union provision itself.

CONCLUSIONS

The European Union was founded on fundamental values, becoming a legal reality in the sense that it is a creation of the law that pursues its objectives exclusively through the law, with the Union citizen and the member states at the centre of its interest.

The study aimed to answer the question to what extent do we retain the supremacy of the Union regulation in relation to the national acts? As was to be understood, one cannot discuss the supremacy of a derivative source of the Union law system without first arguing the prevalence of the Union legal order over the national law system. Thus, I brought arguments in support of the above, both of a jurisprudential and legislative nature.

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ADMISSIBILITY OF INTRUSION INTO THE PERSON'S PRIVATE LIFE THROUGH THE USE OF UNDERCOVER INVESTIGATORS AND COLLABORATORS IN CRIMINAL PROCEEDINGS

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Abstract

Through this article, we aimed to highlight the importance of using undercover investigators, as a special investigative mean in the criminal process, to obtain evidence, data and information useful for solving the case, but also to emphasize the fact that the regulation of special investigative techniques is focused on the direction of maintaining a fair balance between the purpose pursued and the respect of the fundamental rights of the persons affected by these intrusive investigative methods, such as the right to private life and the right to a fair trial.

The use of undercover investigators may involve intrusion into the person's private life for a shorter or longer period while the type of relationship they establish with the person targeted by the undercover operation may vary as it may be a single contact or multiple meetings where a rapprochement is established between the suspect and the investigator or collaborator.

The guarantees imposed by the European Convention of Human Rights and Fundamental Freedoms, as they have been developed in the jurisprudence of the European Court of Human Rights, refer to the condition that the interference is provided for by national law, the measure is necessary in a democratic state and proportionate in relation to the content and purpose pursued, and the person targeted by the undercover operation to be able to challenge the legality of the measure before an independent and impartial court.

Key words: *special surveillance and investigation methods; undercover investigators; collaborators; private life; necessity; proportionality.*

ADMISSIBILITY OF INTRUSION INTO THE PERSON'S PRIVATE LIFE THROUGH THE USE OF UNDERCOVER INVESTIGATORS AND COLLABORATORS IN CRIMINAL PROCEEDINGS

INTRODUCTION

The development of technology and globalization have contributed to diversifying the modes of operation of criminals in such a way that it is increasingly difficult to detect both crimes and perpetrators, to the expansion of their area of action, states having to constantly adapt to new social realities and to adopt the necessary measures to counteract the criminal phenomenon, which is becoming more and more advanced in terms of the methods used and the hiding of the traces of the perpetrators.

In this international context there have been recommendations from international bodies for the use of special investigative techniques to more effectively combat organized crime and other serious crimes such as terrorism and corruption crimes.

In the "Deployment of Special Investigative Means" paper[1] it has been shown that special investigative techniques are those techniques used to gather evidence and/or information in such a way as not to alert the persons under investigation.

The evolution of crime has produced a change (in Europe and other parts of the world) in the way crime is investigated and discovered, with a much greater emphasis on proactive, intelligence-based investigations, with particular use of informants ("sources"), undercover agents and other covert techniques such as environmental surveillance, communications interception, and controlled delivery.

The importance of using information received from informants and collaborators has been noted both in the doctrine and by international bodies and the European Court of Human Rights, and the benefits that can be granted to them can be an important tool in their determination to provide judicial bodies with information and, possibly support to obtain evidence in criminal investigations.

The regulation of special investigative techniques is focused on two directions: the need to obtain evidence in criminal cases of a certain importance (being applicable in the case of investigating crimes of a higher gravity, such as intentional crimes against life, human trafficking, trafficking of drugs, tax evasion, corruption offences, money laundering, etc.) and maintaining a fair balance between the purpose pursued and the respect of the fundamental rights of the persons targeted by these intrusive investigative methods, such as the right to private life and the right to a fair trial.

The institution of the undercover investigator and the collaborator, as a special investigation method, has proven to be particularly useful in proving certain crimes, such as in the case of corruption, where the subjects involved have

[1] Prepared within the Project on the recovery of the proceeds of crime in Serbia, available on the website www.coe.int-Council of Europe, accessed on 20.05.2021, pp. 12

a high level of intelligence and commit the crimes in a rather cautious manner, so as to avoid the risk of them being discovered.

The use of the collaborator is most often essential in the investigation of drug trafficking crimes or other illegal activities carried out by organized criminal groups, considering the clandestine nature of their activities and the difficulty of infiltrating foreign persons into the criminal environment.

1. THE USE OF UNDERCOVER INVESTIGATORS AND COLLABORATORS: SPECIAL RESEARCH METHOD IN THE ROMANIAN CRIMINAL PROCESS

The use of undercover investigators and collaborators, as a special investigative method, is regulated in articles 148-149 of the Romanian Criminal Procedure Code, where the legal conditions for the use of this technique, its duration, the limits within the undercover investigators and collaborators may conduct activities and protection measures that they may benefit from.

The measure is ordered by the prosecutor, ex officio or at the request of the criminal investigation body, by ordinance, which must include the indication of the activities that the undercover investigator is authorized to carry out, the period for which the measure was authorized, as well as the identity assigned to the undercover investigator.

Undercover investigators are operational officers within the judicial police (for example within the Special Operations Directorate or the General Anti-Corruption Directorate, within the police stations), and in the case of investigating crimes against national security and terrorist crimes they can be used as investigators under coverage and operative workers from state bodies that carry out, according to the law, intelligence activities in order to ensure national security (for example officers of the Romanian Intelligence Service, the Foreign Intelligence Service, the Intelligence and Internal Protection Directorate of the Ministry of Internal Affairs).

Exceptionally, when the use of the undercover investigator is not sufficient to obtain data or information or is not possible, the use of a collaborator can be authorized, to whom an identity other than the real one can be assigned.

The collaborator was defined in the doctrine as "that person who is not part of the judicial bodies and who acts under their coordination to obtain data and information". *(Mihail Udroiu and others., 2015, p.449)*

The Constitutional Court of Romania mentioned in Decision no. 323/2017 (relating to the rejection of the exception of unconstitutionality of the provisions of art. 148 paragraph (2) letter c) of the Criminal Procedure Code) the categories of persons who can have the capacity to be collaborators in the criminal process showing that "a collaborator is not member of the judicial police and can be any person in the circle of suspects or who has interacted with the criminal area and who can bring evidence to prove crimes. Thus, since in numerous situations the infiltration of an investigator undercover or with a real identity is impossible due

to the concrete conditions related to the clandestineness of the criminal structure or the relationships within the groups, the judicial bodies can recruit a member of the criminal network or a person who can penetrates inside it thanks to the trust it enjoys among the members." (par. 22)

The measure is ordered for a period of 60 days, which can be extended consecutively by a maximum of 60 days, the total duration of the measure in the same case and regarding the same person not exceeding one year.

The measure can be extended indefinitely, i.e. for the entire duration of the criminal investigation, in the case of crimes against life, national security, drug trafficking crimes, arms trafficking, human trafficking, acts of terrorism, money laundering and crimes against financial interests of the European Union.

The purpose of using undercover investigators and collaborators is to obtain evidence and information in the course of a criminal investigation.

In the undercover operation the investigator or collaborator must infiltrate the criminal environment, such as within an organized criminal group, come into contact with its members, gain their trust and, apparently, act in the interests of the group and, in parallel, to obtain the data and information necessary to identify the members of the group, the organizational structure as well as the discovery of the mode of operation, the facts committed by them, the place where the proceeds of the crime are located, etc.

In practice, the use of a collaborator is resorted to since he is most often infiltrated in the targeted criminal group and his loyalty to the group is not doubted, so his access to data and information useful to the criminal case is faster and easier.

Specifically, undercover investigators and collaborators can contribute to

- establishing whether the crime of which a person or an organized criminal group is suspected has been committed, is in progress or in the preparatory acts phase;
- identification of members of the criminal group, identification of accomplices, identification of witnesses, injured persons;
- identification of the places where the product of the crimes are hidden, identification of the places where the victims of the crimes are located;
- specifying some favorable moments for carrying out searches or arrests, etc.

2. THE USE OF UNDERCOVER INVESTIGATORS AND COLLABORATORS AND THE INDIVIDUAL'S RIGHT TO PRIVATE LIFE

2.1 The right to private life. Notion

In Romanian legislation, the right to private life is regulated in article 26 of the Romanian Constitution, which provides in paragraph 1 that "public authorities respect and protect intimate, family and private life", and in article 53 of the

Romanian Constitution exceptional situations are provided, when "1) the exercise of certain rights or freedoms can be restricted only by law and only if it is required, as the case may be, for: the defense of national security, order, public health or morals, the rights and freedoms of citizens; conducting the criminal investigation; preventing the consequences of a natural calamity, a disaster or a particularly serious disaster. 2) The restriction can only be ordered if it is necessary in a democratic society. The measure must be proportional to the situation that determined it, to be applied in a non-discriminatory manner and without prejudice to the existence of the right or freedom".

This fundamental right is also protected by the provisions of the Romanian Code of Criminal Procedure, which in article 11 provides that respect for private life, the inviolability of the domicile and the secrecy of correspondence are guaranteed, the restriction of the exercise of these rights is only allowed under the strict conditions of the law and if this measure is necessary in a democratic society.

At this moment there is no clear, unanimously recognized definition of the right to private life as it can cover many aspects of an individual's life, relevant in the case of this right being the national legislation of each individual state as well as the degree of democracy in a society, in one era or another.

Private life cannot be included in an exhaustive definition, in the specialized literature a demarcation is made between the concept of "private life" in the broad sense and the narrow meaning of the expression.

In a broad sense, the right to private life protects four interests of a person: "private life (in the narrow sense), family life, the right to the home and the secrecy of correspondence, but although these aspects can be delimited, they will overlap in a way inevitable and mandatory." *(Mihai Şuian, 2021, p. 18)*

As for the notion of "private life" in the narrow sense, the European Court of Human Rights, through some decisions *(Van Oosterwijk v. Belgium; Schüssel v. Austria; Von Hannover v. Germany; Petrina v. Romania)*, has provided guidelines regarding to the meaning and scope of private life within the meaning of art. 8 of the European Convention of Human Rights and Fundamental Freedoms: the right to respect for private life is the right to privacy, the right to live as you wish, protected from publicity. The notion of private life includes elements related to a person's identity, such as their name, photo, physical and moral integrity.

“In addition, the right to personal development and the right to develop relationships with other people, covering multiple aspects of a person's physical and social identity, will also be included in the sphere of private life. The private life will not be limited only to the aspects that strictly belong to the person, but also to the way in which he decides to externalize himself in society, being able to include his professional activities, as it is often not possible to distinguish between

the relationships that belong to the private sphere and professional relationships." *(*Mihai Şuian, pp. 22-23)*

"The guarantee offered in art. 8 of the Convention is intended, in essence, to ensure the development, without external interference, of the personality of each individual in relation to his peers." *(Vasile Soltan, 2016)*

The use of special surveillance techniques and special investigtive methods implies an intrusion of legal bodies into the private life of the person, which must be carried out within the limits imposed by the European Convention on Human Rights and Fundamental Freedoms, ratified by Romania in 1994.

The use of undercover investigators may involve intrusion into the person's private life for a shorter or longer period, the degree of interference also varying depending on the type of relationship the investigator establishes with the person targeted by the undercover operation, which may be a single contact or multiple meetings in which a connection is established between the suspected person and the investigator or collaborator. Therefore, the sensitive nature of the information that the undercover agents and, implicitly, the judicial bodies become aware of, may differ from case to case.

Certain contacts may be purely business-related, such as in drug or arms trafficking investigations, where the undercover investigator or collaborator may claim that they intend to purchase the trafficked goods.

In cases where an undercover agent befriends a suspect in order to obtain information about his involvement in a serious crime (for example, a murder), he must sometimes establish a rather intense personal and emotional connection with the suspect.[2]

In addition to the activities mentioned above, the use of the undercover investigator may also involve technical surveillance activities (for example, audio/video recording in the ambient environment of meetings between the agent and the person targeted by the undercover operation, taking photographs in private spaces, placing GPS tracking systems on vehicles, accessing a computer system, copying data from an accessed computer system, etc.) which represents a more serious interference with the person's right to life as a result of recording and storing aspects of private life.

In this situation, it is necessary to obtain, prior to carrying out these activities, a technical supervision mandate from the judge of rights and liberties from the court that would have jurisdiction to judge the case in the first instance or from the corresponding court in its level in whose jurisdiction is the

[2] In this regard, see Kruisbergen, Edwin W., Combating Organized Crime: A Study on Undercover Policing and the Follow-the-Money Strategy www.researchgate.net/publicationCombating_Organized_Crime_A_Study_on_Undercover_Policing_and_the_Follow-the-Money_Strategy, accessed on 30.03.2020, pp. 41-42

headquarters of the prosecutor's office of which the prosecutor who made the request is a member. Technical supervision can take place for an initial period of no more than 30 days, which can be successively extended for a maximum period of six months, with the exception of environmental registration, which can be carried out for a period of no more than four months due to the high degree of interference in the private life of the person that imposes a limitation of this measure to exceptional situations.

Given the essentially intrusive nature of the special research method, it is required that it respects all the guarantees imposed by the European Convention of Human Rights and Fundamental Freedoms, as they were developed in the jurisprudence of the European Court of Human Rights.

II.2 Conventional standards regarding respect for the right to private life

With the exception of the right regulated in art. 3 of the European Convention on Human Rights (prohibition of torture, inhuman or degrading treatment or punishment), which is an absolute right, all the other rights may involve derogations under the minimum conditions provided for in the Convention, in conjunction with those provided for in the national legislation of each state.

As such, the interference of state bodies in the person's right to private life is allowed under certain conditions that must be judiciously respected.

Starting from the text provided for in art. 8 para. 2 of the European Convention of Human Rights and Fundamental Freedoms, according to which "the interference of a public authority in the exercise of this right is not allowed except to the extent that this interference is provided for by law and if it constitutes a measure that, in a democratic society, is necessary for national security, public safety, the economic wellbeing of the country, the defense of order and the prevention of criminal acts, the protection of health or morals, or the protection of the rights and freedoms of others", the Court of Strasbourg developed in its rich jurisprudence the standards of protection of the right to private life that the signatory states must fulfill when using technical surveillance methods or special research methods.

As a first condition, it is required that the measure be provided for by law, and that the legislator provides as clearly as possible the cases in which the use of undercover investigators and collaborators can be ordered, so that the persons concerned are able to foresee the cases where they might be the subject of surveillance measures or other covert operations *(Halford v. the United Kingdom, § 49, Silver and Others v. the United Kingdom, § 87, Shimovolos v. Russia, § 68)*. However, predictability is not synonymous with certainty. Individuals must be able to reasonably foresee, at least with the help of legal experts, the conditions for the use of undercover agents *(Case of Slivenko v. Latvia)*.

The second condition is the need to use the measure in a democratic state for one of the purposes expressly provided for in Article 8 of the Convention: for national security, public safety, the economic wellbeing of the country, the defense of order and the prevention of criminal acts, the protection of health or morals, or protecting the rights and freedoms of others.

In its jurisprudence, the European Court of Human Rights ruled that the states have a margin of appreciation of the cases in which these special research techniques can be used, but this margin is a limited one, in the sense that their use must be reduced to an "absolute minimum". *(Case of Klass v. Germany, point 59)*

In the same decision, the Court held that there must be adequate and sufficient guarantees against abuse, which must be correlated with the conditions provided by the national law of a state which clearly indicates the nature, purpose, duration of the measures, the grounds on which the measures may be ordered, the competent authority to order and implement such measures or supervise their implementation, the remedies provided by national legislation.

Regarding the concept of necessary measure, it must reach the threshold of "imperative social need" that justifies the authorities' interference in the person's right to private life. *(Dudgeon v. Great Britain, para. 51)*

At the same time, in addition to the conditions shown above, the condition of proportionality of the measure in relation to the intended purpose must also be met. *(case of Z. v. Finland, par. 94).*

"Essentially, the proportionality test will have to take into account the fact that both public interests will have to be weighed, with their degree of importance, by reference to the investigated crime, as well as the seriousness of the interference brought to the private life of the person." *(*Mihai Suian, p. 56)*

Proportionality is a leitmotif when the question of a state's interference in a fundamental right of the person is raised, in the sense that derogations must be evaluated concretely, from case to case, according to its particularities, so that the degree of intrusion into the fundamental right of the person not to exceed the level necessary in a democratic state to achieve the intended goal.

The evaluation of the meeting of this criterion is left to the appreciation of judicial body that orders the measure resulting in the intrusion into private life, which must make a fair assessment of all the circumstances of the case, the effects of the measure, the purpose pursued in order to establish whether there is a fair relationship between the interference with the fundamental right of the person and the imperative to protect public order by holding criminally responsible persons who commit crimes.

Last but not least, the Strasbourg Court ruled that in order to ensure the supremacy of the law, it is necessary that an intervention by an authority that is part of the executive power can be subject to effective control by the judicial authority, at least as a last resort, judicial review offering the best guarantees of

independence and impartiality, as well as due process *(Klass v. Germany case, para. 55)*

Referring to the Romanian legislation regarding the use of undercover investigators and collaborators, we can note that the legislator imposed the necessity of meeting all the conditions set forth by the European Court of Human Rights in its jurisprudence regarding the use of special surveillance and investigative techniques: the provision of the measure in the legislation, the condition of necessity and proportionality, as well as that of subsidiarity.

In this sense, the legislator provided in art. 148 para. 1 of the Code of Criminal Procedure the conditions for ordering the measure, this being limited to the cases expressly provided by law, when there is a reasonable suspicion regarding the preparation or commission of a crime of a certain gravity, such as those against national security provided by the Code criminal and other special laws, drug-trafficking crimes, crimes under the regime regarding doping substances, trafficking and exploitation of vulnerable persons, acts of terrorism or similar, or in the case of other crimes for which the law provides for a prison sentence of 7 years or more or there is a reasonable suspicion that a person is involved in criminal activities related to the crimes listed above.

It was pointed out in the doctrine that the phrase "a person is involved in criminal activities related to the crimes listed above" is not clear enough because those activities that could attract the use of undercover investigators are not determined. *(*Mihai Șuian, p. 435)*

Thus, it was argued that the notion of "involvement in criminal activities" can mean the commission of any crime related to those provided for in art. 148 para. 1 lit. a of the Criminal Procedure Code, which would constitute a much too extensive approach and it would be possible in this way to use investigators and collaborators in any case. It was thus proposed that the law be amended to provide for the possibility of using undercover agents only if related crimes are committed to support the commission of one of the crimes referred to in art. 148 para. 1 a from the Romanian Criminal Procedure Code.

We agree with the opinion that the Romanian law is not sufficiently clear and predictable regarding the scope of the special investigative method because, on the one hand, as indicated in the doctrine, any criminal activity can be related to the commission of the crimes expressly provided for in art. 148 para. 1 a of the Romanian Criminal Procedure Code, which would extend the scope of using undercover agents to all crimes, without a penalty limit, without specifying the type of connection and, on the other hand, without specifying the form of guilt with that the respective acts can be committed.

We are of the opinion that the scope of application of the phrase "criminal activities related to the crimes listed above" should be limited to intentional or intentional combined with negligence crimes, because the possibility of using undercover investigators and collaborators for investigating crimes committed

through negligence and that do not reach the minimum punishment threshold of 7 years in prison would represent a risk of using the special method under far too permissive conditions in relation to the importance of the fundamental right to private life.

Regarding the degree of connection with the crimes expressly indicated by the legislator in art. 148 para. 1 a of the Romanian Code of Criminal Procedure, we believe that it must be sufficiently strong, coherent, to highlight the determination of the criminals in supporting the commission or concealment of the traces or products of the serious criminal activities mentioned above or of hiding the criminals.

Regarding the first connection hypothesis, respectively for supporting the commission of the crimes mentioned in art. 148 para. 1 a of the Code of Criminal Procedure, this would justify the use of undercover investigators and collaborators since, by committing these acts, criminals are also participants as accomplices in more serious crimes. However, it would be appropriate to delimit this type of connection between crimes to also cover those situations in which it is difficult from a legal point of view to retain complicity in the commission of a more serious crime, such as in the case of committing acts involving a qualified perpetrator.

The other hypothesis of connection that I proposed, the concealment of traces or serious criminal activities or crimes, acts of hiding or favoring the perpetrators who committed one of the express crimes of art. 148 para. 1 a from the Romanian Criminal Procedure Code.

It is worth noting that, in principle, for the crimes of favoring the perpetrators and concealment, it is ensured in art. 269, respectively art. 270 of the Criminal Code, the penalties provided by the law are prison from 1 to 5 years or a fine, for the investigation of which the use of undercover investigators or collaborators would not be allowed.

We note that the connection between related and serious crimes in such cases is sufficiently well outlined to justify the need to resort to special investigative methods that involve interference with the right to private life of individuals.

Therefore, I have that art. 148 para. 1 a of the Code of Criminal Procedure, the final part, should be amended in the sense of indicating as crimes that are related to the crimes expressly indicated by the legislator those that facilitate the commission of crimes, the concealment of the traces of the commission or of the assets of those serious crimes, as well as the hiding of the perpetrators that commit such serious crimes. Such a regulation would ensure clearer and more predictable conditions for investigating the criminal phenomenon by modern means.

Also, the legislator provided that the measure must be necessary and proportional to the restriction of the fundamental rights and freedoms of the person, taking into account the particularities of the case, the importance of the information or evidence to be obtained or the seriousness of the crime, and at the same time be disposed only in the alternative, if the evidence or the location and identification of the perpetrator, the suspect or the defendant could not be obtained in any other way or obtaining them would involve special difficulties that would prejudice the investigation or there is a danger to the safety of persons or valuable goods.

The proportionality of the measure must be taken into account not only at the time of its disposition, but throughout its use and subsequently, at the time of the evaluation of the results obtained. Thus, the use of undercover investigators must be stopped by the prosecutor as soon as all the conditions provided by law for its disposal are no longer met, for example, if the evidence and information necessary to establish the mode of operation of a criminal group have been obtained.

Also, judicial bodies will avoid including in the case file information that concerns the private life of the person and is not related to the criminal case in order to limit as much as possible the interference with the fundamental right of the person.

The evaluation of the meeting of all the conditions for the use of undercover investigators and collaborators will be done by the prosecutor when he analyzes the opportunity to use the special investigative method, and the legality of the evidence administration may be challenged by the person targeted by the undercover operation (whether or not they are parties or main procedural subjects) to the superior hierarchical prosecutor according to art. 339 of the Romanian Code of Criminal Procedure or before the judge of the preliminary chamber, or in the procedure of the complaint against the solution of not sending to trial, when there was a defendant in the case, according to art. 341 para. 2 of the Code of Criminal Procedure, either in the procedure of the preliminary chamber, the object of which consists, among other things, in verifying the legality of the administration of evidence during the criminal investigation.

The constitutional court recalled in Decision no. 244 of April 6, 2017 that the conventional standards for the protection of fundamental rights imply the right of persons whose rights have been affected to challenge the legality of the measure and obtain, if necessary, compensation for the interference suffered.

We note that in the Romanian Code of Criminal Procedure there are no special provisions regarding the granting of compensation in the event that the right to private life has been violated by the measures of state bodies, but it is possible to obtain them through a civil action for tortious civil liability, according to art. 1349 et seq. of the Romanian Civil Code.

If evidence obtained as a result of the use of undercover investigators and collaborators has been declared illegal, it will be excluded from the criminal record.

CONCLUSIONS

The use of special investigative methods is a modern and effective tool in combating the phenomenon of crime, thus being able to obtain evidence that could be more difficult for the defense to combat since the persons targeted by these criminal investigation measures are not alerted to the conduct of a criminal investigation towards them so that their behavior during the investigation is not extremely cautious.

Undercover investigators and collaborators may have access to highly intimate and personal information through the nature of the relationships they may form, develop or maintain with individuals targeted by undercover operations, information that will be made available to law enforcement. Such information, if useful for solving the case, will also be presented in the documents in the file, such as the reports written by the undercover investigators, but also in the statements given by them or by the collaborators.

Becase of those mentioned above, it is required that the judicial bodies, when they analyze the necessity of using this special investigative method, make a thorough assessment of all the aspects that contribute to establishing the proportionality of the measure in relation to the nature of the facts that are the subject of the research and the result that is sought to be obtained through the use of undercover agents and the degree of intrusion into the person's right to private life.

In this sense, all the standards for the protection of the right to private life established by the jurisprudence of the European Court of Human Rights must be taken into account as a starting point.

The level of protection of the right to private life that the judicial bodies must ensure at the time of taking the decision by which it is interfered with must be adequate, so that the fundamental right of the person is not an illusion, but a concrete one and effective.

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INFORMATION SAFETY: TOP FIVE FAKE NEWS IN THE ROMANIAN MEDIA (2022)

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Abstract

The phenomenon of "fake news" is increasing in both the online area in Romania and in other media: newspapers, radio and television. The pandemic and the war in Ukraine have been bombarded with such information. Some theorists even speak of a hybrid-information war that precedes the war in Ukraine (see the 2016 USA election and evidence of Russian Federation interference in the process). In Central and Western Europe, the phenomenon is explosive through the falsification of documents, the spread of fake news, trolls, and website cloning. How safe is information for the public? How much are journalists making sure they inform correctly, check information so they can maintain the information safety?

Key words: *"fake news", news, emotion, Elon Musk, sources.*

INTRODUCTION

We live in a world where information is power. It is said in an opinion that we live in a world where problems should be easier to highlight, should be conceptualized (Cirmaciu Diana, 2021, p. 67). But information in the Internet age requires sometimes additional checks, uncertainty (*Curta, 2021, p.45-53*), comparisons with other news, analysis by the reading public to establish the reality of the news data (such as the CRAAP test, which checks the currency and relevance of the information, authority-sources, accuracy and purpose of the material). Social media is often the place where the public gets its information from (or where it is delivered a certain type of information), but it is a difficult medium to control because it spreads false messages very easily.

1. "FAKE NEWS"- MORE THAN FALSE NEWS

What are the "fake news"? Are they simply false news or more than that? What makes them spread so quickly, and especially why is the general public no longer interested in the (sometimes) subsequent denials? Who uses them and for what purpose?

First of all, let's make the distinction between "fake news" narratives (*Armanca, Danilet, Oprea, Tabusca, Tibrigan, 2021, p.13-18*), which are put into circulation by an organization, a state with the aim of creating confusion and generating social tension, while false news has no origin of an ideology or the strategy of a state, and in some cases they have no intention of manipulation[1]. People's cultural baggage and expectations - their fears or fears - are used to the maximum by rumours, lies, false events, exaggerations that cause public panic. "Fake news" reinforces these fears (for example, a future global blackout, the price of gasoline, oil, running out of products in stores in the first month of the pandemic in Europe and in the USA - no toilet paper), causes damage to the image of some people, institutions and political, financial earnings (by increasing the number of readers and click bites). Being emotional beings *(Ireton, Posetti, 2021, p.15-50)*, not just rational, more dangerous is the flash of emotion they create that can make the audience respond to the command. Our anxieties are inside us, so we tend to take in and spread information that confirms our expectations, our fears, in the form of the herd wave.

Another worrying phenomenon is related to citizens, who consider information sources equal: people no longer distinguish between journalistic integrity, credible sources and those who do not know the values of journalism, between information and opinion, satire, the citizens consider them equal.

The following material presents a selective top of the five most resounding "fake news" in the Romanian mass media, during the year 2022.

2. UE WILL FORCE US TO EAT INSECTS

In early September 2022, when news of the pandemic and war had thinned out, prints and TV news reappeared about this new and forced food style. *Digi 24* treats the news as a fake in the material "How the fake news that the EU will force citizens to eat cockroaches was born" (September 4th) [2]. The news initially appeared on *Romania TV* in July, viewed as a "food reset" imposed by "neo-Marxists" and being brought back in the speeches of politicians such as the Minister of Agriculture Petre Daea (on *Romania TV* and *Antena3*), George Simion and AUR (Alliance for Union of Romanians), which submitted to the Parliament a draft law on the prohibition of the use of insects in the production of food for the human population.

[1] The first fake news appears in Ancient Egypt and the Roman Empire, but it has also been used in all historical periods.

[2] https://www.digi24.ro/stiri/cum-a-luat-nastere-fake-news-ul-potrivit-caruia-ue-va-obliga-cetatenii-sa-manance-gandaci-2065163 (accessed on 22.10.2022)

The news is presented on September 14th by *B1TV* and is picked up in September by the website *ziare.com*[3]. The context of the news has existed since 2013, when the UN, through the specialized agency Food and Agriculture Organization (FAO), considered (in a report) insects an alternative source for protein[4]. As a result, material on the same topic appeared in the American and Dutch media in 2015 and strong public backlash related to this assumption.

The news about the insects, as ingredients of European fast foods, like famous companies McDonalds, KFC..., became the subject of stand-up comedy on a Russian television and was picked up and transmitted by the Russians to the population as "real news" (October 2022).

3. FAKE VIDEO, UNVERIFIED NEWS

In June, *Digi 24* does not verify the information received and transmits a fake news. The material attracts criticism from the Romanian media, after the respective national station highlighted the fact that the information is very carefully verified by their editors at all times.

The material was in Russian, old from 2008, featured a young man who was being interviewed about the music in a club and is presented by the TV producer, Cosmin Prelipceanu in the *Jurnalul de seara* (evening journal edition) as something completely different: Russia attracts recruits with lies (a drunk "recruit" told the story of how will enlist in the war and how he will drive tanks) [5].

The failure to check the news and its transmission as Russian propaganda is harshly criticized by the Romanian journalist and political commentator, Cristian Tudor Popescu, on the same TV station, in the program *Cap limpede* (together with the moderator Claudiu Pandaru) [6]. The remark leads to the dismissal of Cristian Tudor Popescu from the *Digi24* station, which calls into question the functioning mechanism of the respective TV station and the freedom of expression of Romanian journalists.

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[3] Alina Toma, „Ne va obliga sau nu UE sa mancam gandaci? Zvonurile care au pus pe jar omenirea", https://ziare.com/insecte/gandaci-mancare-ue-1759500, 04.09.2022 (Accessed on 22.10.2022)

[4] The European Commission conveys its view as follows: "it will not force citizens to eat insects (or anything else). The consumption of insects is possible, never mandatory, as long as they are authorized as novel foods by the Commission". Razvan Filip, "Pazea, ne obliga UE sa mancam gandaci! Originile unei naratiuni false", in https://pressone.ro/, 28.08.2022, https://pressone.ro/pazea-ne-obliga-ue-sa-mancam-gandaci-originile-unei-naratiuni-false (Accessed on 22.10.2022)

[5] Mihai Todoca signs the article found at the category *Fact check.* https://specialarad.ro/dupa-ce-ne-a-obosit-vreo-trei-zile-ca-este-cel-mai-serios-post-de-stiri-digi-24-promoveaza-un-fake-news-de-zile-mari/(Accesed on 23.10.2022)

[6] "It is a black lie. There is gray, there are many shades of gray in fake news. This is black fake news, it has nothing to do with anything"- Cristian Tudor Popescu.

4. THE SWIMMER DAVID POPOVICI BOUGHT A LUXURY CAR

As soon as he came of age of adulhood and got his driver's license, the young world record holder allegedly bought a very expensive car (over 100,000 euros) - this was the news that circulated on online sites, on radio and national television, being widely distributed also on social networks.

David Popovici stole all the eyes with his new car! The world champion, demonstration in front of his colleagues: "Look, there's no one inside" was the title with which the material appeared on October 10th, 2022 on *as.ro*[7],, from where it was picked up by *spynews.ro*[8] and *Realitatea sportiva*[9] on October 11th. On the same day, headlines like this end up being shared on social media from other sports news sites: *David Popovici bought a luxury car that he parks by remote control. How much is the car that "The Shark" drives*[10].

Popovici immediately noticed the fake and took action: he posted the misleading images on his Facebook page, with the message "I don't have a driving license, nor a car, I like to ride a bike and I urge you all to enjoy the rides by bike. It is not known, maybe we will meet on a shift". The online press, radio and television take this idea one after the other[11] and transpose it as a discovered and debunked fake news.

5. FLORIN SALAM IS DEAD

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[7] The material appears on *Antena Sport* and is signed by Cosmin Cioboata; the news contains images from the Elisabeta Palace, where Popovici and other Romanian swimmers have been medaled in the summer of 2022 by the Royal Family of Romania and an insert in which a car leaves without the driver being seen. Popovici states "Look, there's no one inside", a statement that is twisted and falsely used in the material. https://as.ro/inot/david-popovici-a-furat-toate-privirile-cu-noua-sa-masina-campionul-mondial-demonstratie-in-fata-colegilor-ia-uite-nu-e-nimeni-inauntru-228238.html?fbclid=IwAR3mKL0UNc6LM6xMWbryOBUG29Q0jLw94jw08Khfq_vSBh_7T9fauB6YpLM (Accessed on 23.10.2022)

[8] *David Popovici purchased his first luxury car. How the champion impressed his colleagues:* "*Look, there's no one in the car",* signed by Ioana Cazacu, who cites *Antena Sport* as a reliable source. https://spynews.ro/sport/david-popovici-sia-achizitionat-primul-bolid-de-lux-cum-ia-impresionat-campionul-pe-colegii-sai-ia-uite-nu-e-nimeni-in-masina-290837.html (Accessed on 23.10.2022)

[9] *What luxury car did David Popovici buy after winning gold medals at the World and European Championships*, signed by Dan Istrate and provides clear details "*The car starts at 57,000 euros and can reach almost 100,000, if it has all the features in force. It is a BMW Series 5 Touring, estate version*". https://www.realitateasportiva.net/ce-bolid-de-lux-si-a-cumparat-david-popovici-dupa-ce-a-castigat-medalii-de-aur-la-mondiale-si-europene (Accessed on 23.10.2022)

[10] https://playtech.ro/stiri/david-popovici-si-a-cumparat-o-masina-de-lux-pe-care-o-parcheaza-din-telecomanda-cat-costa-bolidul-pe-care-il-conduce-rechinul-589022 (Accessed on 23.10.2022)

[11] *B1 TV, Antena 3, România TV, Digi 24, Digi FM, ziare.com. spynews.ro* kept both news, and the disclaimer was uploaded to the site late, close to midnight. *Gazeta sporturilor* deleted the initial news.

A news that produced emotion at very high levels was the one in which the singer Florin Salam died, as a result of Covid. It is a serious slippage of the journalist profession, such baits are produced many times with various stars (Fuego, Angela Similea, Ion Iliescu are just a few of the names that have produced recent hits).

On August 13th, 2022, this news appears on the *Pro TV* website, the cause of death would have been drug consumption. The news was given "on sources", unverified, in order to present it first. It was an irresponsible act, having major emotional consequences, especially for the singer's family, but also for his fans. The information is taken over by *Capital* and *Antena 3*.

It took the singer's daughter to send denials on social networks, and then Salam himself sent a video proving that everything was a fake, in order to change the public information. Currently on the *Pro TV* website, the news is listed as "unverified information" and apologizes to those it affected so strongly[12].

Some TV stations were more modest and gave the news that Florin Salm died, but they did further verification - they talked to the singer's relatives, contacted the medical staff at the hospital (this is the case of *Romania TV*, which returned to the original title faster than and *Pro TV*).

The news was immediately shared on Facebook, and for two or three days, users made fun of the living dead. Even in this case, the public did not charge the mass media for amateurism.

6. ELON MUSK AND ANGELINA JOLIE IN ROMANIA

From a spark of cancan or miscellaneous fact, the news has rolled so many times that it has acquired proportions that cannot be stopped or denied. Between October 29t and November 1st, 2022, the maximum of fake news was reached in Romania with unverified information on sources such as that on Halloween, Bran Castle was rented by none other than the billionaire Elon Musk. He, along with 300 of the richest and most famous people on the planet, were going to spend time at the castle, in the company of the beautiful actress, Angelina Jolie. Although it was found out relatively quickly about Angelina that she was in Los Angeles and would not take part in the masquerade ball, the newsrooms rushed to broadcast spicy details from Bran as quickly as possible.

Dozens of reporters and cameramen were sent to the scene, who transmitted to television, radio and print media information about the guests, costumes, delicacies eaten, and some even claimed to have seen Musk and how he was dressed (of course, under anonymity protection). On November 1st, at the end of the ball, media representatives started to say they knew it was fake news, but didn't denounce it sooner. Some online editions kept the fake news on their

[12] *Pro TV* was harsly criticized by the other media https://www.libertatea.ro/opinii/florin-salam-traieste-de-murit-a-murit-pro-tv-sfarsit-de-era-4242559 (Accessed on 04.11.2022)

websites for several days after, without apologizing for the lack of professionalism they showed. Commentators and media analysts are of the opinion that the event was not just a fake-news, but a whole phenomenon of testing the limits of the public carried out by the secret services.

The first to release the information is the website mediaflux.ro, classified as an "exclusive Paparazzi" material: "ULTRA-SECRET Event In Romania: The Richest Man In The World, Elon Musk, Angelina Jolie And Other Billionaires Of The Planet, Halloween Party at Bran. Peter Thiel, The Founder Of Paypal, Already Landed Last Night At The Otopeni Airport" [13]. The site quotes from "our sources" as other notable guests are expected to arrive: Sergey Brin, founder of Google, Steve Jurvetson, founder of Hotmail, on the board of Space X, Peter Thiel, founder of PayPal, Luke Nosek, co-founder PayPal and founder of Gigafund. A few hours later, comes the second incendiary headline "mediaflux.ro Global exclusivity": "Bomb Details Inside The Party Of The World's Billionaires At Bran Castle. Elon Musk Hired A Director For Dracula's Experience" [14]. A little later, the third material appears "Elon Musk Confirms That He Is In Romania. He Wrote On Twitter About A Very Popular Product In Our Country" [15].. Six more news about Musk appear in the following days: four on October 30th ("The Romanian Attending Elon Musk's Mega Halloween Party In Bran. Mediaflux Found Out Who He Is", "Cozmin Gusa Points To Mediaflux In An Exceptional Material: Elon Musk "Disembarks" In Romania Disguised As A Vampire. "Trick or treat?!", "How Much Did It Cost To Rent Bran Castle By Elon Musk! Exclusive Details Regarding The Transaction", "Elon Musk's Mother, Maye, Comes To Bucharest. What Event Is The Former Model Participating In"), one on October 31st ("Romeo Dunca Turned Down Elon Musk And Went For A Ride With Friends In The Helicopter He Didn't Want To Rent To Billionaires") and

[13] The material is signed by Malina Pana and at the end of it there is an invitation to the public: "Whoever has information about this subject, please write to us at pont@mediaflux.ro". https://mediaflux.ro/exclusiv-paparazzi-eveniment-ultra-secret-cel-mai-bogat-om-din-lume-elon-musk-angelina-jolie-si-alti-miliardari-ai-planetei-petrecere-de-halloween-la-bran-peter-thiel-fondatorul-paypal-a-ateri/(accessed on 05.11.2022)

[14] The article appears in the Showbizz section, signed by Toma Ionescu and is a "world exclusivity". .https://mediaflux.ro/exclusivitate-mondiala-detalii-bomba-din-interiorul-petrecerii-miliardarilor-lumii-de-la-castelul-bran-elon-musk-a-angajat-un-regizor-pentru-draculas-experience/(accessed on 05.11.2022)

[15] In the *News* section. This one is also signed by Malina Pana and is born as a result of Musk's message on Twitter, interpreted as "a sign that he has already tasted traditional Romanian products": " Fresh bread and pastries are some of life's great joys!". Musk is placed at several luxury villas in the Brasov area. After resuming the lists of VIPs that are apparently preparing to appear, the editor notes "MediaFlux was the only publication in Romania and even in the world that obtained exceptional information and images from what can be called not the event of the year, but of the last a little over 30 years in Romania". https://mediaflux.ro/elon-musk-confirma-ca-e-in-romania/(accessed on 05.11.2022)

another one on November 1st ("Where Elon Musk Spent Halloween. The First Pictures Of The Billionaire In A Party Costume").

The news is picked up by *Libertatea* on Saturday, in an article announcing that Elon Musk is coming to Romania[16]. In the following articles published on Sunday, the newspaper stated that there is no confirmation of him coming, although the organizers of the event confirmed that Musk is on the guest lists. On Monday morning, Cătălin Tolontan published "MAI Officials: «Elon Musk did not enter Romania»"[17], in which, at the end of the material, he noted that: "*Libertatea* apologizes to its audience, but also to those who took the information from us, because we risked by publishing on Saturday the anticipation that Elon Musk would arrive in the country on Sunday evening. It is not the fault of the sources we cited, but only ours, because we were not more scrupulous in analyzing and verifying the information. The fact that, later on, we did not also state that Elon Musk arrived in the country, does not excuse our initial error". On Tuesday, a material appears on the topic of Musk's arrival "How the television reported about «Elon Musk in Romania». Each station gave dozens of news daily, on *Digi 24, Pro TV, the Antenas* and *TVR*"[18].

In the rush to be the first to bring other details, we find the news on other online publications, national or local, we mention only a few: *Cancan*, *Euronews*[19], but also on all televisions: *Digi 24* "the news was the opening news of the Journal, with discussions with guests on the set and broadcasts from the spot, focused on the topic of the party), *TVR* ("Sources TVR INFO: Elon Musk and Angelina Jolie are coming to Romania", followed by news with billionaires, including Musk, who are expected to come), *Antena 1* (says that Musk is expected to come), *Pro TV* (even has an anonymous guest who claims to have seen Musk

[16] On October 31st, in the sequel of the material, he publishes an erratum in which he states that Musk will not come to the party and apologizes to the readers. It also attaches the original published news. https://www.libertatea.ro/stiri/elon-musk-vine-in-romania-cel-mai-bogat-om-din-lume-a-inchiriat-castelul-bran-pentru-o-petrecere-privata-cu-miliardari-si-vedete-de-la-hollywood-4329053 (accessed on 04.11.2022)

[17] The material specifies the list of famous guests present at the party and that "but Elon Musk and Angelina Jolie did not arrive in Romania, confirmed, for *Libertatea*, two concordant sources from different arms of the Ministry of Internal Affairs, institutions that should have known the entry of American citizens into the country." We learn that foreign security firms have checked the castle since September 2021 and bookings have been made since November 2021. https://www.libertatea.ro/stiri/oficial-mai-elon-musk-nu-a-intrat-in-romania-4330380 (accessed on 05.11.2022)

[18] https://www.libertatea.ro/stiri/cum-au-relatat-televiziunile-despre-elon-musk-in-romania-zeci-de-stiri-zilnic-si-invitati-la-digi-24-pro-tv-antene-si-tvr-4331756 (accessed on 05.11.2022)

[19] Who also have convincing guests - Dragos Anastasiu, founder of Eurolines, entrepreneur, expert in tourism and HoReCa: "I know that Elon Musk is in Romania, I know that he is staying last night and the night before, I can't tell you more. There are many hotels and the one I know of is definitely ready to receive important guests". It also appears on *Digi24*, with equally stringent lines.

and Angelina Jolie and describes how they were dressed), *Antena 3* (claims that Musk is flying over the area from a helicopter and that he is / would be on the way, Dana Budeanu in the *Subiectiv show* with Razvan Dumitrescu, affirms as a certainty that Musk is not in the country).

Not even the radios avoided the trap. One of the most credible channels of Romanian Radios - *Radio Romania Actualitati*[20] presented the information in great detail - such as that Elon Musk has been in Romania for several days and rented the Bran Castle. They even used a correspondent from Brasov who transmitted a live report on this topic, adding how Musk arrived at a barn, what he did and then how he went to the party.

After three days that the miracle lasted, on Monday morning the subject ended up being a joke. In *Radio Zu's Matinal*, with Buzdu, Emma and Morar, the children were invited to say where Musk was, to play with the concept of "fake news", which was even more inventive.

CONCLUSIONS

The five examples presented can be considered up to the time of writing this material, the tip of the iceberg in terms of the vast phenomenon of "fake news" in the Romanian press in 2022. The reason we catalog them in this way is the emotional impact on the public, but and the serious slippages made by the media channels. Unfortunately, dozens of other materials of this kind have appeared in the public space and, worse, they will not be stopped.

The mainstream newsrooms work according to the concept of "time is money", they try to convey the information very urgently, with the risk of not checking too carefully all the data received from their sources, but the end does not justify the means. It is up to each individual reader to constantly inform themselves, using multiple media channels, to form an opinion about the news they read.

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EFFECTS OF BURNOUT ON THE SOCIO-PROFESSIONAL ACTIVITY OF TEACHERS

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Abstract

Many teachers start their careers with a high level of energy and motivation, wanting to make their subject interesting to their students and demonstrate interest in them. However, professional disillusionment, accompanied by fear, insecurity and anxiety, replaces the joy of teaching.

Teacher burnout is a multidimensional construction with three related constructions: emotional exhaustion, depersonalization, and diminishing personal achievement.

Key words: *burnout, professional stress.*

INTRODUCTION

In recent years, burnout has been one of the most discussed mental health issues in modern societies. In a world facing major socio-economic challenges, people are facing increasing pressure in their daily lives, especially in the workplace. As a result, managers, employees and workers in a variety of industries and sectors around the world suffer from work-related stress, fatigue and burnout, the most prominent signs of which are often referred to as burnout syndrome.

However, burnout is not exclusively related to work, as the findings showed that privacy and social support also played a key role *(Maslach and Jackson, 1984; Sprang, Clark, Whitt-Woosley, 2007).*

It has also been found that professionals working in the public sector have a higher risk of burnout than those in the private sector *(Sprang, et al., 2007).*

Exposure factors such as long hours, duration of assignment, case tasks, correlated with organizational factors such as lack of autonomy, low peer support, lack of preparedness provide conditions under which exhaustion will inevitably penetrate the workplace in a certain capacity. The results will affect not only the

professional, but also the efficiency of the job and the levels of care and support for the client *(Boscarino, Figley, & Adams, 2004; Sprang, et al., 2007).*

The concept of burnout was first introduced by Freudenberger (1974). Since then, various definitions have emerged. Lee and Ashforth (1990), referring to Maslach and Jackson (1981), defined burnout as a syndrome of emotional exhaustion (characterized by fatigue, somatic symptoms, decreased emotional resources and the feeling that he had nothing left to offer others), depersonalization (the development of negative, cynical attitudes and impersonal feelings towards their clients, treating them as objects) and the lack of feelings of personal achievement (feelings of incompetence, inefficiency and inadequacy). This definition of burnout has been most widely used in the literature.

Freudenberger (1974) not only described burnout syndrome, but also suggested preventive measures. Because he believed that burnout is specifically related to specific work environments and organizational contexts, the author proposed intervention at the organizational level and not just at the individual level. His recommendations included shorter working hours, regular job rotation, and frequent supervision and staff training.

This first publication on burnout anticipates much of the research to be conducted over the next 40 years. Freudenberger's initial work (1974) was followed by a significant number of psychological and medical studies, starting with research by Christina Maslach and her colleagues in the late 1970s and early 1980s *(Maslach, 1976; Maslach and Jackson, 1981; Pines and Maslach, 1978).*

Maslach was one of the pioneers of burnout research and is still one of the most important scientists in this field. Unlike Freudenberger's qualitative, almost autoethnographical account (1974), psychologist Maslach focused on measuring burnout. Based on the three dimensions of burnout, that is, exhaustion, cynicism and ineffectiveness, she developed Maslach Burnout Inventor, which is still the most widely used questionnaire for measuring burnout even today *(Maslach and Jackson, 1981).*

In their article, Maslach, Schaufeli and Leiter (2001) distinguish between a pioneering phase and an empirical phase of burnout research. The first phase in the mid-1970s concerned the description and naming of this new "syndrome". At the moment, the research was mainly based on observations and interviews in the human services and health care sector.

It has also been systematically described in relation to concepts established in industrial-organizational psychology, such as stress at work, job satisfaction and organizational engagement *(Maslach et al., 2001).*

Maslach Burnout Inventory offers a common understanding of the concept. The questionnaire suggests that burnout is a coherent phenomenon and made it possible to measure exhaustion without the need to question or reflect on the basic assumptions regarding this mental condition and its implications in society and beyond.

Over the past 10 years, burnout has become a topic of growing interest to scientists, practitioners and the workforce. Clinical psychologists, in particular, began to adopt burnout as a diagnosis and tried not only to assess the level of exhaustion, but also to discriminate between cases of burnout and non-cases, treatment and non-treatment *(Schaufeli, Leiter and Maslach, 2009).*

Today, burnout is a medical diagnosis established in very few countries, such as the Netherlands and Sweden; in most (industrialized) countries, it remains a contested diagnosis that is widely discussed but not officially recognized in the healthcare system.

Langle (2003) defines the phenomenon of burnout as an existential crisis resulting from a modern society demanding and oriented towards achievements, resulting in a life that is alienated and distant from our existential reality and that is determined by the demanding character and spirit of consumption that marks our present tense.

These more contemporary definitions of burnout will guide this study and establish the reasons for exploring the characteristics of burnout.

Although burnout can have a negative impact on the workforce, patient care and health of the individual, it can also play a protective role. It was assumed that the symptoms of exhaustion would appear to protect the human psyche from further damage. Freudenberger (1983) describes depersonalization as a means of protection against subsequent emotional drainage. In a similar sense, it can be argued that emotional exhaustion acts as a "brake" for individuals who do not know how or when to slow down. Negative changes in attitudes (reduced goals at work, loss of idealism, increased self-interest) were described by Benbow (1998) as a form of coping.

Burnout has been described as a state of physical, emotional and spiritual fatigue caused by long-term exposure to stressors at work *(Sherring and Knight, 2009; Breen and Sweeney, 2013).*

To date, there are various definitions of burnout. While each contributed to the understanding of the phenomenon of burnout, this lack of clarity and consensus was the greatest limitation in the advancement of solid empirical tests at the theoretical and methodological level.

According to Beemsterboer and Baum (1984), the understanding of burnout is hampered by the lack of a single operational definition and a clear set of criteria. Starrin, Larsson and Styrborne, (1990) confirm that it is possible to agree on a common description of burnout rather than on a common definition of it.

The popular definitions that contributed to the understanding of burnout state the following:

- Burnout is a process that begins with excessive and prolonged levels of tension in the workplace, whereby stress produces feelings of tension, irritability and fatigue.

- This process is completed when employees respond defensively to stress at work, psychologically decouple from work, and become apathetic, cynical, and rigid *(Ray, Nichols and Perritt, 1987).*
- Burnout is a progressive loss of idealism, energy and purpose experienced by people in the helping professions as a result of their working conditions *(Beemsterboer and Baum, 1984).*
- Burnout is characterized as a state of physical, emotional and mental exhaustion caused by long-term involvement in emotionally demanding situations *(Pines and Aronson, 1988).*

The definitions above vary from each other in terms of scope and accuracy, but each has uniquely contributed to the understanding of burnout.

Despite this, the different definitions share certain similarities in terms of the key characteristics of the phenomenon.

There is a general agreement that burnout:

- occurs at individual or agency level
- it is an internal psychological experience that involves feelings, attitudes, motives and expectations
- refers to problems, suffering, discomfort and dysfunction
- is perceived by the individual as a negative experience
- are negative consequences
- lead to decreased effectiveness and performance at work

Schaufeli and Peeters (2000) reviewed the literature on burnout conducted until 1999. Thus, three different types of stressors associated with the burnout experience were identified.

Types of stress have been identified as **physiological stressors, psychological stressors and behavioral stressors**.

- **Physiological stressors** refer to somatic symptoms such as headaches, heart palpitations, shortness of breath and hypertension.
- **Psychological stressors** refer to a decrease in job satisfaction and an increase in symptoms such as anxiety and depression.
- **Behavioral stressors** refer to behaviors such as absenteeism from work, high staff turnover, and the use of prohibited substances and alcohol as coping mechanisms.

More recently, Endicott (2006) has summarized similar characteristics in terms of mood indicators of burnout that include anger, cynicism, depression, and anger. In addition, the author found that people who exhibit behaviors such as absenteeism and excessive use of substances such as alcohol were exposed when faced with exhaustion.

Based on these researchers it is obvious that beliefs about the experience of burnout have remained stable and consistent over time. Recent research has continued to focus on the experience of burnout as identified by the individual.

Borritz (2006) conducted an analysis of the literature on burnout research during this most recent period from the late 1990s to the present day. It included 13 studies that had a follow-up period of more than 1 year, a response rate of over 50% or participants who included diversity in the occupational classification.

The findings from these studies have identified an overwhelming load of cases, high levels of emotional demand and a diminished sense of support as primary factors leading to emotional exhaustion. Emotional exhaustion is the only component that professionals agree on as a prominent feature of burnout in literature. Borritz (2006) states that current conclusions on the nature of the phenomenon of exhaustion claim that it is a complex phenomenon with a multi-factorial causality.

1. FEATURES OF BURNOUT

According to the literature, the characteristics of burnout consist of cynicism, psychological suffering, feelings of dissatisfaction, impaired interpersonal functioning, emotional numbness and physiological problems *(Sprang, Clark andWhitt-Woosley, 2007)*. There are also observable behaviors such as irritability, impatience and nonverbal communication that conveys a lack of interest in goals to be achieved in the workplace and even in colleagues.

Burnout can lead to conditions such as trauma , secondary traumatic stress and professional burnout *(Newell and MacNeil, 2010).* Emotional exhaustion, depersonalization or cynicism and diminishing sense of personal achievement help define the main dimensions of burnout *(Sprang, Clark and Whitt-Woosley, 2007; Maslach, 2003)*. Emotional exhaustion is a state that occurs when the emotional resources ofa person become exhausted by the chronic needs, requirements and expectations of clients and superiors at work *(Newell and MacNeil, 2010)*. There is a positive correlation between workplace requirements and stress-related health problems *(Maslach, 2003).*

The characteristics of burnout consist of:

- cynicism
- psychological distress,
- feelings of dissatisfaction,
- impairment of interpersonal functioning, and
- physiological problems *(Sprang, et al., 2007).*

These aspects can lead to a loss of interest in the workplace, which leads to the avoidance of professional responsibilities. Also, these characteristics can also be due to problems in the personal life of the individual. If burnout occurs due to problems at work and the environment, many of the employees are likely to face this. Continuing without intervention would not only lead to poor services, but would be engaging in irresponsible practice that would lead to possible harm.

Organizational factors contributing to burnout include excessive and high number of cases, lack of autonomy, inequity in structure, lack of support and poor on-the-job training *(Barak, Nissly and Levin, 2001; Newell and MacNeil, 2010).*

The characteristics that lead to these negative organizational factors include a structure of bureaucratic constraints, inadequate supervision, lack of availability of resources and lack of support *(Newell and MacNeil, 2010)*. Such jobs may also not recognize that they have employees experiencing burnout, and this adds to the stigma of seeking help.

Many factors that lead to burnout include unmet expectations and lack of social support *(Thomas and Lankau, 2009)*.

According to Crocker, Lee and Park (2004), being devalued in an environment characterized by competition or evaluative concentration is a powerful trigger for declining self-esteem, especially for female employees.

The results may reflect the fact that women have less influence in the workplace and need to balance work and family life, and overtime can cause additional stress in these areas.

Competence and stress management are also linked because competence contributes to the psychological functioning of individuals *(Puig, et al., 2012).*

2. CAUSES OF BURNOUT

According to the burnout theory, when individuals perceive or experiment that they do not have enough resources, such as time, energy and support, to balance the demands of their work, they are more likely to be vulnerable to burnout *(Thomas & Lankau, 2009)*. It should be noted that burnout is not exclusively related to the workplace, as research has shown that privacy and social support have also played a key role *(Blom, 2012).*

However, more modern theories have argued that workplace and personal characteristics should be studied simultaneously in the organizational environment *(Bianchi, 2018; Maslach and Leiter, 2016a).* These job factors (organizational risk factors) are compiled into six critical areas of the workplace context *(Maslach et al., 2001)*:

- Workload: Workload is one of the most discussed sources of burnout and the most obviously related to the burnout exhaustion part *(Maslach and Leiter, 2008).* The imbalance can occur through numerous requests and responsibilities made with a shortage of resources.
- Control: It indicates how much autonomy the staff has over their work. Inconsistencies in control reflect that the employee does not have sufficient control over the critical size and resources required for the workplace
- Reward: It leverages positive feedback and recognition, be they financial, social, or both. The mismatch here is the lack of positive feedback for the work that people do.

- Community: Reflects the quality of social synergy (personal relationship and team interaction) in working with colleagues, managers and clients.
- Fairness: It reflects trust, openness and respect in the workplace.
- Values: It reflects the aspirations, motivation and ideals of the individual regarding the field in which he/she operates. Imbalance occurs when there is a conflict between individual and organizational values *(Maslach et al., 2001).*

According to Maslach and Leiter (2016a) and Maslach et al. (2001), any inconsistency or imbalance between the employee and the six areas presented above can increase the likelihood of professional burnout.

While the mismatch between the person and the factors at work can lead to a higher risk of experiencing burnout, some personal traits of individuals can also contribute to the possibility of burnout. Personality traits can play a significant role as a coping mechanism *(Ghorpade et al., 2007)* or as a burnout size enhancer *(Maslach and Leiter, 2016a).*

For example, hardness is a collection of personality traits used by individuals as a mechanism for adapting to a stressful situation *(Kobasa, 1979).*

On the other hand, people who show a less resilient personality also display a higher score in burnout, especially the size of exhaustion *(Maslach et al., 2001; Maslach and Leiter, 2016a).* Burnout scores are more prominent among people who have a more external locus of control - the individual perception of the event and achievements as a result of chance, destiny or under the control of the power of others, while people who have more internal locus of control - the individual perceives the event as being conditioned by his behavior, ability and efforts *(Rotter, 1966)* - are less prone to exhaustion *(Maslach et al., 2001).*

Neuroticism is also strongly associated with a higher level of burnout *(Bianchi, 2018; Swider and Zimmerman, 2010).*

3. RESEARCH METHODOLOGY

The objective of the work:

Through this research we set out to discover the effects of burnout on the professional activity of teachers and the effects it can have on them.

Working hypotheses:

- It is presumed that there is a negative correlation between exhaustion and fulfillment and determination in teachers.
- It is presumed that there is a negative correlation between burnout and general satisfaction in teachers.

The group of participants:

The sample consists of 206 participants. Of the 206 participants, 190 of them are female (92.23%) and 16 male (7.77%).

In terms of teaching experience, the teachers who participated in my research have the teaching experience between 1 and 40 years. 19 of them have experience between 1 and 5 years (9.22%), 27 have experience between 6 and 12 years (13.11%), 43 between 13 and 20 years (20.87%), 78 between 21-30 years (37.87%) and 39 between 31 and 40 years (18.93%).

In terms of marital status, 152 of the participants are married (73.79%) and 54 are unmarried. At the same time, 152 of the participants have children, and 54 have no children (26.21%).

Participants also mentioned their monthly income. Out of the total number of participants, 25 of them have income between 2500 and 3000 lei (12.14%), 27 participants have income between 3000-3500 lei (13.11%), 34 participants have income between 3500-4000 lei (16.50%), 52 participants have incomes between 4000-4500 lei (25.24%), 31 participants between 4500-5000 lei (15.05%) and 37 between 5000 and 6000 lei (17.96%).

At the same time, research participants teach at different levels of study.13 of the participants teach at preschool level (6.31%), 66 of the participants teach at primary level (32.04%), 40 at secondary level (19.42%), 41 at high school level (19.90%) and, last but not least, 46 teach at university level (22.33%).

If we refer to the age of the participants, 13 participants are aged between 18 and 29 years (6.31%), 41 are between 30 and 39 years old (19.90%), 134 between 40 and 55 years old (65.05%) and 18 between 56 and 65 years of age (8.74%).

Of the 206 participants, 152 of them have children (73.79%) and 54 have no children (56.21%).

The size of the class that the participants in my research teach is also an important factor to mention: 50 participants teach classes between 1 and 20 pupils (24.27%), 63 teach in classes between 21 and 30 pupils / students (30.58%) and 93 teach in classes between 26 and 30 students (45.15%).

Last but not least, I will also specify the background of the participants. 155 of them live in urban areas (75.24%) and 51 live in rural areas (24.76%).

Working tools:

Questionnaire "Mentality towards work" (Constantin, 2004)

The questionnaire consists of 27 items, and fthe actors of the questionnaire are:

I. Mentality towards work (overall score) expressing a negative attitude towards work (low scores) or a positive attitude towards work (high scores), quality work being seen as a condition of personal existence.

II. Fulfillment and determination: work is perceived positively, as a factor of fulfillment, and involvement in work is stated as a condition of existence.

III. Obligation and avoidance: work is evaluated without much enthusiasm, more as a tedious obligation, without involvement and only the negative aspects of it being noticed.

Questionnaire "Job satisfaction" (Constantin, 2004)

The questionnaire consists of 32 items that highlight four factors:

I. Remuneration and promotion: dissatisfaction (low score) or satisfaction (high score) of an employee regarding rewards (salary, other financial incentives, recognition opportunities, or promotion) of the work performed by the employee.

II. Leadership and interpersonal relationships: dissatisfaction (low scores) or contentment (high scores) with the social climate and relations with colleagues or with the boss, as well as with that of the relaxed, non-conflicting atmosphere.

III. Organization and communication: the employee's dissatisfaction (low scores) or his satisfaction (high scores) with the way in which the work is organized and carried out: defining tasks, effort, communication, feedback, etc.

IV. General satisfaction: the extent to which the employee is satisfied with the work he performs, both in terms of his organization and in terms of the rewards he receives for his work (material or moral rewards) and the interpersonal climate in which he carries out his work.

The Maslach Inventory of Measuring Burnout (Schaufeli, Leiter, Maslach, Jackson, 1996, pp. 22-26)

The questionnaire consists of 16 items, containing four subscales (Exhaustion, Cynicism, Professional Inefficiency, Total).

I. Exhaustion: 1, 3, 5, 11, 14

II. Cynicism: 2, 7, 8, 13, 15

III. Professional inefficiency: 4, 6, 9, 10, 12, 16

IV. Total: all items

Verification of assumptions:

It is presumed that there is a negative correlation between exhaustion and fulfillment and determination in teachers.

To begin with, we calculated the starting indices by obtaining (N= 11.23 for exhaustion and N=55.98 for fulfillment and determination), the median (N=11 for exhaustion and N=56 for fulfillment and determination), the standard deviation (N= 7.062 for exhaustion and 7.58 for fulfillment and determination) and variance (N=49,867 for exhaustion and N= 49,867 for fulfillment and determination) in terms of exhaustion and fulfillment and determination.

Table 1. - The test of normality of the distribution of variable scores in relation to the second hypothesis.

Tests of Normality

	Kolmogorov-Smirnov[a]			Shapiro-Wilk		
	Statistic	df	Itself.	Statistic	df	Itself.
fulfillment.si.determination	,084	206	,001	,981	206	,008
exhaustion	,086	206	,001	,967	206	,000

a. Lilliefors Significance Correction

The data presented in Table 1 shows a non-normal distribution of scores.

Table 2.- Correlation table.

Correlations

			epuizare	implinire.si. determinare
Spearman's rho	epuizare	Correlation Coefficient	1,000	-,196**
		Sig. (2-tailed)	.	,005
		N	231	206
	implinire.si.determinare	Correlation Coefficient	-,196**	1,000
		Sig. (2-tailed)	,005	.
		N	206	206

**. Correlation is significant at the 0.01 level (2-tailed).

This correlation is a negative one, as we can see below at the point cloud, since the cloud is oriented downwards (from the upper left to the bottom right).

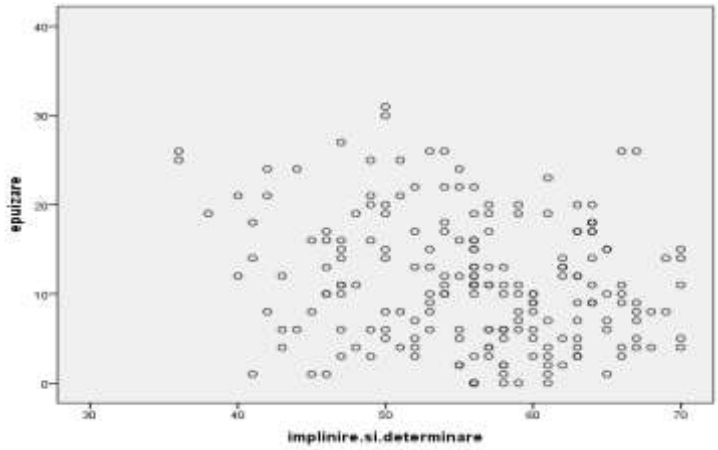

Figure 1. - The point cloud of the correlation between exhaustion and fulfillment and determination.

Existential fulfillment means fulfillment in life in general, work being only one aspect. Existential fulfillment is neither about fulfillment in life, apart from work, nor about fulfillment in work, apart from other aspects of life. By virtue of existential fulfillment, work is given a place in life. The correlation between the four aspects of existential fulfillment and the pressure of work and burnout can be explained as follows: that someone who is incapable of making a clear distinction between himself and the environment has lived his life for himself, and this can easily lead to his overuse. Someone who fails to connect work with self-transcendence can experience his work as a burden and suffer from a lack of job

satisfaction, exhaustion and cynicism. Someone who does not carry out their work by making goal-oriented choices that they can support (freedom and responsibility) can resort to alternative means of fulfillment, such as career, performance, status, power and income.

These aspects can make that person vulnerable, since achieving these alternative goals will depend on many unverifiable circumstances. People who manage to incorporate work into existential fulfillment work with inner consent and therefore experience less pressure from work.

In burnout studies, only a few attempts have been made to quantify professional fulfillment as a possible determining factor of burnout *(Yiu-kee and Tang, 1995; Nindl, 2001).*

Moreover, Pines (2004) found correlations between existential fulfillment in life and even professional fulfillment and a decrease in the level of exhaustion. But apart from the studies conducted by Yiu-kee and also Tang (1995) and Nindl (2001) the aforementioned correlations have barely been empirically examined. There are various reasons to examine the importance of existential fulfillment as a possible determining factor of burnout among teachers.

First, Schaufeli and Enzmann (1998) viewed the conflict between intentions and the reality of work as the main factor in the onset of burnout. Intentions result from aspects of life that are considered to be valuable, and value is related to fulfillment and determination. Insufficient fulfillment is linked to unrealistic values and intentions that can lead to conflicts with the realities of the workplace, increasing the risk of falling victim to burnout.

Secondly, as has been said before, burnout is likely to increase as a result of cultural changes, for example the trend of individualization and the high expectations of new professionals *(Schaufeli and Enzmann, 1998)*. Cultural changes are associated with changes in existential fulfillment. The implication is that burnout will become a bigger social and therefore educational problem.

Third, there is a specific reason to include teachers in burnout research. The requests made to teachers largely involve emotionally charged relationships with students and parents.

Moreover, every year, many teachers feel unable to continue their work. Defining their position requires them to show great independence that must be based on existential fulfillment. Only when teachers are convinced of their own goals will they be able to stay with them and cope with resistance. If they fail to do so, they risk falling victim to the ambiguity of the role, and this could increase the chances that they will face an increase in pressure at work and burnout.

3.1. It is presumed that there is a negative correlation between burnout and general satisfaction in teachers.

To analyze the validity of the hypothesis we calculated the starting indices and identified the mean (N = 11.29 for exhaustion and N = 126.73 for general satisfaction), the median (N = 11 for exhaustion and N = 128 for general satisfaction), the standard deviation (N = 6,956 for exhaustion and N = 17.84 for overall satisfaction) and variance (N=48,388 for exhaustion and N= 318.26 for overall satisfaction) in terms of exhaustion and overall satisfaction.

Table 3. – Test of normality of the distribution of the scores of variables in relation to the fourth hypothesis.

Tests of Normality

	Kolmogorov-Smirnov[a]			Shapiro-Wilk		
	Statistic	df	Itself.	Statistic	df	Itself.
exhaustion	,083	231	,001	,968	231	,000
satisfaction.generala	,057	231	,070	,990	231	,120

a. Lilliefors Significance Correction

The data presented in Table 3 shows a non-normal distribution of scores for exhaustion and a divisiveness that can be considered normal for the general satisfaction characteristic.

Table 4. – Correlation table.

Correlations

			epuizare	satisfactie. generala
Spearman's rho	epuizare	Correlation Coefficient	1,000	-,558**
		Sig. (2-tailed)	.	,000
		N	231	231
	satisfactie.generala	Correlation Coefficient	-,558**	1,000
		Sig. (2-tailed)	,000	.
		N	231	231

**. Correlation is significant at the 0.01 level (2-tailed).

This correlation is a negative one, as we can see below at the point cloud, since the cloud is oriented downwards (from the upper left to the bottom right).

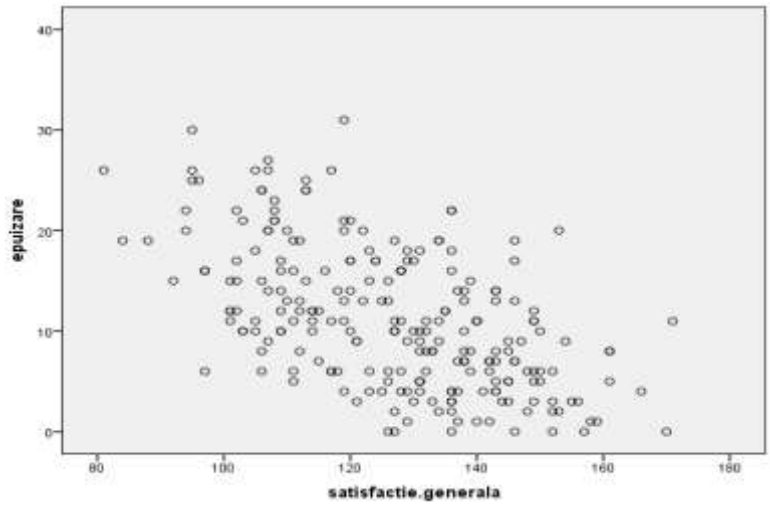

Figure 2. – Point cloud of the correlation between exhaustion and general satisfaction.

The general satisfaction of a teacher implies, according to the interpretation of the questionnaire "Job satisfaction" *(Constantin, 200)*: the extent to which the employee is satisfied with the work he performs, both in terms of his way of organization and in terms of the rewards he receives for the activity performed (material rewards or moral) and the interpersonal climate in which they work.

A large part of the teacher's life is dedicated to work and, as a result, job satisfaction becomes a very important aspect of the professional activity, it has important consequences, both personally and on the organization in which the work is carried out.

Job satisfaction is a concept that also interests the management of the organization, because it has a positive impact on its development activity *(Blau et al., 2008).*

In general, job satisfaction refers to the happiness and pleasure of the individual that he receives from his work circumstances. Psychological factors (such as depressions and frustrations), demographic factors (gender, age, etc.) and environmental factors (climate and work) can affect teachers' level of job satisfaction *(Crossman and Harris, 2006).*

According to several researchers, the teaching profession involves more stress than other professions *(Baltas and Baltas, 2000).* Several research studies have looked at negative associations in teacher engagement and burnout *(Akin and Orman, 2015).*

Scientific studies over the past decade on job satisfaction have identified factors that influence teachers' job satisfaction. The study led by Zembylas and Papanastasiou (2006) identified the following factors: relations with students,

contribution to society, collaboration with colleagues, increase of professional personal development; As a result of the study led by Cretu (2000), it was discovered that a factor influencing the satisfaction in work is the content of work, and Harris et al. (2007) identified as a factor, success in work. The fact that teachers work with students, feel good when a student learns, see how students grow up and make a difference in students' lives are reasons to have job satisfaction, according to an extensive study conducted across the United States of America in 2001 by Harris Interactive, Inc.

First of all, the teaching profession, most of the times, involves the allocation of a large volume of time and intellectual effort necessary for the proper preparation for the lesson: many hours of study, analysis of articles and specialized works, elaboration of the strategy for approaching each lesson, for each class, preparation of teaching materials, evaluation tools, analysis of the lessons carried out and appreciation of the students.

Secondly, teachers , most of the time, spend a lot of time involved in managing relationships with both students and superiors, co-workers, parents and more. These relationships involve high consumption of mental, emotional, even physical energy resources.

Thirdly, the continuous reform of education in Romania has the effect of restructuring the curriculum, the curricula, the teacher being constantly faced with new challenges and, most of the time, he does not have the freedom to choose. At the same time, to these problems arising during their careers, teachers are facing new challenges that they have to face such as the increased class size and the volume of increased loads.

All these things that are a reality in the education system are a main source of teacher burnout and dissatisfaction in the workplace. If there were a drastic change in the attitude of the management and not only, I believe that there would be far fewer resignations in this area because many of teachers, especially beginners, after a while they give up their job and retrain.

Under these conditions, over time, the joy of success and the emotions of achievements become more and more difficult to achieve, and this fact erodes the energy and enthusiasm of the teacher and the phenomenon of emotional exhaustion appears, which manifests itself in decreased self-esteem, problems from the point of view of health, poor interpersonal relationships, disinterest in the workplace, absenteeism and can culminate in abandonment of the profession.

CONCLUSIONS

Teachers are overworked, the salary is inadequate and they work overtime, so these aspects directly lead to exhaustion. Professional exhaustion can be amplified by the problems that the teacher has in his personal life, these problems leading even to the abandonment of the profession and re-profiling.

Teachers can prevent burnout through self-analysis, recognizing the risk of burnout of this profession, time management, program planning, eliminating sources of stress, healthy lifestyle, self-appreciation, communication at work with both management and colleagues and rest.

In particular, emotional exhaustion is likely to interfere with a teacher's efforts to implement effective training practices and can influence the development of negative attitudes and interactions with students (Lamude, Scudder and Furno-Lamude, 1992).

Unsurprisingly, it has been shown that teacher exhaustion and stress negatively influence the well-being of teachers and students (Beer and Beer, 1992; Geving, 2007,).

In addition, Kokkinos (2007) found that teacher depletion was significantly associated with higher levels of antisocial and oppositional/defiant behaviors of students (e.g. bulling).

The self-efficacy of teachers is also negatively associated with the stress and exhaustion of teachers with evidence suggesting mutual effects over time (Brouwers and Tomic, 1999). *Similar to the exhaustion and stress of teachers, self-efficacy is associated with classroom management* (Reinke et al., 2013). *Conceptually, teachers who feel more confident in their ability to manage behaviors in the classroom are more likely to provide effective practices and observe positive student outcomes. In turn, the positive responses of students to effective classroom management serve as positive feedback for increasing self-efficacy and the likelihood that the teacher will provide effective practices in the future. On the contrary, lack of trust or effectiveness can interfere with a teacher's ability to be effective in meeting students' needs.*

The effectiveness of teachers is also linked to the academic achievements of students. In a study of academic gains achieved in a school year of primary school students, Muijs and Reynolds (2002) found that academic achievements and annual earnings were best predicted by teacher behavior. In addition, the authors found that teachers' self-efficacy and knowledge of the subject affected the behavior of teachers, thus creating an indirect relationship with the academic achievements of students.

Self-efficacy predicts future behavior. The theory of self-efficacy suggests that if a teacher will be successful on a task, then he/she is likely to believe that he/she will be successful again in this task (Tschannen-Moran and Hoy, 2007). *Conversely, if a teacher perceives that he or she is not competent in managing student behaviors or promoting the academic achievements of their students, then the teacher will be less likely to try to further affect these areas.*

In particular, self-efficacy is a characteristic of the malleable teacher that can be altered through cognitive restructuring and mastery experiences (Bandura, 1997). *Thus, building self-efficacy and improving confidence in effective practices*

can serve as an entry point to reduce stress and burnout of teachers, while improving outcomes for students.

As has been demonstrated in several studies, teaching is a very stressful occupation (Johnson et al., 2005)*, and most teachers experience stress in the workplace. Long-term stress decreases job satisfaction and can lead to chronic exhaustion that can turn into burnout syndrome. The implications of burnout syndrome are strongly negative for both the personal and professional lives of teachers.*

Because burnout syndrome endangers teachers' well-being, the quality of teaching, and relationships with students, it is important to look for ways to avoid teacher burnout. Many studies have confirmed the protective role that coping strategies play in managing stressful situations, teacher self-efficacy or social support.

Many studies confirm that teachers with high levels of burnout syndrome are not able to establish positive relationships with students, understand students' needs, stay in touch with trends in their field and provide effective pedagogical lessons (Greenglass et al., 1996,; Yong and Yue, 2007 ; Shen et al., 2015).

Other studies show that teachers with a high level of burnout syndrome suffer from somatic problems such as back pain or headaches, low self-esteem, lack of orientation towards meaningful life, interpersonal conflicts and low social support. In many cases, burnout syndrome leads to depression (Dilekmen and Erdem, 2013)

Since burnout syndrome endangers the well-being of teachers, the quality of the teaching process and relationships with students, it is important to look for ways to avoid teacher burnout. Loonstra et al. (2009) argue that the exhaustion of teachers is a barrier to a higher quality of the educational system, and therefore it is necessary to pay scientific attention to this aspect.

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PROFESSIONAL TRAINING AND EDUCATION AS THE FOUNDATIONS OF SOCIAL CAPITAL BUILDING

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Abstract

Education is a public and common good under the care of states and it is often seen as a societal endeavor that involves an inclusive process of policy formulation and implementation. Social actors and civil society, teachers and educators, the private sector, communities, families, youth and children have important roles in accomplishing the right to a quality education. The role of states is essential in establishing and adjusting the standards and norms designed to achieve gender equality. This rights-based approach ensures not only that girls and boys, women and men have access to and promote learning cycles, but that they are equally treated in and through education. These three fundamental principles summarize not only the normative acts of the UN/UNESCO regarding education for sustainable development and for all, but also those related to human rights, generally contained in regulations. The principles transposed in the documents demonstrate that the regulation and the preocupations in applying the established norms are the attribute of the state, the only one that has the power to generate normative acts, enact and apply, but also to ensure the consolidation of the social capital of man and citizen.

Key words: *professional development, education, equal opportunities, regulations, educational policies, inclusion.*

INTRODUCTION

The evolution of society and continuous growth of the human needs impel as main purpose the professional development and access to resources of students, but also other direct beneficiaries of professional and educational training, who can relish the benefits offered by graduate status. Benefits and status provide the

individual with a professional position and obviously the welfare state that emerges in the context of social stratification.

Educational services are intended for all people of school age but also for adults eager to develop and improve their skills and professional status. Therefore, managing a project should mean applying benefits to all and each one. Because it is difficult to move from the ideational space of intentions to the space of the concrete, the concern that everyone be respected and educated had to take shape through a certain liberating social awareness, which gave birth to a sense of social justice. Education for all is both an ideal and a reality over time, various national and international entities regulate what is to do or what should be done.

This goal has been included in declarations, laws and international treaties that establish the right to knowledge and literacy as a fundamental right available to all human beings.

1. THE PROVISIONS OF ARTICLE 26 OF THE UNIVERSAL DECLARATION OF HUMAN RIGHTS OF 1948

1. „Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit.

2. Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace.

3. Parents have a prior right to choose the kind of education that shall be given to their children."(https://www.un.org/en/about-us/universal-declaration-of-human-rights)

In the context of *education for all*, in order to facilitate learning, to keep pace with socio-economic development and to redress the gaps between states, 26 article provides regulatory models in the domestic law of states to include provisions on education in all forms of manifestation.

These internal regulations must be found in all stages of education, whether we talk about media literacy, educational communication, instructional management, ICT literacy or learning skills in virtual environments. Strongly related to the power and influence of international regulations, we also find provisions that prove the right to education and development in article 32 of the romanian Constitution. These provisions establish this fundamental right to education, which has a high impact on human development:

„(1) The right to education is provided by the compulsory general education, by education in high schools and vocational schools, by higher education, as well as other forms of instruction and postgraduate improvement.

(2) Education at all levels shall be carried out in Romanian. Education may also be carried out in a foreign language of international use, under the terms laid down by law.

(3) The right of persons belonging to national minorities to learn their mother tongue, and their right to be educated in this language are guaranteed; the ways to exercise these rights shall be regulated by law.

(4) State education shall be free, according to the law. The State shall grant social scholarships to children or young people coming from disadvantaged families and to those institutionalized, as stipulated by the law.

(5) Education at all levels shall take place in state, private, or confessional institutions, according to the law.

(6) The autonomy of the Universities is guaranteed.

(7) The State shall ensure the freedom of religious education, in accordance with the specific requirements of each religious cult. In public schools, religious education is organized and guaranteed by law." (https://aceproject.org/ero-en/regions/europe/RO/consitutuion.pdf/view)

Close examination of each paragraph of the constitutional article, one can observe the details related to compulsory education and how the obligation is established through other regulations that have the Constitution as the main source of law. In the content of the article we find details referring to schooling levels, such as compulsory general education, high school education and vocational education.

The autonomy of university education is mentioned as well as the other levels of professional training that find their place in the constitutional regulation. Paragraph 3 of the article recognizes the right to study in the mother tongue for citizens belonging to national minorities. Paragraph 4 regulates free education in the public education system in Romania, one of the first states that have introduced free education in the public education system in South-Eastern Europe. Paragraph 7 mentions religious education that may be established and organized under the law.

The right to education can also be found in European regulations that have a general character and pursue to establish a standardization of regulations in the field of education and professional training - *Charter of Fundamental Rights of the European Union*. In the presentation of the text, it is said that the article is inspired by the constitutional traditions as by Article 2 of the Additional Protocol to the ECHR, which states: „No person shall be denied the right to education. In the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and

teaching in conformity with their own religious and philosophical convictions." (https://fra.europa.eu/en/eu-charter/article/14-right-education).

CONVENTION on the rights of the child, adopted by the General Assembly of the United Nations

This international agreement includes two articles: 28 and 29, both with extensive provisions and norms applicable worldwide in favor of the intellectual and biological development of children. The document specifies many aspects related to the applicability of the regulations contained in the two articles that explicitly specify the child's rights to education and human development. At the end of the examples, the arguments for the precise application of the provisions highlighted by the Convention are also presented.

„No part of the present article or article 28 shall be construed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions, subject always to the observance of the principle set forth in paragraph 1 of the present article and to the requirements that the education given in such institutions shall conform to such minimum standards as may be laid down by the State." (https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-child).

In other words, the chance to be equal or have equal opportunities means ensuring access to quality education and participation in the institutional system of education and its benefits *(Vrăsmaș, T, pp. 16-19)*. A distinction could also be made between the terms „equalization" and „equality": while the first denotes the process of making people equal and belongs to the concrete space, the second implicates the, being equal process" conceptualization, therefore it corresponds to the ideational/desirable space.

The equalization process and the ideal of equality are closely related to education for all, because, both conceptually and praxiologically, the whole (society, group) does not represent a homogeneous entity, but a sum of specific individuals, with heterogeneous traits, who are ideologically identical in rights but must also be concretely accepted by others as equal.

The balance of trajectory between the space of ideas/norms and the space of manifestations/perception is achieved through all, but for each. Thus, equality is for all, but it is applied to each. To realize this desideratum, the main problems consist of the limited opportunities for education, the conceptual limitation of the system and the beneficiaries of education, the existence of specific groups with a high degree of exclusion risk.

In order to reduce the discrepancies between everyone's right to be equal and the concrete reality, it is necessary to apply collective/political measures to equalize opportunities, specific measures for certain areas or types of disadvantaged groups, targeted measures to identify each unique case. If no action is taken at the level of societal mechanisms, group interactions and, of course,

individually, efforts to equalize education for all tend to have no effect *(Vrăsmaș, T., 2004, pp. 26-27).*

UN/UNESCO has made tremendous efforts to normatively standardize and to apply nationally the paradigm of education for all, starting from 1990. The next step is to evaluate the reference moment of the 21st-century beginning and then to continue the intentions of education for 2015-2030. It is important therefore to link the broad concept of inclusion to that of equity and introduce quality education and lifelong learning. In this sense, we can enunciate the following general principles (UNESCO Guide):

a) inclusion and equity are overarching principles that guide all educational policies, plans and practices;

b) - the national curriculum and its associated assessment systems are designed to respond effectively to all learners;

c) All partners who work with learners and their families understand and support the national policy goals for promoting inclusion and equity in education

d) Systems are in place to monitor the presence, participation and achievement of all learners within the education system.

Although there is a delimitation in the plan of ideas, from a practical perspective, they converge in the application plan, involving all educational actors, together with the school - as a functional space of education to which the local community is added.

2. THE PROCESS OF EDUCATION AND INCLUSION IN BUILDING EDUCATIONAL CAPITAL

Following the same direction of what has been explained above, when we discuss about inclusion, we can accept that inclusion is a permanent process, but also a way to respond to the needs of diversity. (*Vlăsceanu, 2019).* It should be noted that the important thing is to live with the difference, the explicit acceptance of the other and grasp from this difference to fully realize that our identity – as a group or individual is related to otherness.

Social and educational inclusion is concerned with identifying and removing barriers, collecting, comparing and evaluating information from a variety of sources and statistics. There are also other elements of the educational system such as: the presence of students - in terms of space and time, their participation - in terms of the quality of the educational act, school success, academic achievements. All there are similarities and differences between the concepts of equality and equalization, inclusion and equity, integrated education and inclusive education. However, there are also certain differences between equality and equity.

The first difference could be defined as the state in which the impartial and fair treatment of all actors participating in the educational act, in our case, the students, is ensured. The second difference is represented by the state of

distribution of resources to groups and individuals, regardless of particularities such as race, ethnicity, sex, gender, disability.

In other words, equality is equivalent to the treatment of everyone according to the normative system and equity is represented by the treatment of everyone according to their needs and particularities. Equality is about similarity, uniformity, norming, ideational and desirable space according to which everyone has the same rights. This situation provides a normative point from which everyone could start in building social capital. Hese elements support the concept of inclusion and building social capital.

To be more precise, equity could be perceived as an effect of equality, strongly bonded with concepts such as non-discrimination, impartiality, ethics, individuality. Returning to the UNESCO 2015-2030 educational project, we can affirm the fact that equity and inclusion represent capital concepts, without whom the education of the 21st century could not face the moral imperative of education for all.

Ultimately, the quality of education must be achieved at the level of the entire education system for all members of society who want to build their social capital. Whether we are talking about inclusion, equity, quality or lifelong learning in education for all (EFA), it is essential to contextualize these aspirations in the wider context of the world in which we live. This signals to us that the educational approach is not only an ideational one, understood as theorizing, conceptualizing and elaborating policies, but also a real one, with educational actors involved in it.

In this manner, we integrate into an educational culture that has certain characteristics: a certain degree of development of culture and civilization, a certain geographical and demographic determination, various types of collective mentality but also variable ability to use exhaustible resources *(Vlăsceanu, 2019).* Rephrasing our ideas, it is imperative to keep a neat balance between the use of the human resource, which is theoretically inexhaustible, and the use of the material/natural resource, which is, as it has been observed in the last decades, exhaustible.

Every human activity involves resource usage that leads to change, evolution and/or development, and for the long and very long term, it must be sustainable or rational. These desiderata were included in several projects and programmatic documents at the international level. One major event is the 1990 UNESCO World Conference "Education for All" held in *Jomtien*, Thailand. The main issues, objectives and future plans were discussed, reaffirming community's commitment to ensure the right to education for all people *(UNESCO Final Report, 1990, pp. 43-49):*

- expansion of preschool and early childhood education activities;
- universal access to education and completion of primary education;
- improving learning results;

- reducing adult illiteracy;
- expanding basic education and training/cultivating skills for children and adults;
- increasing the acquisition of knowledge, skills and competences for a better life among individuals and families;
- universalizing access to education and promoting equity;
- the multiplication of learning spaces/environments but also the strengthening of partnerships
- universal access to education and the promotion of primary education at a rate of 80% by the year 2000; - halving the adult illiteracy rate and increasing the share of female literacy by the year 2000;
- improving learning outcomes so that the passing rate increases (beyond primary education);
- expanding basic education and skills training/cultivation for children and adults to include poor, disadvantaged and/or disabled young people/children".

(https://unesdoc.unesco.org/ark:/48223/pf0000243724.)

The second important moment is represented by the 2000 World Forum for Education, organized in *Dakar* in Senegal. States representatives as well as the organizers elaborated the principles for an extensive and effective education and raised the standards, in accordance with the partial achievement of the targets set in 1990. Aditionally, the qualitatively and quantitatively expanded educational principles of the 21st century and the new millennium were developed. The main issues, objectives and aspirations discussed at the meeting are encompassed in UNESCO's The Dakar Framework for Action, 2000.

We should mention here another turning point in the field of education, namely The Incheon Declaration and the Framework Action for the Implementation of Sustainable Development which is a follow-up of ideas expressed at 2000 World Forum for Education. The 2015 World Education Forum (WEF) adopted the *Incheon* Declaration, committing to undertake steps toward promoting education opportunities for all by 2030. WEF 2015 took place in Incheon, Republic of Korea and set out a new vision for the next 15 years. Discussions were centered around five themes: the right to education; equity in education; inclusive education; quality education; and lifelong learning. In accordance with this document, the proposed objectives seem to be extremely ambitious. (pp.20-21).We will reproduce 4 outcomes as they are expressed in the programmatic documents:

„The Sustainable Development Goal 4 (SDG 4) – Ensure inclusive and equitable quality education and promote lifelong learning opportunities for all.

4.1 By 2030, ensure that all girls and boys complete free, equitable and quality primary and secondary education leading to relevant and effective learning outcomes.

4.2 By 2030, ensure that all girls and boys have access to quality early childhood development, care and pre-primary education so that they are ready for primary education.

4.3 By 2030, ensure equal access for all women and men to affordable and quality technical, vocational and tertiary education, including university.

4.4 By 2030, substantially increase the number of youth and adults who have relevant skills, including technical and vocational skills, for employment, decent jobs and entrepreneurship. (https://uis.unesco.org/sites/default/files/documents/education-2030-incheon-framework-for-action-implementation-of-sdg4-2016-en_2.pdf)

Therefore, it is expected a reasonable time interval to achieve a real equality of opportunity regarding education, to give access to all those who are interested in human and intellectual development. Decisions and proposals, debates in various educational meetings are based on people's desire to be able to develop, evolve, and be involved as citizens in the societies in which they live.

CONCLUSIONS

In this study, we have tried to include some elements that define the school infrastructure but also regulations regarding education in the internal and external plan. On a different note, I have mentioned several international forums and conferences where principles regarding education have been decided and outlined.

The objectives of these strategic targets are not new, but they gather and synthesize a unified vision of the United Nations on what is desirable to happen in the medium and long term. At the same time, there is no axiological distance between the goals of education for all and those of education for sustainable development. Social capital is strengthened due to the fact that the educational process takes place in a space-time continuum with limited resources. Unlike the previous education prognosis and expectances, the 2015-2030 period, includes higher demands, compared to the last one.

In this context, we mention that primary education no longer represents an ambiguous target, but an achievable and partially achieved one. Moreover, the transition between secondary and tertiary education is framed in a vision that includes regulations that allow generic student to have access beyond the ideal of basic education and fulfill aspirations toward higher-level qualifications. In this way, the present position towards university education shows us that, indeed, we are talking about a sustainable education and education for sustainable development.

Furthermore, the expectations regarding a post-secondary education are not without purpose because they are connected to the labor market, especially through the concern for the practical aspect of technical or professional training; in other words, insertion into the labor market represents an intrinsic objective to

sustainable development, because, as we have mentioned above, there is anorganic link between the economic and social-educational spheres. Last but not least, international cooperation and qualified training for educators/teachers are positive factors that help the learner gain more efficient and complex skills, so necessary for society to evolve.

According to the same programmatic document adopted at Incheon (Target 4 – Ensure inclusive and equitable quality education and promote lifelong learning opportunities for all. p. 28), the goals or targets listed above can be transposed into the following principles: „- education is a fundamental human right and an empowering, enabling right –to fulfill this right, countries must ensure universal equal access to inclusive and equitable quality education and learning, which should be free and compulsory, leaving no one behind; education should aim at the full development of the human personality and promote mutual understanding, tolerance, friendship and peace", but also should aim to strengthen social capital.

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THE INFLUENCE OF POPULATION SURVEYS ON THE DEVELOPMENT OF SOCIAL CAPITAL

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Abstract

Population surveys represent an extremely important quantitative method, giving valuable details in regard to the great diversity of characteristics of a state's population at a certain time. Even though it is extremely important and they are mandatory by nature, the population survey that was done this year in Romania was negatively affected by a series of issues, having to do with the low participation rate which had as a result the postponing of the deadline several times. This situation highlighted the negative attitude that usually the citizens have in connection to state authorities. Social capital, which is mostly based on trust, has a huge rule on the success of the survey. If we are talking about a low social capital, this will usually materialise in a lack of participation of the citizens in the process, but when participation increases this leads to the development of social capital. These two aspects, the survey process on one hand, and social capital on the other hand, have an interdependence, being marked by a people's history, civic culture and education.

Key words: *population survey, social capital, civic culture, citizen participation, trust.*

INTRODUCTION

The etymology of the Romanian "recensământ" is rooted in French, being derived from "recensement", the initial term used was „passer en revue", which would be literally translated as "review". *(Bargan, N, p.8).* The survey is one of the most important observation methods which makes possible the creation of statistics in demography. According to the UN *(Commission for Statistics)*, the survey represents a "a highly peculiar process that implies collecting, generalising, analysing and publishing, or disseminating through other methods of demographic, economic and social data which are representative at one point for the population

of an entire country, or of a well define region of a country,"According to the Romanian statistician Sabin Manuilă, "population censuses are important, not only to know the demographic and social structure of the moment, but also to see the trend of social evolution and the speed of development of a society". He was also one of the coordinators of the 1930 census conducted in Romania *(Bargan, N, p.9).*

The population census is the largest and most important statistical process of a state which opened at the end of the century. 18th, is organized regularly in almost all countries of the world, including Romania. The methods of carrying out censuses as well as processing data or using their results have an old tradition, but which support a continuous update, keeping pace with the changes of time, currently applying the most advanced technologies aimed at efficiency. Of the process *(Bargan, N, p.5).*

The census represents an extremely important quantitative statistical research, which is carried out at the level of the population that actually lives in the territory of a country at a precise moment. Thus, the Population and Housing Census of Romania refers to that resident population that lives on the territory of the country. As a quantitative method, it provides statistics on a number of aspects such as the demographic and socio-economic structure of the population, housing, living conditions, existing utilities in housing, etc.

Thus, the data obtained are used for the implementation of various public research policies or in the performance of various research statistics. In specialized literature, censuses have been over time procedures for recording the population, characterized primarily by the lack of errors and a very high statistical precision. Modern approaches emphasize population estimation problems, the results being improved by using various techniques and methods of estimating statistical data with other official data sources.

In the last decade, the quality of population censuses in the European Union states was a topic discussed and analyzed at the level of official European statistics *(Chirnuciuc, C, Vaida-Muntean, G, Vârdol, D, p.66)*. The census process helps both at the national level, as I mentioned, in the formulation of various public policies or in research, but on the other hand, it also helps to outline some overviews of the position of a state compared to other states, so it also helps in the formulation of comparative analyses.

1. THEORETICAL NOTIONS REGARDING SOCIAL CAPITAL

Regarding social capital, citing Robert Putnam, social capital represents those characteristics of social life: networks, norms, trust, which allow participants to act more effectively together to achieve common objectives *(Putnam, R, p.121)*. Also, social capital represents an argument and a pressure factor for the performance of social and governmental institutions *(Popescu, L, p.141).*

Both the trust of citizens in each other but also the trust of citizens in institutions, the willingness to live in accordance with the norms of the community you belong to and to sanction those who do not obey the laws of the community, all these elements are essential for the proper functioning of society and, implicitly, of democracy, contributing to the development of social capital *(Preda, D, p.5).* The main components of social capital are institutions, social networks and social values, but also sanctions (the latter represent the processes that ensure compliance with the rules by network members) *(Preda, D, p.5).*

Social capital can also be defined, according to Dietlind Stolle, "a societal good that unites people and allows them to pursue their common goals more effectively". The main components of social capital, on which the attention of numerous authors focuses in different ways, are: institutions - which are based mainly on laws but also on tradition, history, social networks - who knows who, social norms and values - formal rules and informal ones that guide our entire behavior but also the sanctions - which represent those processes that ensure compliance with the rules by the members of a society *(Preda, D, p.8).*

If all these components exist in a society, are respected and work in support of citizens, then the level of social capital in that society will be high, with individuals actively involved in the problems of the communities, who respect the laws and who show a high degree of trust in the authorities that lead them.

2. THE INFLUENCE OF THE CENSUS PROCESS ON THE DEVELOPMENT OF SOCIAL CAPITAL

These two basic components of the present work, namely the census on the one hand and the social capital on the other, are based on the concept of citizens' trust in the state authorities. When the census process is carried out normally, easily, without difficulties related mainly to the percentage of those who participate, this leads to the development of social capital. It is very important for citizens to participate in the census, because it is a civic duty that we each fulfill for the community in which we live, we all want a better future for ourselves and the generations to come. Completing the review questionnaire is mandatory because obtaining accurate and relevant results is a goal of major importance to each of us or to the communities in which we live, to us as a state. A low percentage of participation, given the fact that it is mandatory, does nothing but emphasize citizens' lack of interest, lack of information, fear or mistrust in state institutions.

Talking recently with several land surveyors from the city of Constanța, I found out that citizens' trust in the state authorities is extremely low, they consider that if they participate in the census they are doing the state a favor and I quote "what the state offers me is worth participating too at this census?". Situations of this kind are not particular or specific to a city or region, but are spread throughout the country, the causes being multiple. Also, political culture has a

major impact on the census process but also on social capital, but in the relationship between the three concepts, an extremely important role is played by education, lack of knowledge regarding personal data, fake news, etc., and all these elements prevent individuals from becoming civically involved because they lack trust in the authorities, their main concerns are others, and many prefer to pay fines rather than participate in the census. This causes the share capital of the company to decrease.

Social capital is created when relationships between people change in a way that facilitates all cooperation and action. In the present case, the action is represented by the census process and when citizens decide to participate in the census and thus be involved from a civic point of view, then social capital develops. In a democratic society gripped by corruption, fear, inflation, poverty or poor education, there will be a lack of trust in state institutions or the desire for civic involvement and this was clearly seen in this year's census process (2022) needing more many extensions of the completion deadline often encountering problems related to citizen indifference or technical problems.

But in this case the citizens are not to blame, but the lack of efficiency of the state institutions, because this distrust of the citizens in the state authorities, has its roots in the disappointment of the people who over the years had expectations, wishes, shortcomings and who waited for decades in line for the state to solve these problems. This did not happen and the citizens repressed all these shortcomings, considering the state an "enemy that does not deserve to be helped (through participation in the census)". When citizens would rather pay fines than participate in the census, it is clear that trust as the basis of social capital is at an extremely low level or absent. This aspect causes the level of social capital at the national level to decrease.

3. THE INFLUENCE OF THE CENSUS PROCESS ON THE DEVELOPMENT OF SOCIAL CAPITAL

As for the population census in Romania, it turned out to be an arduous process, needing several extensions of the completion deadline because those who participated were in an extremely small number initially. From a sociological point of view, the interaction between field reviewers and reviewees has been influenced by a number of factors, including the conflict in Ukraine.

In addition to this aspect, other factors influenced the evolution of the process and the interaction between the reviewer and the reviewed, these being represented by the poor education of the citizens, the lack of civic spirit but also a chronic mistrust of the citizens in the state institutions.

On the other hand, there were also problems regarding the technological means of completing the questionnaires, being another obstacle in bringing the process to a successful end. Based on all these problems, the citizens did not see this census as an obligation or duty of theirs as a citizen but as a favor done to the

state, choosing not to participate and thus leading to a decrease in the level of social capital.

CONCLUSIONS

As I have explained in this paper, social capital is formed by the totality of a state's institutions, interpersonal relations or social values and norms, all of which are based on citizens' trust in each other on the one hand and in the state authorities on the other.

The census is an extremely important part of a society that cannot be replaced, providing accurate, clear data on what exists in a state at a given time, being binding. When citizens are aware of the importance of this process, are informed, have a civic culture and participate in the census then citizens contribute to the development of social capital through the census process.

But in a society dominated by economic problems, poverty, corruption or poor education, the trust of citizens drops significantly, giving way to suspicions or fears, decreasing participation in the census for various reasons previously exposed in the paper, and thus the social capital suffers.

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SELF-AGGRESSION IN DELINQUENT TEENAGERS

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Abstract

This paper aims to to approach the issue of self-aggression among juvenile delinquents due to the actuality of the phenomenon, the life risk, but also the social and mental health implications of their reintegration into society. Our study aimed to provide an overview of accentuated personality traits and relevant aspects of the psychological history of 40 young delinquents who are institutionalized, some of whom have a psychiatric history.

We also observed the correlation of these traits with autolytic acts and illicit acts. The motivation of the study comes from the need to know adolescents who exhibit self-aggressive acts in order to intervene with programs to prevent suicide and juvenile delinquency.

Key words: *autoaggressiveness, delinquent teenagers, aggression, delinquent acts, autolytic acts.*

INTRODUCTION

The approach to the phenomenon of juvenile self-aggressiveness and its production mechanisms justifies its actuality and relevance by the intense character of this phenomenon, by the criminal offense, which brings serious damage to human interests, of maximum generality. It endangers the adolescent's life as well as the fundamental values and norms recognized and accepted within society, thus affecting his good functionality *(Banciu, D. 2000).*

The psycho-social guidelines in the field of juvenile delinquency support the idea that delinquent behaviors among minors are caused by the inability to adapt satisfactorily to the social environment, due to psychological disorders caused by a multitude of factors *(Focault, M. & Focault, M .1997).*

Among the delinquent behaviors of adolescents, one with a major impact is self-aggression. Due to the increase in the number of suicides and the awareness

of this social danger, it was proposed to introduce the "self-harm syndrome" in the DSM-V as a separate clinical entity *(Plener and Fegert, 2012).*

1. REVIEW OF LITERATURE

The appearance of delinquent manifestations in adolescents is linked to a lack of family socialization and/or the existence of educational dysfunctions at school. Due to the lack of knowledge of the socio-familial conditions and the lack of proper supervision by the school of students who display deviant behaviors from an early age, they can become illicit or self-aggressive acts with adolescence *(Pasca, M. D. 2005).*

Neighborhood subculture is a factor that can negatively influence a child's education. Neglected by family and school, the teenager takes refuge in groups because he is accepted here. Serious acts are usually committed in these groups: theft, vagrancy, destruction of property, rapes, crimes, consumption of prohibited substances, online violence, self-aggressive or hetero-aggressive acts.

Taking into account this aspect and correlating it with the unlimited access and appetite of adolescents in the virtual world, as well as with statistical data, we can conclude that delinquent adolescents have a much higher level of self-aggression than the general population *(Frazee, S.G., 2003).* Therefore, this phenomenon must be continuously studied because it can take on various forms of manifestation from parasuicide to intentional or manipulative suicide, all manifested in the online environment *(eg: various posts with a hidden SOS message, podcasts, YouTube videos, the Blue Whale phenomenon, The Fire Fairy).*

In the many definitions of aggression, the common aspect of aggressive behavior has been captured by the intentionality of the aggressive act: "Aggression can be defined as conduct that intends to harm, cause pain, suffering or death to another. The crucial element of the definition is the intention: the person must intend to do harm, for his act to be considered aggressive" (Butoi 2000).

"Aggressiveness can thus be considered as any form of behavior directed with intention towards objects, persons or oneself, in order to cause harm, injury, destruction and damage" *(Mitrofan, 1992).*

According to Berkowitz, the aggressive act is the result of the interaction between aggression-frustration *(Leonard Berkowitz 1969).* Berkowitz introduces the notion of the "weapons effect". In his understanding, through the process of social learning, some objects can be associated with aggression. Applying this principle to the delinquent environment, we could conclude that certain specific factors (weapons, drugs, alcohol or blunt objects) can influence the delinquent's behavior in the sense of intensifying aggression.

Bandura explains aggression from the perspective of social learning, the imitation of aggressive behavior. He argues that aggression manifests as a

function of: past personal and observed experiences; rewarding or coercive expectation; the impact or success of previous aggressive behavior, situational factors; cognitive factors *(Bandura, 1988).*

In Bandura's experiments, aggression is expressed by hitting a small child's doll, verbalizing aggressive intentions, but it is also expressed by self-mutilation or suicidal behavior. Suicide attempts are quite common, as are various autolytic behaviors such as scratching or burning the skin, swallowing/inserting objects, medicinal or toxic substances, refusing food, accessing various websites, online games.

Suicidal behavior is a way of expressing pain, but it can also represent a manipulative way of adolescents, such as to avoid abandonment or to obtain various other immediate benefits.

Adolescent self-aggression would represent an attempt to avoid strong negative emotions *(Marica, 2007).*

Another form of manifestation of self-aggression in adolescents is slander, it being a verbal form of premeditated aggression, which represents a way of "socio-moral murder". It presupposes the establishment of a target towards which the image-killing "poison" is directed, which denotes an accumulation of resentment, envy, adversarial positions, hatred *(Sutherland E. H., Cressey D., 1966).*

Self-denigration - aims at causing one's own suffering on a moral level, with the aim of reducing intrapsychic tension and that undermines the personality. It can be the replica of an inferiority complex, and the benefit can be translated into the stimulation of appreciation, attention, the denial of defamation and the highlighting of some qualities from the other people around *(Irenaus, 2018).*

Self-harm - is "another way of saying the unspeakable" *(Banciu, 2000).* It consists in causing pain of any kind, from moral to physical, through bodily harm, accompanied by a reduction of varying degrees of the instinct of conservation *(Vandebosch, H., 2001).*

Self-aggression is generally viewed as a coping mechanism, whereby a person physically injures the self to cope with emotional pain or to alleviate feelings of numbness through stimulation.

Self-aggression is any deliberate behavior, with or without suicidal intent, that causes bodily harm for the purpose of emotional release. Physical pain is often easier to manage than emotional pain, which is intolerable. Wounds inflicted validate emotional distress.

Frazee (2003) proposes the definition of self-aggression as "a deliberate destruction or alteration of body tissues without the desire to die and which can be major, stereotyped or superficially moderate". Superficial self-injury -moderate or deliberate, in Favazza's sense, represents "a direct, repetitive and episodic form of superficial self-mutilation, without producing death and which is serious enough to produce alteration of the body especially".

Butoi (2000) considers autolytic gestures as having a "direct, repetitive nature of injury to the tissues of one's own body, with low lethality, which occur in a short time, are accompanied by the consciousness of one's own action and involve the express intention of self-harm".

Most researchers consider this behavior, which consists in causing pain of any kind, from moral to physical, through bodily harm, accompanied by a reduction of varying degrees of the instinct of conservation, to be a maladaptive coping mechanism, in which self-harm is aimed at reducing internal tension and relieving overwhelming emotions. This understanding excludes suicidal intent from the definition of self-aggression.

The integrative theoretical model, proposed by Suyemoto in 1998, distinguishes between six functional types of self-injurious behavior:

1. THE SOCIAL MODEL - the creation of responses reinforced by the social environment to facilitate the expression of aspects that cannot be expressed verbally and the sublimation of conflicts;

2. ANTI-SUICIDE MODEL - injury has a substitute role for suicide, it represents a compromise between the desire to live and die;

3. THE SEXUAL MODEL - self-aggression is the result of open conflicts of sexuality;

4. THE MODEL OF AFFECT REGULATION - self-aggression expresses and controls mania, anxiety, psychological pain, which cannot be verbalized or expressed in other ways;

5. THE DISSOCIATION MODEL - self-harm is a way to stop or overcome the effects of dissociation resulting from the intensity of emotionality;

6. INTERPERSONAL BOUNDARIES MODEL - self-injury is an attempt to create a distinction between oneself and others, to protect against the tendency to lose one's identity;

Hawton and Harriss (2008) studied a group of 710 teenagers, determined that at this age self-aggression is related to current life difficulties (family, school, etc.). They believe that self-aggression manifests itself due to unresolved existential questions, cognitive immaturity, with inability to solve problems due to deficiencies in abstract thinking, conflicts in various relationships, especially with authorities.

Longitudinal studies have revealed certain groups of individuals who present a particular vulnerability to self-aggression, among them the persons deprived of their liberty are in the first place *(Royal College of Psychiatrists, 2010).*

2. RESEARCH DESIGN

Our research is based on the questionnaire method, the analysis and interpretation of the data collected from the psychological sheets. We chose this

method considering the autolytic tendencies in delinquent teenagers, the seriousness of the committed acts and the study of personality dimensions.

2.1. Objectives of the study:

- studying the correlation between accentuated personality traits in delinquent teenagers and autolytic acts in order to prevent their occurrence;
- studying the correlation between personality traits and the type of delinquent act committed by the adolescent.

The database was collected between 01.03.2022 - 01.06.2022, statistical processing with SPSS 20. We applied the t test for comparisons and Pearson for correlations.

2.2. Methodology

In our research we used the Schmiescheck accentuated personality questionnaire and the parameters taken from the Psychological Observation Sheets.

The questionnaire for detecting accentuated personalities was translated and adapted for Romania by the psychologist I. M. Nestor, in 1975.

The questionnaire includes 88 questions, mixed presented, forming ten groups, each group aiming to explore/highlight a certain "accentuated" feature:

I - 12 questions regarding the demonstrative nature;
II - 12 questions regarding the hyperexact nature;
III - 12 questions regarding the hyperperseverant nature;
IV - 8 questions regarding unruly nature;
V - 8 questions regarding the hyperthymic nature;
VI - 8 questions regarding the dysthymic nature;
VII - 8 questions regarding cyclothymic nature;
VIII - 4 questions regarding the exalted nature;
IX - 8 questions regarding the anxious nature;
X - 8 questions about the emotional nature.

Dimension: Autolytic antecedents

Regarding autolytic antecedents, the score 0 means the absence of autolytic gestures, and the score 1 the presence in the antecedents of self-aggressions. The mean on this dimension m= 0.55, and sd=0.5.

Dimention: Delinquent act

Also according to the severity criterion, the scores from 1 to 2 were established, 1 meaning serious (crimes of the type: murder, rape, robbery), and 2 less serious (theft, burglary, without injury to persons). Thus the average obtained is m= 2.58, and sd=1.1.

2.3. Research sample:

The participants in the studio are 40 delinquent teenagers who, for the crimes they committed, are in a re-education center in Romania. All study participants are male.

3. RESULTS AND CONCLUSIONS:

Hypothesis no. 1: There are significant differences in autolytic behavior on the "unruly" dimension.

As seen in Table 1, the average obtained by delinquent adolescents without an autolytic antecedent on the uncontrollable. PA dimension is m=19.82, and the average obtained by prisoners with an autolytic antecedent on the uncontrollable PA dimension is m=22.43, thus in the case of adolescents with autolytic antecedents, the mean on the uncontrollable PA dimension is significantly higher.

Table 1. Descriptive statistics

	Antec_autol	N	Mean	Std. Deviation	Std. Error Mean
l A_N	0 – without antec	17	**19.82**	2.899	.703
	1 – with antec	23	**22.43**	1.779	.371

Following the application of the t-test, the obtained coefficient t=-3.523 was significant at a p<0.01 threshold, thus the hypothesis according to which there is a significant difference depending on the presence of autolytic gestures in delinquent adolescents on the uncontrolled PA dimension is confirmed.

Table 2: Correlations

		Levene's Test for Equality of Variances		t-test for Equality of Means						
			Sig.			Sig. (2-tailed)	Mean Difference	Std. Error Difference	95% Confidence Interval of the Difference	
A	Equal	.891	.002	**3.523**	38	**.001**	-2.611	.741	-4.114	-1.108

unruly	variances assumes qual variances not assumes	3	0	**23** 3.285	4.755	003	-2.611	.795	12 4.249	11 .973

According to the hypothesis and the results obtained in the case of the quantitative analysis, it can be stated that delinquent teenagers who present uncontrollability as the accentuated personality trait, tend to resort to autolytic gestures. Moreover, the author of the questionnaire for accentuated personalities applied in this study, Leonhard considers accentuated personalities, from the point of view of social integration, as presenting only a pathological tendency, but when this tendency reaches high scores it determines behaviors "with specific notes".

In the case of the present study, the specific notes coincide to a large extent with the autolytic behavior. The accentuation of the personality trait represents a constant on the uncontrolled dimension, and the particular social context is a precipitating factor of the pathological behavior. This consideration mobilizes us under the aspect of vigilance regarding the approach to delinquent teenagers who present, in the social context, higher risks of adopting autolytic behaviors.

Hypothesis 2: The gravity of the act committed by delinquent teenagers correlates with the demonstrativeness factor

Table 3: Descriptive statistics

	Mean	Std. Deviation	N
Acts	2.58	1.107	40
PA_Dem	18.60	5.027	40

Thus, between the acts committed and demonstrative PA we obtained a correlation coefficient r=0.425, significant at a p<0.01 threshold, i.e. with the increase in the seriousness of the act, the predisposition towards demonstrative PA increases.

Thus, the hypothesis is confirmed, the seriousness of the act correlates directly proportionally with the accentuation of demonstrative PA.

Table 4: Correlations

		Acts	PA_Demo
Acts	Pearson Correlation	1	.425(**)
	Sig. (2-tailed)		.006
	N	40	40
PA_Dem	Pearson Correlation	.425(**)	1
	Sig. (2-tailed)	.006	
	N	40	40

Delinquent teenagers who have committed serious crimes show demonstrative behavior, which is often expressed through self-aggressive acts. It is the expression of parasuicide with the aim of getting out of anonymity, to impress other teenagers or employees in the prison system or even relatives, namely family and friends.

Limitations of the research: Being an experimental research, we did not consider predictive factors (we did not analyze causality), we focused more on correlations.

CONCLUSIONS

The two hypotheses of our study were confirmed:

• delinquent teenagers who present "uncontrollableness" as an accentuated personality trait tend to resort to autolytic acts;

• the seriousness of the act of delinquent teenagers correlates directly proportionally with the accentuation of the "demonstrativeness" dimension;

• psychological counseling is needed to make them aware of the social danger of theirs previous actions, sensitize them to re-education actions, understand the need to reintegrate into a normal and dignified social life and prevent the commission of self-aggressive acts;

• effective participation in various educational activities and projects for reintegration into society is required.

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