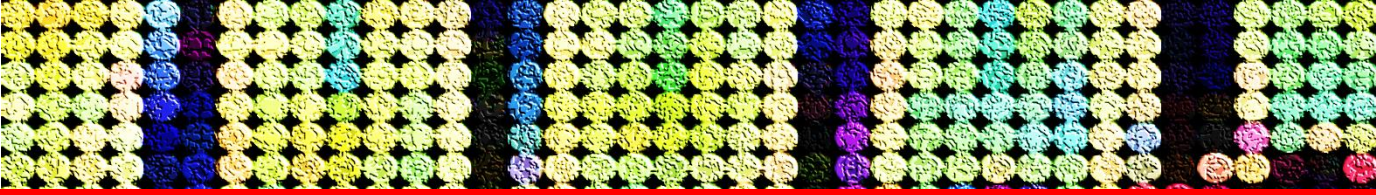
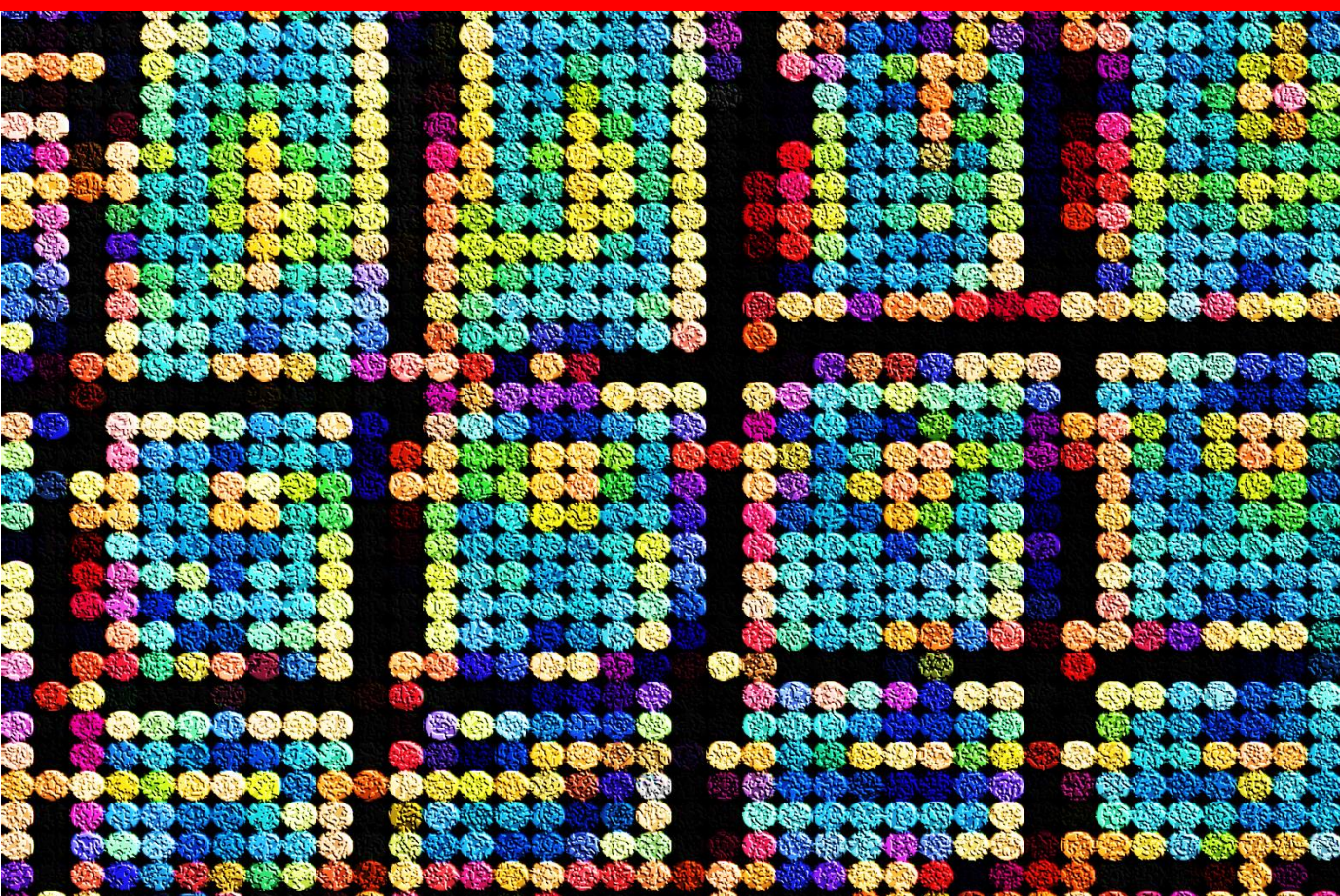


UNIVERSITY OF CRAIOVA
FACULTY OF LAW AND SOCIAL SCIENCES
POLITICAL SCIENCES SPECIALIZATION &
CENTER OF POST-COMMUNIST POLITICAL STUDIES
(CESPO-CEPOS)

REVISTA DE ŞTIINŢE POLITICE.
REVUE DES SCIENCES POLITIQUES

NO. 46 • 2015



UNIVERSITY OF CRAIOVA
FACULTY OF LAW AND SOCIAL SCIENCES
POLITICAL SCIENCES SPECIALIZATION &
CENTER OF POST-COMMUNIST POLITICAL
STUDIES (CESPO-CEPOS)

Revista de Ştiinţe Politice.

Revue des Sciences Politiques

No. 46 • 2015

Editura Universitaria Craiova

CONTACT: REVISTA DE ȘTIINȚE POLITICE. REVUE DES SCIENCES POLITIQUES
University of Craiova, 13th A. I. Cuza Street, Craiova, 200585, Dolj, Romania.
Phone /Fax: +40251418515, Email: cepos2013@yahoo.com, cepos2013@gmail.com.
Website:http://cis01.central.ucv.ro/revistadestiintepolitice/

The Journal is published quarterly.
(Online) - ISSN 2344 – 4452
ISSN–L 1584 – 224X

No. 46 • 2015

Revista de Ştiinţe Politice.
Revue des Sciences Politiques

Editura Universitaria Craiova

NOTE of the EDITORIAL BOARD
Revista de Ştiinţe Politice. Revue des Sciences Politiques
is abstracted by / indexed in:

EBSCO
Political Sciences Complete ● Situation January-February 2015
http://www.ebscohost.com/titleLists/poh-coverage.pdf (page 45/ 54)

ProQuest Central
Proquest Title List, Accurate as of 1 April 2015 (position 179734) and also ProQuest Political Sciences, ● Professional Proquest Central ● Proquest Research Library ● ProQuest 5000 International ● Proquest Central K12

INDEX COPERNICUS

http://jml2012.indexcopernicus.com/REVISTA+DE+STIINTE+POLITICE+REVUE+DES+SCIENCES+POLITIQUES,p1331,3.html
ICV 2013: 5,04

DOAJ Directory of Open Access Journals
http://doaj.org/toc/5bd3cf0f9a874a8e84ee7ba56818fda7

KVK Catalogue
Karlsruhe Institut für Technologie
http://www.ubka.uni-karlsruhe.de/kvk_en.html

Gale Cengage Learning
Report Generated 21 April 2014 (position 13456)

Revista de Ştiinţe Politice. Revue des Sciences Politiques

RSP • No. 46 • 2015

Human Rights, Migration and Identity Perceptions: Capturing Regional Bids & Displays

CONTENTS

RSP • No. 46 • 2015: 11-13

EDITORS' NOTE

Note of the Editors of the *Revista de Ştiinţe Politice. Revue des Sciences Politiques*

Anca Parmena Olimid[*]**,**
Cătălina Maria Georgescu**,**

In the aftermath of the disintegration of Communist systems, human rights, migration and identity perceptions had been connected as elements of scientific analysis and understanding; this correlation continues to shelter theoretical considerations and remarks.

The articles within the latest issue of the Revista de Științe Politice. Revue des Sciences Politiques (hereinafter **RSP**) – 46/2015 – create a bridge among geopolitics, democratization, human rights, migration, identity formation and imagology at regional, national and local levels. The political crises and domestic and foreign policy processes which finally led to the fall of Communism and the dissolution of the Soviet Union started the democratization and political transformations in the socialist countries in Central and South-Eastern Europe. Guided by a historical approach the article signed by Marusia Cîrstea discusses the main events capitalising the ideological trends and the societal inputs that shaped the formation and then dissolution of the Communist block in Europe. Following the fall of communism in Eastern Europe, the Balkans entered a period of turmoil, social upheaval and political transformations. The Ohrid Framework Agreement conditioned and shaped the democratization process of the Former Yugoslav Republic of Macedonia. In his article, Ali Musliu correlates the democratizationof the Former Yugoslav Republic of Macedonia to the concepts of human rights, freedom, political and civil liberties within the transition period and the evolution of the state structures towards the integration to the EU, while Fadil Memed Zendeli pursues an in-depth analysis on the Macedonian municipal management and the efficiency of public services.

A similar historical institutionalism approach guides Melina Rokai's analysis of the democratization of Serbia. The research is centered on transition challenges of successive post-Communist governments and the evolution of restitution and property rights as part of Serbia's democratization.

[*] Associate Professor, PhD, University of Craiova, Faculty of Law and Social Sciences, Political Sciences specialization, Phone: 0040251418515, E-mail: parmena2002@yahoo.com.
** Lecturer, PhD, University of Craiova, Faculty of Law and Social Sciences, Political Sciences specialization, Phone: 0040251418515, E-mail: cata.georgescu@yahoo.com.

Editors' Note

Contemporary democratic education aims at valuing personal individuality and determining the autonomy of the individual through innovative approaches which are fundamental demands of training and educating the human being. In their article, Mihaela Aurelia Ștefan and Alexandrina Mihaela Popescu provide an in-depth analysis and a guide to modern democratic education instruments in a self-reflective approach towards enhancing competences. Postmodern axiological education is analysed as a determination of endogenous and exogenous cultural and axiological variables (Florentin-Remus Mogonea and Florentina Mogonea).

The evolution of technology and science re-scalled social and political participation. The literature on the role of Internet and social media in boosting civic participation and stabilizing democratic institutions is enriched with the work of Marina-Irina Lazăr. The article engages the role of internet and communication technological revolutionin strengthening citizens' participation in deliberation about regulatory policy issues and, as such, determining the modernization of democracy.

Dragoș Alexandru Bălan analyses the private segment of the economy to identify the strategic determinants of corporate reputation and corporate image in correlation to stakeholders' behaviour. The analysis of national and regional economies through the application of an Open Markets Index (OMI) was accomplished within a multi-criteria model inputting individual indicators towards a final evaluation of Bulgaria, Romania and Slovakia (Donka Zhelyazkova).

In the context of judicial reform and Romanian codes transformation, Raluca Lucia Cismaru's work presents the results of in-depth researches on the challenges and evolution of the regulation of property rights in Romania and the effects for legal relations and procedural legitimacy in judicial practice. Also, the judicial reforms are presented in the article of Sevastian Cercel and Ștefan Scurtu focusing on the legal capacity acquired before the age of majority in the new Romanian legislation.

Within the current geopolitical context image perception studies have focused on identifying the common opinions and beliefs regarding nationality, citizenship, human rights.Within the East-West boundary scalling discussion, Antanina Siamionava questions the relative cultural and linguistic similarities in order to identify differences in mental imagesor a *collective image* of Russians, Ukrainians and Belarusians.

In the light of state democratization and integration into the supranational level, Mariana-Daniela Sperilă (Crăciunescu) explores the institutional relations and structural interdependencies among the High Court of Cassation and Justice, the Constitutional Court of Romania and the European Court of Justice. Focusing on the process of modernization and democratization,the article signed by Cristinel Trandafir investigates structural and functional contradictions between the communist state and the free rural communities theoretically correlating Communism and condominium towards a scientific knowledge of the traditional Romanian village.

The common relationship between state-led investment and local development was shrunk to a comparative analysis of the housing tenure before and after EU Integrationto develop an institutional and political image of the reorientation towards the growth of local state budget allocations (Anca Parmena Olimid).

Within the internal market of the European Union, the social-economic environment received strong impulses from international migration fluxes bringing forward the issue of national and racial minorities (Alexandra Porumbescu). The behaviourist analysis of Romanians' mobility for work after the fall of the communist regime was accomplished in order to highlight the implications of this social-economic

phenomenon in the change of family status and roles and boosting child protection policies (Bertha Sănduleasa and Aniela Matei) while religious concerns of migration argue for the integration of migrants and to the preservation of their identity abroad (Adrian Boldişor). The formation of minorities' identities in the post-communist society had to build its relation with the national state, but also to accommodate other tensions with other groups and communities; Áron Coceancig's study on the Szekler Identity in Romania after 1989 builds upon this hypothesis. Political migration as a phenomenon shifting the legitimacy of political power was correlated to the evolution of the National Renaissance Front within the context of increasing civil and political rights and the escallation of extremist regimes throughout Europe (Mihaela Camelia Ilie). The unification geopolitics is the central theme of the article signed by Ionuț Virgil Șerban. The author reloads the intellectual analysis of diplomatic relations and international agreements within a diachronical approach of archival resources.

The Romanian judicial system has undergone substantiated changes throughout the contemporary period. The main normative acts that regulate the Romanian punishment and detention system, the Criminal Codes and policies in the field are thoroughly discussed in the article signed by Cristina Ilie Goga. The new Romanian Criminal Code has introduced a series of rules that regulate civil servants' behaviour by further criminalizing actions associated to corruption (Ruxandra Răducanu).

By predicting a strong relationship between investment in health and economic growth, Denada Frasholli and Eglantina Hysa build an in-depth cross-national analysis on policy-making along South Eastern European Countries. As a result, the authors argue for an affirmation of health expenditure policies as a vector for supporting economic and social inclusion. A similar hypothesis is assumed by Andreea-Mihaela Niţă, Maria Stoica and Irina-Petria Trușcă in their inquiry on the feed-back of beneficiaries of the medical social security system outputs at regional level.

The article signed by Veronica Gheorghiţă and Cristina Ileana Vădăstreanu explores a social phenomenon associated to modern slavery. The need to match the problem to the necessary solutions support this intellactual analysis of beggary and human trafficking at national and international level.

Further, the norms which regulate the actions of naming and name change in the Romanian administrative system are pursued by Oana-Nicoleta Retea in her study on cenceptualising "the right to a name". Enhancing the legal protection of the victims of domestic violence was the issue approached in the article of Roxana Gabriela Albăstroiu analysing the regulation of the protection order in the Romanian legislation.

The authors of the articles in **RSP** issue 46/2015 consider the intellectual analysis of human rights, migration and related policies from various perspectives pursuing different research methods and working hypotheses. We would like to salute the presentation of innovative solutions and to present our sincere thanks to all the authors of our journal in all its 46 issues!

Sincerely,

RSP Editors

RSP • No. 46 • 2015: 15-27

ORIGINAL PAPER

Explaining the European Communist Bloc Formation and Implosion: Capitalizing Ideology and Societal Inputs

Marusia Cîrstea*

Abstract
The article examines the main events that led to the formation of the communist block and then its implosion in 1989-1990. The political evolution of Eastern Europe – in the aftermath of the Second World War – reveals the existence of a complex plan framed by the Kremlin and based on gradualism and camouflage in the circumstance of the Red Army's presence, a plan that targeted the incorporation of the occupied states into the Soviet economic, social and cultural system. Consequently, the continuation of these states (within the communist bloc) was obtained through political, military and economic pressures. After Stalin's death (1953) a hesitant incipient liberalisation could be discerned within the communist bloc. This phenomenon of "de-Stalinisation" – visible during Khrushchev's period – had an immediate effect in the other communist states in Europe. Thus, the phenomenon of "de-Stalinisation" freed the centrifugal forces which, in various East-European socialist countries, led to internal liberalisation and the weakening of their connections with the Soviet Union. In the late 80's, Soviet leader M. Gorbachev also inaugurated a novel approach of interstate relations, among which there was the principle of "recognising the right of *popular democracies* to choosing their political regime" – which accelerated the fall of the Berlin wall and the communist regimes in Eastern and Central Europe in the autumn of 1989.

Keywords: *the communist bloc, the Soviet Union, popular democracies, Stalin, Gorbachev*

*Associate Professor, PhD, University of Craiova, Faculty of Law and Social Sciences, History specialization, Phone: 0040251418515, E-mail: cirsteamara@yahoo.com.

One can speak about a *socialist socio-economic* system and a corresponding *socialist governing system*, in rigorous terms, only after the Second World War, when, under the well-known historical circumstances, a number of Eastern European countries, and, in time, other Asian and Latin American countries went from the former social-economic system based on private property, the principle of market economy, the principle of competition, the traditional production relations, the established division of the society into the owners of the production means and the owners of the labour force, to the socialist system based on state property, the principle of distribution according to need and the work performed, the principle of economic planning etc. (apud Voiculescu, 2002: 291-297).

The first socialist state in the world was established in Russia, as a result of the October 1917 Revolution (Dukes, 2009: 214-231). The revolution occurred at lightning speed. On the night of 6th -7th of November (24th -25th of October old style), the red guards and soldiers, who sided with the revolution, took control of all strategic points in Petrograd (the capital of the Russian Empire at the time) – the Winter Palace, the seat of Government, was occupied and a Soviet government was established throughout Russia: the Congress of Soviets appointed a Council of People's Commissars chaired by Lenin, with Trotsky in charge of Foreign Affairs and Stalin – the Ministry of Nationalities (Riasanovsky, 2001: 469-476). After taking over power, Lenin went on to put into practice the ideological principles – stated in his book *Imperialism, the Highest Stage of Capitalism*, written in 1916 and published in the spring of 1917, principles aiming the victory of global Socialist revolution, in accordance with the slogan "Win Russia and then the world" (apud Nolte, 2005: 62). Lenin's death (1924) was followed by a fierce battle for leadership during which Joseph Stalin (1876-1953) thwarted, without mercy, the plans of his opponents, one by one. Succeeding Lenin, I.V. Stalin – supporter of the theory of "building socialism in one country" – created an inflexible and totalitarian model and turned the Communist ideology from an internationalist theory into a nationalist doctrine" (Baradat, 2012: 190-192).

After the end of the First World War, the revolutionary movement expanded: starting with the mutiny of crews in the German military fleet, in the early days of November 1918, and followed by the action of Karl Liebknecht who proclaimed a "Socialist Republic"; and later, on 21st of March, 1919, a "Republic of Soviets" was established in Hungary, on the initiative of Béla Kun (Carpentier, Lebrun, 2006: 325). In the same month of March 1919, Lenin founded in Moscow the Third International, the Communist International (Komintern), whose objective was leadership of the world revolution and the creation of a world Communist Party. An attempt was made to implement Communist parties in different societies in Europe, Asia, Latin America and Africa. All Communist parties that were established during that period remained loyal to "Lenin's genetic framework" of construction of Communist society which had at its core (apud Courtois, 2008: 12): a doctrine – *Marxism-Leninism*; a model of organization – the *Party of professional revolutionaries*, turned into the *party-state* after the take-over of power; a strategy and a tactic – both commanded by the necessities of taking over and maintaining power in "the homeland of socialism".

The fate of Europe – and implicitly of the world – would change at the end of World War II. Fearing Soviet expansionism, Western European countries turn their gaze upon the United States, who offers economic aid through the *Marshall Plan* and military protection through the signing of the *Atlantic Pact*. With regard to the Eastern European countries occupied by the Red Army, they undergo a process of political and economic "*satellization*", which leads to complete allegiance to the Soviet Union. Between 1945-

1950, Stalin created a satellite empire within which constituent states retained their separate legal identity – both in relation to each other and to the USSR – but had to abide by the judgments of Moscow because of Soviet military power, the methods of the C.P.S.U., the national police regime and the inequitable economic treaties (Calvocoressi, 2000: 269). A few years after World War II, the Communists were in power not only in the Soviet Union and Mongolia (the Mongolian People's Republic was proclaimed on 26th of November 1924 under the leadership of the single party), but also in eight countries in Southern and Eastern Europe (Albania, Bulgaria, East Germany, Hungary, Poland, Romania, Czechoslovakia, Yugoslavia) and in Asia they were ruling the Popular Republic of China and the Democratic People's Republic of Korea (Soulet, 1998: 11).

The enforcement of Communist society in Eastern Europe was gradual; cautious as usual and still in good relations with Western powers, Stalin initially adopted a tactic that was familiar in the years of the Popular Front and the Spanish Civil War, namely (Judt, 2008: 119-138): he favored the creation of governments "of national unity" (coalitions of Communists, Socialists and other so-called "antifascist" parties); what was sought was to exclude from power and persecute the supporters of the former regime, but in a cautious and "*democratic*" manner, rather than in a reformist and revolutionary style; for the sake of Western leaders' peace of mind, in 1945-1946, Eastern Communists did not generally assume the titles of State President, Prime Minister or Foreign Minister, preferring to leave them for their fellow socialist, peasant or liberal coalition party members; "socialist society" as an objective is rarely spoken of, the Communist Party did not promote collectivization in the beginning, quite the contrary, the division of land and its allotment to peasants, nor was the party militating yet at government level for the nationalization of major means of production or for state property; the declared goal of Communists in Eastern countries during 1945-1946 was to "accomplish" the unfinished bourgeois revolutions of 1848, through redistribution of property, guarantee of equality and the observance of democratic rights.

During 1946-1947, with the support of the Red Army, the Communist parties gradually moved on to strategies of covert pressure, then to outward repression and terror (Judt, 2008: 119-138): political opponents were tarnished, bullied, threatened, beaten, arrested, prosecuted as fascists or collaborationists and imprisoned or even shot; "people's" militias formed by the Communists contributed to creating a climate of fear and insecurity; vulnerable or unpopular politicians in non-communist parties became objects of public disgrace. The members of the Peasant's, Liberal and other traditional parties proved targets – vilified with accusations of fascism and national betrayal, they were gradually eliminated; the Social Democrats were forced to institute Communist-Socialist "unions", and those who refused were eliminated from political life. After the decimation, arrest or absorption of the main opponents, and also by falsifying the elections of 1946-1948, the Communist parties in the East (or the newly formed "Unity" or "Labor" Parties) imposed their monopoly on political power, pursuing the following objectives: an intense nationalization, collectivization, the destruction of the middle class and the punishment of real or imaginary enemies (Giurescu, 2003: 48-53).

Step by step, the Soviet sphere of influence in Central and South-Eastern Europe became an extension of the Soviet political regime, economically and socially. Stalin wanted to impose the Communist system in the countries that were under the domination of the USSR (Păiuşan-Nuică, 2008: 39-45). The takeover of power by the Communists in all the eight states turned into "Socialist Republics" (such as Czechoslovakia, Romania, Yugoslavia) or "popular democracies" (such as East Germany, Albania, Bulgaria,

Hungary, Poland) led to the establishment of a political, economic and social regime that replicated the Soviet model in all aspects. All eight States will adopt the same kind of *Constitution*, taking as a model the Soviet Constitution of 1936, of course with a few formal variations, meant perhaps to correct the impression that the institutions of the new states had been cloned in their entirety after those of the USSR (Soulet, 2008: 1). Under such circumstances, the *Communist system* developed as a *totalitarian and authoritarian government* in the countries occupied by the Red Army. This totalitarian governance may be characterized by the following traits: an official ideology; a single mass party usually headed by a single man; a terrorist police force; a monopoly of communications; a monopoly of weapons; an economy ruled from the center (apud Voiculescu, 2002: 284).

The political evolution of Eastern Europe reveals the existence of a complex plan framed by the Kremlin and based on gradualism and camouflage in the circumstances of the Red Army's presence, a plan that targeted *the incorporation of the occupied states into the Soviet economic, social and cultural system*. The continuation of these states – within the communist bloc – was obtained through political, military and economic pressures. In this sense the Soviet Union imposed the establishment of supra-national bodies such as the *Cominform*; *The Council for Mutual Economic Assistance* (CMEA) and *The Military Treaty of Warsaw*.

The *Cominform* (*Information Bureau*) was constituted between 22 and 27 September 1947, when in Szklarska Poreba, Poland, the representatives of nine communist parties (i.e. those in the Soviet Union, Bulgaria, Czechoslovakia, Yugoslavia, Poland, Romania, Hungary, France and Italy) decided to set up the Information Bureau, a body through which Stalin could coordinate directly the political movement of the Communist leaders (Onişoru, 2004: 34-37). The Cominform's objective was the strengthening/expansion of the USSR's control over European Communist parties. When the Cominform was formed, A.A. Zhdanov – one of Stalin's main collaborators – enunciated the Kremlin's official doctrine in the field of international politics, stressing that "the world is now split into two irreconcilable « factions »: the faction of « democracy and peace », whose leader is the USSR and the « imperialist » faction, whose main driving force is represented by the United States" (Berstein, Milza, 1998: 231).

CMEA (The Council for Mutual Economic Assistance) was created in January 1949 as a reply to the Marshall Plan. Its founding members were the Soviet Union, Poland, Czechoslovakia, Hungary, Romania and Bulgaria, joined by Albania and Eastern Germany (China and Yugoslavia were admitted as observers). The CMEA became an auxiliary of Soviet politics which – by use of excessive economic planning, instituting national targets and tracing specific tasks for each company – sought to annex the economy of satellite states (Calvocoressi, 2000: 277).

With regard to military issues, Moscow employed a strict control by means of the occupation army, the officers of the satellite states' armed forces, who had been trained and were in the service of the USSR and also through the creation of the *Warsaw Treaty*. This treaty – signed on 14 May 1955 (by the USSR, Poland, Albania, Bulgaria, Czechoslovakia, Romania, East Germany, Hungary) – was a military tool that proved practical for the Kremlin in dealing with the United States of America and other Western countries, and also in keeping under control the "Socialist allies" attempting to emancipate themselves from under Soviet tutelage (Olteanu, Duţu, Antip, 2005).

In the early 1950s, the Kremlin tried to impose a unique model of socialism, copied exclusively after the Soviet system, and to establish total control over Eastern European countries. Soviet "counselors" are enforced in all the countries where the Red

Army was stationed, being present and omnipotent – they are the ones who shape national realities according to Moscow's desire/politics. The Soviets controlled everything through these "advisors": the economy, the culture and, in particular, the policy of those states within the internal life of the Communist Party, the army and the security forces. The omnipresent and omnipotent Soviet ambassador becomes "the number one official supervisor" (Soulet, 2008: 78).

On the morning of 6th of March, 1953 Stalin's death was announced. The new administration – Malenkov, Beria and Molotov – declared they were ready to govern the country. Shortly afterwards internal fighting for power in the Soviet Union started: in mid-March 1953, Malenkov resigned from the post of Secretary of the party and Khrushchev was promoted to the position of First Secretary of the party; in the summer of 1953, Beria was arrested and then killed; in February 1955, Malenkov resigned from the post of Prime Minister, too, Nikolai Bulganin being appointed in his place. From that moment on, Khrushchev and Bulganin – the head of the party and the head of Government – moved to center stage in Soviet matters and to the forefront in foreign affairs. In 1956, Khrushchev felt self-assured enough to launch a deadly attack against Stalin's actions and character, saying that he had been a cruel and bloody tyrant, who had destroyed many lives during the great purge of the party and the army in the 1930s. This attack on the former Soviet leader – expounded in the "Secret Report" of February 25th, 1956 in front of the 20th Congress of the CPSU – actually triggers the process "de-Stalinization", which will include (Courtois, 2008: 299): the removal from the party leadership of the "anti-party group", consisting of several Stalinists; the amnesty and release of Gulag prisoners and the rehabilitation of victims of terror; a certain relaxation of censorship is allowed (in 1962, Solzhenitsyn published *A day in the life of Ivan Denisovich*, the first story about the Gulag), etc.

This radical change and Khrushchev's recognition of "national forms of socialism" will arouse the hope of a close liberation in Soviet-exploited Eastern Europe (Berstein, Milza, 1998: 303). The phenomenon of "*de-Stalinization*" in the USSR had an immediate effect in the other socialist countries, namely: it released the centrifugal forces which, in various East-European socialist countries, led to internal liberalization and the loosening of ties between them and the Soviet Union; it was required that a new doctrine regarding rapports between socialist countries shall be developed; the principle of "peaceful coexistence" was adopted in the area of international affairs; "the fraternal countries" are encouraged to take "reformist measures" in order to make certain "corrections" to the socialist system. Many Communist leaders – also encouraged by the popular movements of 1956-1957 – agreed to proceed to changes, but of different depths and orientations. Thus, the strategies adopted by Yugoslavia, by the countries under Soviet influence and by those under Chinese influence proved to be significantly different and any post-Stalinist reconciliation policy disintegrated, causing the "Communist bloc" to fall to pieces.

The impact of the post-Stalinist Soviet policy was manifested very strongly in Poland and Hungary. The first obvious signs of unrest occurred in Poland, where several riots broke out in June 1956, imposing a series of claims and reforms: the Polish Communist Party called for a reinstatement of the purged Wladislaw Gomulka as head of the party; the dissolution of organized collective agricultural farms; higher privileges for the Catholic Church; the overall reduction in the intensity of state control, etc. On the other hand, the events in Hungary would follow a significantly different course: in October 1956, after the outbreak of student riots and popular demonstrations, the new government

led by Imre Nagy stated with no hesitation that they were going to withdraw Hungary from the Warsaw Pact organization, to introduce a multi-party system and to move towards Western constitutional forms. As these actions constituted an outright challenge to the USSR, Soviet troops entered Budapest and suppressed the Hungarian revolutionary movement (Jelavich, 2000: 321-324). Clashes over certain aspects of the Communist system – imposed by the USSR – continued and expanded to the socialist countries in Asia. When discord erupted in Eastern Europe, the social climate within the "fraternal countries" in Asia was particularly difficult: in China an "endemic agitation and sporadic violence" become visible both in rural areas and in factories, while in Vietnam, the farmers' discontent is increasing, due to grave excesses in the land reform and religious intolerance (Soulet, 2008: 120). Worried by the expansion of popular dissatisfaction, the leaders (both in China and Vietnam) enforce certain measures – be they symbolic – meant to make the system more flexible. Thus, 1956 was *the first obstruction of the unrelenting expansion of Communism* starting with 1917, both at territorial level, and at the level of ideology and public opinion; and, most importantly, it brings to light the fractures within the core of Communist parties and inside the system as a whole. In the area of diplomatic relations between the two systems – Communist and capitalist – one can notice a significant improvement in relations with the West (according to the principle of "peaceful coexistence"), but the situation remains chaotic and not infrequently at the edge of stability, being marked by a series of events, such as: the Suez Canal crisis in 1956; the Berlin crisis in 1958 (which ends in the construction of the Wall in August 1961); the nuclear missile crisis in Cuba, in the autumn of 1962, and so on (Courtois, 2008: 214-221).

In the 1960s the Communist system in general – and in particular that in the Soviet Union –experiences an ample economic crisis (agricultural problems remain unresolved, the production of consumer goods is well below the level of Western countries, the East-West technological gap is increasing; the intellectual stratum in socialist countries denounce the bureaucracy which is, ultimately, the Communist party apparatus, and so on) (Vaïse, 2010: 93). These difficulties will lead to the fall of Nikita Khrushchev's regime, through a "Palace revolution" (October 15th, 1964). Political power in the USSR is taken over by Leonid Brezhnev – at party level – and Aleksei Kosygin as head of government. Brezhnev's policy in relation to the countries of the Eastern bloc is characterized by intransigence. Hostile to the *Prague Spring*, aimed at the liberalization of the Communist regime, in August 1968 he enforced, in the name of the doctrine of "limited sovereignty" also called the "Brezhnev doctrine", the invasion of Czechoslovakia by the Warsaw Treaty troops (nota bene: Romania took no part in the invasion); he caused the removal of Alexander Dubček and imposed a policy of "normalization" that put an end to the experience of "socialism with a human face" (Judt, 2008: 404-411). In the "Brezhnev era" the USSR is involved in both the politics of the East-West détente (in 1966, Charles de Gaulle makes a historic visit to the Soviet Union, and in 1972 President Nixon is received in Moscow; in August 1975, the Final Act of the Helsinki Conference is signed), as well as in establishing closer ties with countries in the Third World ("The six-day war" allows him to approach the Arab countries Syria and Egypt (Osiac, 2013: 123-132); he helps India in the fight against Pakistan, who was allied with China; he supports Vietnam; he collaborates with the popular movements in Africa in their fight for national liberation, etc.). This internationalism bestows a certain international prestige upon the Soviet Union and for *the communist system these years equal maximum extension*. However, the intervention in Afghanistan – in December 1979 – would lead to

a catastrophe for the USSR. On his death in November 1982, Brezhnev would leave behind a country weakened economically and exposed to growing complaints, both from within and from the countries that constituted the Communist bloc.

After Brezhnev's death, leadership of the USSR came to Andropov and Chernenko for a short period. After the disappearance of the two rulers, political power is taken by Mikhail Sergeyevich Gorbachev (born in March 1931), who is appointed general Secretary of the Communist Party in March 1985. From the start, Gorbachev promises changes aimed at reforming the Communist system to make it more efficient. His objective was *to establish connections between political parties, the state and a controlled liberalization* (Berstein, Milza, 1998: 375). On these lines, he declared, in 1986 at the 27th Congress of the Party, that "democracy is the healthy and pure air without which a public, socialist body cannot lead a rigorous life" (Dukes, 2009: 333). From this moment on (1986), he launches a policy of *Perestroika* (economic restoration); which allows the authorization of private enterprises in the fields of crafts, trade and services, while in 1987 a law concerning state enterprises is promulgated, allowing managers a large autonomy; and *Glasnost* (transparency and freedom of expression), which seeks to infuse ethics into the system. At the same time, in June 1988, Gorbachev announced his intention to restore a "*socialist rule of law*", to impose a separation between party and state. In addition, in foreign policy, Gorbachev inaugurated a new approach of international relations through: the de-ideologization of international relations; the cessation of the arms race and a sustainable détente; resuming the Soviet-American dialogue (in December 1987 *Treaty of Washington* would be signed, which eliminated intermediate-range missiles); a rapprochement to Western Europe (a Charter for a New Europe would be signed by the Soviet Union in November 1990); the withdrawal of Soviet troops from Afghanistan (operation which was completed in February 1989); recognition of the right of "people's democracies" to choose their own administration (which accelerated the fall of the Berlin Wall and of the Communist regimes in Central and Eastern Europe in the autumn of 1989).

All of these events – as a result of the implementation of the policies of *perestroika* and *glasnost* – would lead to an amplification of nationalist movements both in the Soviet Union and other communist states in Europe in accordance with the "Domino principle" (Preda, Retegan, 2000: passim). What most reformers in the socialist world would have wanted was to transform communism into something similar to the Western social democracy. However, the year 1989 brought about the collapse of Communist regimes. Gorbachev realized too late that a liberalization of the Communist system was impossible. The meeting in Malta, in December 1989, of the two presidents – Bush and Gorbachev – legitimated an accomplished fact (through the "reformist revolutions", "Velvet revolutions", "bloody revolutions" in socialist countries) i.e. *the end of the Cold War*, but also *of the Communist regimes.*

In 1990, one by one, the republics of the USSR proclaim their sovereignty and the activities of the Communist party are discontinued. Gorbachev resigns from the post of General Secretary of the Communist Party and requests the CPSU be dissolved. The disappearance of the Communist Party – which had been the binding force of the Soviet Union ever since 1917 – leads to the liquidation of the USSR. The destiny of the former USSR is sealed on December 8th, 1991 in Minsk, when the presidents of the three Slavic Republics (Russia, Ukraine, Belarus) take note of the collapse of the Soviet Union and decide to create a Community of Independent States (CIS) (Berstein, Milza, 1998: 388). Gorbachev resigns on December 25th, 1991, a date which marked the end of the Soviet

system and ushered in a process of democratization and political and economic transformations, as well as the birth/independence of certain former soviet states.

The process of *democratization and political transformations* continued in the other socialist countries in Eastern Europe. In the late 1980s, Albania experienced a general crisis that would reach all state structures. Understanding that the Communist power was in danger, and under pressure from the people, in September 1988, Ramiz Alia, First Secretary of the Party of Labor, announced measures which were only "semi-democratic" and which were continued in early 1989. Later on, following huge demonstration in Albania's main cities – Tirana, Durrës, Elbasan, Shkodra, Kavaja i.a. – in December 1990 Ramiz Alia was forced to accept the introduction of political pluralism in the country. On November 12th, 1990, student circles in the "Enver Hoxha" University in Tirana initiated the first opposition party – the Democratic Party. The establishment of the Democratic Party was followed by the creation of other opposition parties: the Republican Party, the Social Democratic Party, the Greens Party, the Agrarian Party, etc. As a result, on March 31st, 1991 the first pluralist elections took place, resulting in the first pluralist Parliament. The free elections of March 1991 mark the beginning of the proper transition from the totalitarian system to a democratic pluralist society.

As a result of the adoption of a new Constitution in 1971, *Bulgaria* was defined as "a socialist state of laborers from towns and villages, led by the working class"; and the Party was presented as having a leading role in the State, in the society and in the process of building socialism. But, with the worsening economic problems at the end of the 1970s and early 1980s, Zhivkov's regime is beginning to falter. Inside, the reforms imposed by the New Economic Mechanism remained unaccomplished, for various reasons, while signs of protests organized at the University of Sofia forecast the end of Zhivkov's regime (Crampton, 2003: 419-420). Thus, *the domestic economic crisis*, *the ethnic tensions* (inflamed by the so-called "process of regeneration", initiated in 1984, stating that the Turks in Bulgaria were not in reality Turks, but Bulgarians who had been forcibly converted to Islam), *the support given to the "reformers" within the Bulgarian Communist Party* by Mikhail Gorbachev, led to the removal of Todor Zhivkov. On November 10th, 1989 Todor Zhivkov is removed from power through a "palace coup", and the new Bulgarian Communist leader, Petar Mladenov, immediately turned towards a policy of "restructuring" similar to Gorbachev's reforms. The Bulgarian communists did not envisage that the removal of Todor Zhivkov and the speed at which events unfolded, both domestically and internationally, will bring about the end of the Communist regime in Bulgaria (Buzatu, 2011: 618-629).

In *Czechoslovakia*, the Communist Party, aware of its lack of popularity and mismanagement of the country – but also the momentum of changes coming from a USSR led by Gorbachev – preferred to sit at the negotiations table rather than resort to force. Gustáv Husák was removed from the post of General Secretary of the party and a group of more conciliatory communists led by Ladislau Adamec was named in his place. The latter would consider changes within talks with the representatives of the Civic Forum led by Václav Havel. In the context of the transformations which encompass the entire Eastern Europe in 1989, as well as in the aftermath of the great popular demonstrations in October-November in Prague, Václav Havel becomes President of Czechoslovakia. (On December 28th-29th, 1989 the Parliament still led by the Communists elect him President of the Czechoslovak Socialist Republic) (Crampton, 2003: 568). The removal of the Communist regime in Prague – so quick and lacking in bloody incidents – will remain in history as the so-called "Velvet Revolution" (Buzatu, 2011: 621). In 1989 the people of

Czechoslovakia took their fate into their hands. On January 1, 1990 the new President, Václav Havel, pardoned 16,000 political prisoners; and the next day, the secret police was abolished; through an agreement with Moscow it was established that the Soviet troops stationed in Czechoslovakia, counting 70,000 people, should retreat until 1991. However, Czechoslovakia did not survive its freedom: on January 1st, 1993 the Czech Republic and the Republic of Slovakia are proclaimed independent States.

After Tito's death, *Yugoslavia* will experience a visible escalation of tensions and conflicts between the constituent nations of the Federal State, which would lead to a real political crisis. In 1968, Slobodan Milošević was elected at the head of the Serbian League of Communists; and in 1987, he visited Kosovo, promising Serbs there they would no longer be the target of harassment. In May 1989 Milosevic becomes President of Serbia and calls for a new Constitution (September 1989) which incorporated the provinces of Kosovo and Vojvodina into the Serbian State. However, Milosevic's new strategy violated one of the fundamental principles of Federal Yugoslavia: *none of the administrative units was supposed to meddle in the affairs of the other*. The infringement of this principle was used by the other constituent states of Yugoslavia as a pretext to trigger actions/wars of separation. On June 25, 1991 Croatia and Slovenia proclaimed their state independence, followed by Macedonia (September 15, 1991) and Bosnia and Herzegovina (March 3rd, 1992) (Gârz, 1993: 9-69). As a consequence of internal conflict, turning (in Croatia, Bosnia, Herzegovina and later Kosovo) into actual civil wars, resulting in massacres and unimaginable destruction, population displacement and expulsion on the criterion of ethnic "purification", the Socialist Federal Republic of Yugoslavia will disintegrate completely (Jelavich, 2000: 345-362).

Poland is the first among the states of Eastern Europe to embark on the process of reform and revolution. In Poland, General Jaruzelski, appointed First Secretary in October 1981, asserts himself as the representative of a modernist tendency in state reform and accepts the idea of organizing a "round table" with the contestants of the Communist regime who were spearheaded by *Solidarity* (led by Lech Walesa) (Soulet, 2008: 124-125; Sowinska-Krupka, 2008: 243-260). Thus, in April 1989 57 delegates of the party, the Church and Solidarity commence negotiations concerning Poland's future. Following these discussions, Solidarity became legal again, broad economic reforms were to be applied and free elections organized for half of the seats in Parliament (Crampton, 2003: 429). Furthermore, the negotiations entailed also the introduction of a bicameral legislative body and the restoration of the Polish Roman Catholic Church. The elections (in June) record the victory of *Solidarity*. The new parliament convened on July 4 and, following negotiations, decided that Tadeusz Mazowiecki (Buzatu, 2011: 621) – a journalist and *Solidarity* activist – become Prime Minister. Under the leadership of the new Prime Minister, Poland witnessed the dismantling of the Communist system. On December 29, 1989 the Parliament approved constitutional amendments abolishing the leadership of the party, the State received the new name of the Republic of Poland and the old pre-war flag and coat of arms were readopted. In conclusion, Poland had conducted a non-violent radical change of the system with commendable care for legality.

In the *German Democratic Republic*, the revolution that changed the old Communist rule was generated by a government crisis triggered by changes in other countries. The grievances of Eastern Germans were amplified by the difficulty of travelling abroad, which translated into a general exodus to the West, especially after the summer of 1989, when Hungary – with a new reformist leadership – opened its border with Austria and many East Germans took advantage of the opening of borders to flee to

the West. Resistance groups – such as *New Forum, Democratic Renaissance, Democracy Now* – began to appear and they supported the protests and demonstrations against the communist regime ruled by Erich Honecker (Droz, 2006: 134-135). The church also had a very important role, organizing non-violent protests, peaceful wakes, praying and discussion meetings. On October 7th and 8th, 1989 in Berlin, in the presence of Gorbachev, invited to the fortieth anniversary of the foundation of the GDR, there was an extremely violent repression, which led to the amplification of the protest demonstrations in all the major cities, such as Leipzig, Dresden, Magdeburg et al. (Soulet, 2008: 134). Faced with the extent of the hostile movement, Honecker resigns on October 17th, 1989, invoking health reasons and is replaced by Egon Krenz. Hoping the demonstrations would cease, on September 9 Krentz announced the frontiers between the two Germanys would open (Fulbrook, 2003: 237). The East and West Berliners headed for the Wall. In 72 hours, three million people crossed in the west. It was obvious, the "Iron Curtain" had fallen. Gradually, the character of the mass demonstrations started to change into calls for the reunification of the two countries.

While these events were unfolding in the DGR, on November 28, 1989 federal Chancellor Helmut Kohl expounded a ten-point program consisting of a series of measures meant to lead to the establishment of the German State. Chancellor Kohl's efforts were successful. Due to profound domestic changes, the Soviet Union renounced its claims for domination in Eastern Europe. In Eastern Germany, the fall of the Wall hugely strengthened the movement for fundamental political changes. On March 18, 1990 the first free elections brought to power an "Alliance for Germany", the new Prime Minister being Lothar de Maizière (Fulbrook, 2003: 300-301). Through these free elections in March 1990, the GDR had voted for dissolution, a process that ended on October 3rd, 1990 with the official reunification of the two German states.

Hungary is one of the countries – alongside Czechoslovakia and Poland – that managed a peaceful transition from communist dictatorship to political democracy, from planned economy to market economy, while other states – such as Romania and Russia – experienced moments of violence.

The first steps towards achieving these objectives were taken by the Hungarian Parliament in December 1988 and January 1989, when laws guaranteeing the right to freedom of association and assembly were passed. They were followed, in February, by other measures which allowed the existence of a multiparty system and the relinquishing of the socialist party's leadership role (Crampton, 2003: 430). Another extremely important measure – which led to the breach of the "Iron Curtain" – was adopted through the May 2nd, 1989 Government decision to dismantle the electrified fence on the Austrian border, allowing free passage to the West; this action triggered the transit of hundreds of thousands of East German refugees and destabilized the communist rule in the DGR irremediably (Soulet, 2008: 129).

Another of the initiatives taken by the party leaders, with a significant impact on the society, was the decision to inter Imre Nagy's earthly remains (Judt, 2008: 539). After the June 16th, 1989 ceremony of interring of Imre Nagy and other four of his colleagues as national heroes – attended by 300,000 Hungarians – there were round table negotiations, in the Polish model, between the representatives of the opposition and power. On the side of the opposition, they were attended by parties already formed – the Democratic Forum, the Alliance of Free Democrats, the Young Democrats – while the other side was represented by communist leaders; in the course of these negotiations the main issue put forward was the reorganization of political life and the changing of the

Constitution. As a result, the parliament soon passed laws stipulating changes in the constitution, and on October 23rd the People's Republic became a Republic. The terrain was prepared for the transition from the single party system to parliamentary democracy, from total dependence on the Soviet Union to state independence. Thus, by virtue of the will of the party's progressive wing and the peaceful, continuous pressure of civil society, Hungary experienced a negotiated de-satellization.

In late 1980s, *Romania* was affected by an acute social-economic crisis with disastrous results for the communist political regime, under Nicolae Ceaușescu's dictatorship. A first appeal against the regime took place on November 15th, 1987 when workers in the city of Brașov rioted, violent clashes taking place between the forces of order and demonstrators that kept shouting "We want bread! Down with the tyranny" (Scurtu, 2009: 73-74). The events in Brașov reveal the degradation of the socio-economic situation, the people's exasperation and the regime's determination to resort to brutal repression. From the inside, neither Ceaușescu nor his system seemed affected by the giant wave of discontent that would change the status of the Eastern European states.

In 1989, Ceaușescu's regime was completely discredited both inside the country and outside it (Stanciu, 2010: 79-86). In short, the Romanian dictator had everyone against him and his family. Within the party, as well as in the country, everybody wanted him removed from power. After the Communist Party Congress, in November 1989, the Romanian society seemed a barrel of gunpowder ready, at a mere spark, to trigger the explosion of hatred of millions of people against Nicolae Ceaușescu and the regime he represented (Calafeteanu, Neacșu, Osiac, Rusu, 2009; Olimid, 2009: passim). The beginning takes place in Timișoara, on December 16, 1989 when several thousand people protest against the removal of Pastor László Tökés, and on that day the army opened fire on the demonstrators. The army went into action again on December 21, this time in Bucharest. On December 22nd, Ceaușescu's regime is removed and replaced by a Council of the National Salvation Front, headed by Ion Iliescu (Buzatu, Cîrstea, 2010: 577-608).

Analyzing the events of 1989-1990, we find that the world witnessed a unique episode: the breakup, in times of peace, of a large multinational power and its satellites. In Eastern Europe the Communist power abdicated – with the exception of Romania and Yugoslavia – through a process of largely peaceful changes. Thus was achieved a transition from communist dictatorship to political democracy, from planned economy to market economy (Georgescu, 2015: 163-169).

Referring to "*The Great Event in December 1989*", M.S. Gorbachev, George Bush and Helmuth Kohl emphasized in 1999 – on the occasion of the tenth celebration of the fall of the *Berlin Wall* – "that the destruction of the *Wall* was achieved from top downwards, and not vice versa. The consequence? It is easy to discern in today's Europe: the *Wall* itself no longer exists; for Berlin, once again capital of Germany, it remains an unpleasant recollection; Europe nevertheless continues to be divided, separated by other real or imaginary walls, the same as – if not even worse than – in the midst of the *Cold War*. How is that possible? Both the defeated, and the victors of 1989 definitely started from false premises, they based their actions on miscalculations, then they fooled each other and presently *the realities* force actions that are devoid of any perspective. Communism was not simply demolished and exchanged for a multilaterally developed capitalism" (apud Buzatu, 2011: 605).

References:

Baradat, L. P. (2012). *Ideologiile politice. Origini şi impact*, Iaşi: Polirom.

Berstein, S., Milza, P. (1998). *Istoria Europei*, vol. V, *Secolul XX (din 1919 până în zilele noastre)*, Iaşi: Institutul European.

Burakowski, A. (2011). *Dictatura lui Nicolae Ceauşescu 1965-1989. Geniul Carpaților*, Iaşi: Polirom.

Buzatu, G. (2011). *Nicolae Ceauşescu. Biografii paralele, stenograme şi cuvântări secrete, dosare inedite, "procesul" şi execuția*, Iași: Tipo Moldova Publishing.

Buzatu, G., Cîrstea, M. (2010). *Europa în balanța forțelor*, vol. III, Iași: Tipo Moldova Publishing.

Calafeteanu, I., Neacşu, G., Osiac, D., Rusu, S. (2009). *Revoluția Română din Decembrie 1989. Documente*, Cluj-Napoca: Mega Publishing.

Calvocoressi, P. (2000). *Politica mondială – după 1945*, Bucharest: ALLFA Publishing.

Carpentier, J., Lebrun, F. (2006). *Istoria Europei*, Bucharest: Humanitas Publishing.

Courtois, S., (2008). *Dicţionarul comunismului*, Iaşi: Polirom.

Crampton, R. J. (2003), *Europa Răsăriteană în secolul al XX-lea ... şi după*, Bucharest: Curtea Veche Publishing.

Droz, J. (2006). *Istoria Germaniei*, Bucharest: Corint Publishing.

Dukes, P. (2009). *Istoria Rusiei. 882-1996*, Bucharest: All Publishing.

Fulbrook, M. (2003). *O scurtă istorie a Germaniei*, Iași: Institutul European.

Georgescu, C. M. (2015), Enhancing Romanian post-communist democracy. Historical institutionalism perspectives in european integration studies. *Analele Universităţii din Craiova. Istorie*, Year XX, 1(27), 163-170.

Giurescu, D. C., (2013). *Istoria Românilor*, vol. X, *România în anii 1948-1989*, Bucharest: Enciclopedică Publishing.

Gârz, F. (1993). *Iugoslavia în flăcări*, Bucharest: Casa Editorială Odeon.

Jelavich, B. (2000). *Istoria Balcanilor*, vol. II, Iași: Institutul European.

Judt, T. (2008). *Epoca postbelică. O istorie a Europei de după 1945*, Iaşi: Polirom.

Lee, S. J. (1999). *Stalin and the Soviet Union*, London: Routledge.

Nolte, E. (2005). *Războiul civil european. 1917-1945*, Bucharest: Corint Publishing.

Olimid, A. P. (2009). *Politica românească după 1989*, Craiova: Aius Publishing.

Olteanu, C., Duțu, A., Antip, C. (2005). *România şi Tratatul de la Varşovia. Istorie. Mărturii. Documente. Cronologie*, Bucharest: Pro Historia Publishing.

Onişoru, G. (2004). *Istoria contemporană universală după 1945*, Bucharest: Fundaţia România de Mâine Publishing.

Osiac, D. (2013). *Conflictul israeliano-palestinian. Proiecte de pace. 1947-2003*, Craiova: Universitaria Publishing.

Păiuşan-Nuică, C. (2008). *Istoria relaţiilor internaţionale şi a diplomaţiei (1945-2008)*, Bucharest: Fundaţia România de Mâine Publishing.

Preda, D., Retegan, M. (2000). *1989. Principiul dominoului. Prăbuşirea regimurilor comuniste*, Bucharest: Fundația Culturală Română Publishing.

Riasanovsky, N. V. (2001). *O istorie a Rusiei*, Iași: Institutul European.

Sowinska-Krupka, A. (2008), Geneză şi convorbiri la "masa rotundă" în Polonia între puterea comunistă şi "Solidaritatea". *Analele Universității din Craiova. Seria Istorie*, 2 (14), 243-260.

Scurtu, I. (2009). *Revoluția română din decembrie 1989 în contextul internațional*, Bucharest: Redacția Publicațiilor pentru Străinătate.

Soulet, J.- F. (1998). *Istoria comparată a statelor comuniste din 1945 până în zilele noastre*, Iaşi: Polirom.

Soulet, J.- F. (2008). *Istoria Europei de Est de la al doilea război mondial până în prezent*, Iaşi: Polirom.

Stanciu, C. (2010). *Traversând infernul. Scurtă istorie a comunismului românesc (1948-1989)*, Târgoviște: Cetatea de Scaun Publishing.

Vaïse, M. (2010). *Relaţii internaţionale după 1945*, Oradea: Universitatea din Oradea Publishing.

Voiculescu, M. (2002). *Tratat de politologie*, Bucharest: Universitară Publishing.

Article Info

Received: April 28 2015
Accepted: May 25 2015

RSP • No. 46 • 2015: 28-37

ORIGINAL PAPER

Democracy and Human Rights as Topics of the Macedonian Political System Research and Practice

Ali Musliu*

Abstract
Concepts such as human rights, democracy, freedom, political and civil liberties are overlapping concepts. The relationship between human rights and democracy looks more like the pieces of a puzzle because they complement each other. The essence of human rights is to verify the judicial position of the individual within state power. Given the breadth of democracy and its complexity this paper introduces the reader to the scope of the concept of human rights and democracy in general. A variety of ideas provide insight into the relationship between the fields of democracy and human rights. The theory of democratic government rests upon a simple premise: a fair system of voting determines a majority which governs while respecting the human rights of the minority. This paper will examine the interdependence of all ideas of human rights during the transitional period of the Republic of Macedonia's change to democracy since 1991. For contemporary democratic regimes human rights have become the keystone of the modern state. This is a widely used term which describes strategies for building sustainable democratic state power systems. A greater emphasis is given to the Ohrid Framework Agreement regarding a human rights perspective and conditional judicial reforms towards a democratic governance of the state. This paper proceeds directly to its basic points as follows: 1. whether the Ohrid Framework Agreement (hereinafter OFA) human rights provisions provide proper groundwork for a transition to democracy; 2. the replacement of arbitrary use of power with legal regulations through checks and balances; 3. attempts to redefine state structures and access to power for minority groups. The end of this paper gives special attention to the democratic transformation of the system for human rights which is the main challenge to the integration of Macedonia into the European Union.

Keywords: *human rights, democracy, political rights, system, Republic of Macedonia*

* Assistant Professor, PhD, State University of Tetova, Law Faculty, Phone: 00389 44 356 500, Email: ali.musliu@unite.edu.mk.

Introduction

Democracy is one of the *universal core values and principles of the modern state.* Respect for human rights, fundamental freedoms and the principle of holding periodic and genuine elections by universal suffrage are essential elements of democracy. Rousseau states that: "if the populace promises simply to obey it dissolves itself by this act; it loses its standing as a people. The very moment there is a master there no longer is a sovereign and henceforth the body politic is destroyed" (Rousseau: 1762).

This paper follows Beetham's (Beetham, 1991: 55) distinction between the concept of democracy and theories of democracy. The concept of democracy, in its simplest form, can be defined by using the two Greek words *demos* (people) and *kratos* (rule) which combine to make the word democracy; meaning rule of the people. This is the classic idea of democracy. Beetham elaborates on this concept as "a mode of decision making about collectively binding rules and policies over which the people exercise control, and the most democratic arrangement is when all members of the collective enjoy efective equal rights to take part in such decision making directly which realizes to the greatest conceivable degree the principles of popular control and equality in its exercise". Theories of democracy attempt to make this basic concept operational by prescribing how democracy might be realized, in what institutional form it will take and the content of democracy in plural societies such as Macedonia. Larry Diamond defines democracy as "a system of government that meets three essential conditions: meaningful and extensive competition among individuals and groups, especially political parties, for all effective positions of governmental power at regular intervals and excluding the use of force; a highly inclusive level of political participation in the selection of leaders and policies, at least through regular and fair elections, such that no major social group is excluded; and a level of civil and political liberties i.e. freedom of expression, freedom of the press, freedom to form and join organizations, sufficient enough to ensure the integrity of political competition and participation". For contemporary democratic regimes human rights have become the keystone of the modern state. Civil and political rights form a fundamental basis for legitimate politics. This is a widely used term to describe strategies for building sustainable democratic state power systems. This paper is focused on the Macedonian case since its independence in 1991, and deals with shifting from a monistic communist regime to a turbulent period of democratic transition of being that culminates in the conflict of 2001. This transition continues today in a modified form.

From this perspective the paper shows basic features of the transitional period of Macedonia. It highlights the in interdependence of ideas on human rights and democracy, and attempts at building a sustainable modern state after 2001. We trace the origins and processes of democratization and human rights in Macedonia. Thus, we analyze the Ohrid Framework Agreement in regards to a human rights perspective and conditional judicial reforms for democratic governance of the state. We also examine whether the OFA (OFA, 2001) has partially succeeded and why. Throughout we make clear the radically diverse and diametrically opposed thoughts of the communities, both Macedonian and Albanian, in regards to human rights issues, state regulations, power sharing systems and challenges to the democratic development of this state. The first part of the paper deals with the characteristics of the transformation period and the role of human rights concepts in the state-building process of Macedonia. The second part analyzes the post-independence phase of Macedonian state-building and it's positioning in regional relations. The third part deals with the inside of interdependence between democracy and human rights. The fourth part deals with the Ohrid Framework Agreement's (2001) human rights issues,

constitutional changes via the process and composition of democratic values and the state-building process in Macedonia.

Democratic transition and Human Rights issues in Macedonia

The background of the democratic transition in the former Yugoslavia has been complex and has occurred both within states and between states since the end of the Cold War. It was at this time that many states within the Socialist Federal Republic of Yugoslavia (SFRY) began to fragment (Sriram, Martin-Ortega, Herman, 2010: 68). The Socialist Republic of Macedonia, (SRM) one of the six constituent republics in the Socialist Federal Republic of Yugoslavia, (SFRY) was situated in the southern part of the territory of the federation. It was economically one of the least developed of these republics and today suffers from grave economic problems with over 30% unemployment (Liotta, 2000). The Republic of Macedonia declared its independence through a national referendum and confirmed by the adoption of a constitution in 1991. It thus became an independent actor on the political stage of Europe and the Balkans in the context of the dissolution of the Yugoslav Federation (Shea, 2008: 155-192). Macedonian independence declared on September 8, 1991 followed the declarations of independence by Slovenia and Croatia on June 25, 1991. This was in turn followed by independence for Bosnia and Herzegovina where a referendum was held on March 1, 1992 and the declaration of independence on April 5th. Montenegro declared on June 3, 2006 while Kosovo did so on February 17, 2008 (Norman, Holly, 2003).

Ethnic Albanians were not pleased with their own status in the new Macedonian society and boycotted both the referendum on independence and on the constitution in September, 1991 (Musliu, 2012). In addition, the Albanians refused to participate in the 1991 census and contested the results. They held their own referendum on territorial autonomy in January, 1992 which was declared illegal by the government. Many consider these as key symbolic moments in 1991/92 because they formed the basis for continued ethnic tensions in the country due to their salience and mobilizing effects on both the Albanian and Macedonian communities. The new constitution became a focus of ethnic division. Both the act of independence and the constitution of the Republic of Macedonia divided the Albanians and Macedonians in the new state. Constitutional human rights of the Albanian ethnic group in Macedonia were the main generator of discontent which eventually led to the events of 2001 (Musliu, 2012).

Ethnic Macedonians consider the republic as their nation-state. This was clearly expressed in the preamble to the new constitution of 1991: "Macedonia is established as a national state of the Macedonian people in which full equality as citizens and permanent co-existence with the Macedonian people is provided for Albanians, Turks, Vlachs, Romana and other nationalities living in the Republic of Macedonia". The Constitution of Macedonia was altered from its origins in the ex-Yugoslavia which stated that, "Macedonia is the state of the Macedonian people and the Albanian and Turkish nationalities" and that "Macedonia is the national state of the Macedonian nation" (Daskalovski, 2002). The Macedonian ownership of the state was also implied in Article seven (Constitution, 1991) which declared the Macedonian language, written in the Cyrillic alphabet, as the official language of the state. Also, Article 19 (Constitution, 1991) made special reference to the Macedonian Orthodox Church. Church and state are separated by law and the political process is generally secularized. However, preferential treatment in public life is given to the main Orthodox Christian and Islamic denominations. New sects within these faiths cannot officially register under the same

name and operate in the country. Smaller religious communities have problems in practicing their faiths due to long-running denials of permission to build, extend or establish legal ownership over places of worship. These religious organizations are a significant part of the civil society. The government introduced optional religious teaching in the public education system. This decision was reviewed by the Constitutional Court as unconstitutional, as it was seen as violating the secular character of the Macedonian state (Daskaloski, 2009).

Albanian political parties demanded major reforms to the constitution's human rights, and in public affairs regarding the use of languages, representation in the civil service and decentralization (Musliu, 2012). According to the new constitution (1991) we can identify three categories of citizens: the Macedonians as the primary bearers of the rights of the state, the nationalities mentioned and then those assigned to the category of others. The notion of permanent co-existence seemed to be designed to divide rather than integrate groups (Daskalovski, 2002).

There was an under-representation of Albanians in the civil service, the armed forces and the police. This in turn, was linked to the low level of socio-economic development in the Albanian community; accurate statistics are hard to attain but generally male unemployment in the Albanian regions of Macedonia in the 1990s was much higher than the national average of 22%. Although Albanians were granted formal political rights and even seats in cabinet and even though some attempts to remedy their underrepresentation in state positions were made throughout the 1990s it is claimed that real political influence was lacking i.e. their representatives were outvoted and the pace of reform was slow (Ackermann, 2001: 117-135). Degrees awarded by the Universities in Tirana and Pristina had a long process of accreditation in Macedonia and often were not recognized at all. Not having access to higher education resulted in restricted access to jobs in the civil service for ethnic Albanians. This was also used as a justification for the low numbers in the civil service on the one hand and served as the basis for calls for education in the Albanian language and a separate Albanian university on the other. This issue served to not improve the constitutional human rights of the Albanian community and again it was named as a crisis generator (Musliu, Georgieva, Memedi, 2010). The issue of the right to education in the Albanian language became a key demand and one that was to provoke a series of violent incidents during the 1990s. The Albanian community moreover, questioned the considerable discrepancy between constitutional rights and the implementation of those rights in everyday life (Maksuti, 2002).

The Ohrid Framework Agreement (2001) and Human Rights issues in Macedonia

Since independence polarization between the two ethnic groups continues to be a major problem and in 2001 became a challenge for further democratic development of Macedonia (Ackerman, 2001). The armed conflict in 2001 was the worst violence between the two ethnicities i.e. Macedonian on one side and Albanian the other. The Ohrid Framework Agreement, (2001) the eminent peace agreement, relates to human rights of ethnic communities in Macedonia (Musliu, 2012). The Ohrid Framework Agreement (OFA) was signed on August 13, 2001. It was negotiated in the city of Ohrid located in the southwestern part of the country and signed in Skopje in the English language by President Boris Trajkovski. The leaders of the two biggest Macedonian and two biggest Albanian political parties also signed. The procedure was witnessed by Francois Leotard, the special representative of the European Union, and by James W. Pardew, the special

representative of the United States (Reka, 2011). The OFA represents an agreed framework for securing the future of Macedonia as it sets the basic framework of human rights legislation and policy changes without dwelling too much on the details. It strengthens the multi-ethnic character of the state through expanding the rights of ethnic communities while simultaneously proclaiming the state's territorial integrity and unitary character (Brunnbauer, 2002). In the preamble of the agreement it states that "this framework will promote the peaceful and harmonious development of civil society while respecting the ethnic identity and the interests of all Macedonian citizens" (OFA, 2001). After the signing of the OFA, the international community was expecting the political elite of the country to target causes of the outbreak of this serious political crisis and, on the basis of a cold and objective reflection, to prevent the repetition of a new crisis. Thus, from the very beginning, the international community supported the OFA as a new political philosophy, which should have inaugurated a new model for the functioning of a multi-ethnic state.

The OFA (2001) consists of several basic principles. The first provision of the OFA (2001) defines a number of principles that are important for the successful implementation of the provisions. Firstly, it stipulates that signatories reject the use of violence in pursuit of political aims and emphasize that only peaceful political solutions can assure a stable and democratic future for the country. Secondly, it reaffirms the sovereignty, territorial integrity and the unitary character of the state and stresses that there are no territorial solutions to ethnic issues. Thirdly, it states that the multi-ethnic character of the society must be preserved and reflected in public life. Fourthly, with regard to the constitution as the highest legal document in the country it states that the modern democratic state in its natural course of development and maturation must continually ensure that its constitution fully meets the needs of all its citizens and conforms to the highest international standards which they themselves continue to evolve. Finally, it states that the development of local self-government is essential for encouraging the participation of citizens in democratic life and for promoting respect for the identity of communities (Ohrid Framework Agreement, 2001). Besides the basic provisions the agreement also consists of three annexes: Annex A on constitutional amendments, Annex B on legislative modifications and Annex C on implementation and confidence-building measures (Ohrid Framework Agreement, 2001).

In the implementation of the OFA the parliament legislated for constitutional amendments and adopted numerous laws or revised existing ones with nearly two-thirds focused on decentralization issues. The main thrust of the constitutional amendments had the effect of enhancing the power-sharing mechanisms of the political system to prevent any further discrimination against Albanians in civil, economic, social and political rights; the recognition of Albanian as an official language by increasing the number of official languages to include any language spoken by at least twenty percent of the population; raising the ethnic community composition of the state police force; the legalization and state financing for the previously illegal University of Tetova and amnesty for rebel fighters. The legislative framework changes are largely in place, but its effective implementation has yet to be ensured together with a full respect of the spirit of the Ohrid Framework Agreement (Musliu, 2012).

A number of discussions and debates on the importance and nature of the OFA followed after it was signed. These debates centered on the issue of whether the OFA was an international agreement or an internal agreement within Macedonia. These debates were of theoretical, but also practical importance. For instance, this determined if the

agreement was binding or not and if yes what is its relation to the constitution and the legal system of the country. With the adoption of the constitutional amendments based on the OFA these discussions lost relevance. From the moment that these changes took place in the constitution as well as in the laws of the country the implementation of the OFA was at the same time was the implementation of the constitution and of the laws of the country. There remains however, debate as to whether and how far the legislative changes were the true reflection of the Ohrid Framework Agreement (2001).

Civil and political liberties: Democratic capability of Macedonia

To ensure the integrity of political competition participation in civil rights, as well as, political rights and liberties is becoming the essential input for democracy. These are focused on freedom of expression; non-discrimination policies; election disputes; inter-ethnic tensions and dysfunctional state institutions. The situation regarding freedom of expression continues to be highly problematic. This is in spite of the introduction of comprehensive new media legislation at the end of 2013 following extensive public consultations and advice from international organizations (OSCE/ODIHR: 2013/14). There is indirect state control of media output through government advertising and government favored media outlets, which can be interpreted as advertisements for the ruling parties. A few television stations are considered to be politically influenced since the owners of these outlets are also the presidents of political parties. Ownership of the leading print media remains highly concentrated. Corporations that own print media also have alleged links to political leaders and the editorial independence of various newspapers is doubtful (EU Report, 2014). The use of criminal laws to restrict journalistic activity drew international attention in 2013 when *Nova Makedonija* reporter Tomislav Kezarovski was arrested in May for allegedly revealing the identity of a protected witness in a murder case. He was kept in pretrial detention and then sentenced to four and a half years in prison in October (Freedom House, 2014).

In September, 2014 the government made data on government advertising, including partial figures, publicly available; however it is still unclear which media outlets are the primary beneficiaries of such campaigns and according to what criteria public funds are disbursed. Defamation actions continued to be raised by journalists against other journalists (highlighting the low level of solidarity within the profession), by politicians against journalists (creating a chilling effect on the freedom of expression) and by politicians against other politicians (in the place of open public debate). This results in a scarcity of truly independent reporting and a lack of accurate and objective information being made available to the public by the mainstream media. Poor journalistic standards and ethics contribute to the situation (EU Report, 2013/14).

The non-discrimination policy remains an essential element for strengthened human rights, democracy and rule of law in the country. Although the spirit of the OFA was building a civic state, Macedonia still even after a decade of the inauguration of this peace Agreement, functions as a mono-ethnic state. Despite the proclaimed property of all citizens, the majority in this country claims to have absolute ownership over the state. Regardless of the effort of promoting a consensual democracy, the majority furthermore continues to determine how many rights belong to non-majority communities. There has been some progress on implementing the law on languages, on decentralization and equitable representation. Continuous efforts, through dialogue, are needed to fulfill the objectives of the agreement and ensure its full implementation. Furthermore, political elites still use ethno-nationalistic rhetoric for mobilization of their respective ethnic

groups. Constitutional changes have fuelled mistrust, power struggles and, what is even more noticeable, caused a continual decline in confidence into the political process (Musliu, 2012). According to Bell, (Bell: 2003) the agreements are characterized by constitutionalism designed to define, protect, and enforce rights to replace the arbitrary use of power with its legal regulation through checks and balances which is not case in Macedonia. Related to the Ohrid Framework Agreement peace agreement, Reka stressed that it preserved the sovereignty and territorial integrity of Macedonia, but it did not preserve the national integrity of citizens who did not belong to the majority (Reka, 2011). The Ohrid Framework Agreement put an end to the conflict, but it did not put an end to the sources of this conflict. The Ohrid Agreement excluded from consideration territorial solutions to ethnic problems, but preserving the unitary character of the country was not accompanied with the relevant implementation of measures by which all citizens of this unitary country would be equally treated. The war in Macedonia was the only case from the wars in the former Yugoslavia which did not occur for territories, but for the status of state-building and equal rights to all its citizens.

According to the EU Progress Report (2014) there is room for improvement in the areas of non-discrimination, fair representation, the use of languages and education. The law on the use of languages and the law on use of flags of the communities have still not been properly implemented. Local committees for relations between the communities are suffering from a lack of resources. A review of the implementation of the Ohrid Framework Agreement is still incomplete and the resulting recommendations have not yet been published. The budget of the secretariat for the implementation of the Ohrid Framework Agreement has been increased mostly on account of the salaries of around 1,700 civil servants who are yet to be assigned to state administrative bodies. The secretariat and the secretary general continued recruiting on civil servants from non-majority communities, but without specifying defined posts or job descriptions. This occurred often at the expense of the principle of merit. In 2013 the overall proportion of civil servants coming from non-majority communities increased slightly to reach 19%. Measures to address the underrepresentation of smaller minorities such as the Roma, Turks and others remain inadequate. Increased political support and state funding are necessary for efficient implementation of the Strategy on Integrated Education (EU Progress Report, 2014).

One of the basic beneficial instruments that were inaugurated with the Ohrid Framework Agreement was the so-called key 20 per cent, for gaining representational rights for non-majority citizens. With this 20 per cent, during this period, instead of a political-philosophic document, the OFA converted to a statistical exercise of a permanent ethnical counting. The consequence of this absurd percentage formed a new sociological category (not-known so far) for the Albanians in Macedonia – a 20 per cent nation. The Albanians in Macedonia have been counted by this number percentage due to be allowed the acquisition of certain collective rights. Then is a raised a question who should do the statistical counting and afterwards who is the one that shall permit these rights to Albanians? Census is about democracy, not just statistics. This situation leaded to the operational failed of census in 2011. Census in 2011 appealed to be a hostage to politics instead to be a necessary statistical operation for economic and social planning of the country (Musliu, 2012). Major protests by the Albanian community started in July of that year after the court verdict on the so-called "Monster" case relating to murders carried out in 2012 which currently is basic issue in the state. The murder of a teenager in the Skopje municipality of Gjorče Petrov in May, while not ethnically motivated, triggered protests

and increased inter-ethnic tension thereby exposing again the lack of trust between communities. The coalition partners made joint efforts to calm the protests but some political leaders from both communities continued to use ethno-centric and divisive language particularly during election campaigns. More effort is needed under the Ohrid Framework Agreement to pro-actively promote positive inter-community relations (EU Progress Report, 2014). Although elections in Macedonia are de jure free and fair, there have been manipulations of the vote in certain areas of the country in the past. Such manipulations took place during the early parliamentary elections during the period of 2008-2014 and the OSCE-ODIHR Report, 2008-2014 election observation mission reported that key international standards were not met. Tensions in Macedonia have been mounting since a disputed election in April, 2014 in which the ruling conservative VMRO-DPMNE party of prime-minister Gruevski defeated Zaev's ex-communist Social Democrats (SDSM) for the fourth consecutive time. Opposition leaders claimed that the election had been fraudulent and accused the prime-minister of operating a dictatorship. The Macedonian opposition (SDSM) has boycotted parliament ever since despite EU pressure to return to the assembly. Supporters of the government and the opposition have become ever-more polarised, to the extent that people from opposing camps who have been neighbours for years no longer talk to one another. Macedonia, which is a candidate to join the European Union, faces an escalating political crisis amid allegations of a planned coup, a mass wiretapping scandal and claims that the government and the secret service conspired to undermine the judiciary and rig media coverage.

In February, 20015 the Macedonian opposition leader Zaev released the latest of what he has called information "bombs" against the government i.e. a series of alleged wiretapped conversations of prime minister Gruevski, the head of the secret service and other senior officials. These conversations revealed that they apparently discussed government interference in the judiciary, the media and urban-planning processes (Carnegie Europe Report, 2015). One of the major protagonists is the prime minister`s first cousin Saso Mijalkov who is head of the shady security and counter-intelligence agency; the so called UBK. The opposition claims that the government and the UBK have been running a massive wiretapping programme, monitoring telephone conversations of 20,000 Macedonians, including journalists, politicians and religious figures. This represents a larger number than were bugged under communism (Carnegie Europe Report, 2015). Presently, we can only speculate about the veracity of any allegations – we simply don't know the facts, and all the protagonists in this drama modify, add to or even contradict their claims on a daily basis. While the foreign media tends to emphasise an alleged ethnic divide in Macedonia, there are no real "ethnic tensions" – people have lived and will continue together in peace. We will conclude with two comments Ambassador James Pardew stressed on the ten anniversary of the OFA agreement concerning leadership in Macedonia, "Real leaders do not just follow," and "They lead at critical moments in history". Right now is another point in time which requires leadership with vision and courage in the state (Reka, 2011).

Conclusion

Since independence in 1991 the interdependence of democracy and human rights has not been consolidated, yet. The process of democratization, once begun, needs to be sustained. This is the more difficult challenge. Not every democratic transition was sustained and success at the same time. Inter-ethnic relations, which remain fragile, continue however to pose a challenge for the democratic development of the country. The

Ohrid Framework Agreement, which brought to an end the conflict of 2001, provides the framework for human rights and preserving the multi-ethnic character of this society. Constitutional human rights changes have fuelled mistrust, power struggles and, what is even more noticeable, caused a continual decline in confidence in the political process. Effective implementation of the Ohrid Framework Agreement needs to be maintained in a spirit of consensus. Also, significant external difficulties continue to delay membership in NATO and the EU. Progress in relation to the protection of human rights of non-majority groups has been hampered by insufficient financial and human resources and inadequate cooperation between concerned authorities. There continues to be a lack of trust between the communities, however, and further initiatives to proactively promote an inclusive multi-ethnic society are needed. In recent years, an increasingly divisive political culture has resulted in many political crises and a breakdown in political dialogue. Parties in government have also blurred the line between the state and party, thus eroding trust in public institutions. There are serious concerns about government control over public institutions and the free media. However, a few key factors are found to be frequently recurring themes in the paper which discusses the issue of democratic sustainability in Macedonia. One is a democratic development and modernization that will fully respect human rights. Secondly here we take up the questions of political culture, historical tradition and learning to embrace democracy. The Ohrid Framework Agreement should not be seen as a limitation or a cap for the country's desire to build on its multi-ethnic and multicultural identity. Rather the Agreement should be viewed as foundation stone, or platform for building a stronger, fairer and more inclusive democracy where everyone truly believes they have a stake in Macedonia's future prosperity as a nation.

References:

Almond, G., Verba, S. (1963). *The Civic Culture: Political Attitudes and Democracy in Five Nations*, Boston: Little Brown.

Ackermann, A. (2011). *On the Razor's Edge: Macedonia Ten Years after Independence.* Retrieved from: http://ifsh.de/file-CORE/documents/yearbook/english/01/Ackermann.pdf.

Ackermannn, A. (1999). *Making Peace Prevail: Preventing Violent Conflict in Macedonia*, Syracuse: Syracuse University Press.

Arat, Z. F. (1991). *Democracy and Human Rights in Developing Countries*, Boulder: Lynne Rienner Publishers.

Bieber, F. (2008). *Power-Sharing And The Implementation Of The Ohrid Framework Agreement*., Skopje: FES.

Beetham, D. (1991). *The Legitimation of Power*, Basingstoke: Palgrave Macmillan.

Brown, K. (2000). In the Realm of the Double-Headed Eagle: Parapolitics in Macedonia, 1994-9. In Cowan, J. K., *Macedonia. The Politics of Identity and Difference*, London: Pluto Press.

Brown, K. (2003) *The Past in Question: Modern Macedonia and the Uncertainties of Nation*, Princeton: Princeton University Press.

Baxi, U. (2001). *The future of human rights*, New York: Oxford University Press.

Bell, Ch. (2003). *Peace Agreements and Human Rights*, Oxford: Oxford University Press.

Brownlie, I. (2009). *Basic Documents in International* Law, Oxford: Oxford University Press.

Cassinelli, C. W. (1961). *The Politics of Freedom: An Analysis of the Modern State*, Seattle: University of Washington Press.

Chilton, S. (1991). *Grounding Political Development*, Boulder: Lynne Rienner Publishers.

Commission of the European Communities (2005-2014): Analytical Report for the opinion on the application from the Former Yugoslav Republic of Macedonia for EU membership. Retrieved from: http://ec.europa.eu/enlargement/archives/pdf/key_documents/2005/package/sec_1425_final_analytical_report_mk_en.pdf.

Daskalovski, Z. (2002). Language and Identity: The Ohrid Framework Agreement and Liberal Notions of Citizenship and Nationality in Macedonia. *Journal on Ethnopolitics and Minority Issues in Europe*, vol. 3, (1), 14-16.

Dahl, R. A. (1971). *Polyarchy: Participation and Opposition*, New Haven: Yale University Press.

Diamond, L. et al. (1990). Introduction: Comparing Experiences with Democracy. In Diamond, L., Linz, J. J., Lipset, S. M. (eds)., *Politics in Developing Countries: Comparing Experiences with Democracy*, London: Lynne Rienner Publishers, pp. 1-35.

Donnelly, J. (2003). *Universal Human Rights in Theory and Practice*, 2nd edition, New York: Cornell University Press.

Held, D. (1993). *Democracy: From City-states to a Cosmopolitan Order?* In Held, D. (ed). *Prospects for Democracy: North, South, East West*, Stanford: Stanford University Press, pp. 13-52.

Konvitz, M. R. (2007). *Fundamental Rights. History of a Constitutional Doctrine*, New York: Rutgers University.

iotta, P. H., Jebb, C. (2002). Macedonia: End of the beginning or beginning of the end? *Parameters* 32(1), 92.

Maksuti, M. (2005). *Political and Constitutional aspects of political status of Albanian in Macedonia*, Skopje: Logos – A.

McGarry, J., O'Leary B. (1995). *The Politics of Ethnic Conflict Regulation*, New York: Routledge.

Mertus, J. A., Helsing, J. W. (2006). *Human Rights and Conflict. Exploring the Links between Rights, Law and Peacebuilding*, Washington D. C.: United States Institute for Peace.

Musliu, A. (2012). *System of Human Rights*, Skopje: Vatra.

Reka, B. (2011). *Ten years from the Ohrid Framework Agreement. Is Macedonia is functioning as a multi-ethnic state?* Tetovo: South East European University.

Shea, J. (2008). *Macedonia and Greece: The Struggle to Define a New Balkan Nation.* Jefferson, North Carolina: Mc Farland & Company Inc.

Wimmer, A. (2002) *Nationalist Exclusion and Ethnic Conflict*, Cambridge: Cambridge UP.

Article Info

Received: March 25 2015
Accepted: May 15 2015

RSP • No. 46 • 2015: 38-51

ORIGINAL PAPER

New Axiological Trends in Human Being Formation and Development: Trends in the Youth Perceptions and Self-Development in Education

Mihaela Aurelia Ștefan*
Alexandrina Mihaela Popescu**

Abstract
The essence of the human being is the set of values he internalizes and acquires. Nowadays, the educator has to admit that the values reshape continuously. The world today is characterized by dynamism and change and the individual is forced to adapt effectively. School aims at training individuals able to assume their responsibility in acquiring skills. Valuing the individuality of the learner is a fundamental principle of contemporary education. In an educational and social context which is constantly changing, both students and teachers must become reflective practitioners, able to adapt to all educational situations by analyzing their own practices and results. The ability to self-analyze allows the teacher to identify his successes and failures and readjust his future actions. The self-reflexive dimension leads to autonomy. In the present study we intend to emphasize the necessity of training an autonomous individual, able of self-accomplishment by an independent lifelong learning. Responsibility, autonomy and efficiency are present demands of training and educating the human being. The development of the professional skills is a continuous process which is due, on one hand, to the evolution of the sets of knowledge and abilities of the individual and on the other hand to one's increased ability to reorganize in more complex integrative structures his acquisitions according to his experience. The scientific approach is focused on both the presentation of the theoretical aspects and on highlighting the practically-applied implications of the aspects taken into consideration. The present research is oriented on the (meta)cognitive, constructivist theories which effectively imply the learner in the "learning process". Starting from the premise that training the autonomous learning skill is accomplished *progressively, through a systematic, reflexive and continuous practice*, we have tried to draw several directions of action.

Keywords: *competence, reflection, action learning, role play, education*

* Lecturer, PhD, University of Craiova, Department of Teacher Training, Phone: 0040765653357, E-mail: stefan.mihaela25@yahoo.com.
** Associate Professor, PhD, University of Craiova, Department of Teacher Training, Phone: 0040740330900, E-mail: alexia_popescu@yahoo.com.

Introduction

In today's society, the individual is forced to adapt quickly and efficiently. Reflective approach (Perrenoud, 2001), differentiated instruction (Maciuc, 1998, 2005), constructivist learning (Joiţa, 2006; Siebert, 2001; Loyens, Gijbels, 2008), self-management/ self-directed learning /autonomy learning (Frăsineanu, 2012; Abdullah, 2001; Neacşu, 2006; Negovan 2004; Marshall and Rowland, 2003; Ştefan, 2014), learner-centered education/ competence (Perrenoud, 2000, 2006; McCombs, Miller, 2008), conflict management (Popescu, 2014), self-assessment (Schunk, 1996; Mogonea, 2010) are the current requirements in the training/education of the human being.

The school seeks to form individuals able to take responsibility of acquiring skills. Training methodology prepares the learner to become a good organizer of learning experiences. In an educational context and changing social, both the student and the teacher must give evidence of professional competences affirmation. Jurisdiction is today the main indicator in validation for a profession, regardless of their field of activity or status-role acquired during his career (Chiş, 2001). In the field of psychopedagogy, the term competence was defined by the numerous correlations, for example, by comparing him with terms: capacity, skill, knowledge, procedural knowledge strategic, through its settlement in parallel with the term pair: the default standards conforming to the performance (Doron, Parot, 1999) and, in relation to this, the ability to meet the requirements associated with a role (eventually professional), by reference to sets of underlying competence manifestation (Bocoş, 2007) or, on the contrary, by reference to the character of the event, showing competence which is a function of the complex context in which jurisdiction is sought (Richelle apud Doron, Parot, 1999; Chiş, 2005). Mastery of a skill involves the ability to report a specific situation in a class of cases, to integrate it and to interpret it as such (Ionescu, 2003). I. Jinga (2001) says that the professional competence of educators in education is "a set of capabilities, cognitive, affective, motivational and managerial staff who interact with the traits of personality of a tutor, giving it the necessary qualities of a teacher's benefits to ensure that project objectives by the vast majority of pupils, and the performance achieved to lie close to the maximum level of intellectual potential of each". Le Boterf (2000) considers power as "the capacity to mobilize all types of cognitive resources including information, knowledge". This mobilization involves investing knowledge, putting in relation to situations, their enrichment (Perrenoud, 1996). The term competence is also known definitions and other more or less differentiated (Chiş, 2005): "competence is the ability to perform activities related to an occupation or function to the standards defined by the employers"; "competence means the ownership and development of knowledge and skills, appropriate attitudes and experiences necessary for good performance in the roles assumed"; "the competences are complex structures with operational value, instrumental, placed between knowledge, attitudes and skills and have the following characteristics: ensures the roles and responsibilities assumed; activity correlates with performance; can be measured on the basis of performance standards; can be developed through learning" (Parry, 1998).

The competence mobilizes declarative knowledge (describing reality), procedural (prescribing a way forward) and conditional (which looks at what point to start such an action). Practicing skills is more than a mere enhancement of knowledge; it requires anticipation, judgment, creative approximation, synthesis, risk taking. Practicing competences highlights our skills and especially our schemes of perception, thought and knowledge mobilization, information that we have assimilated (Perrenoud, 2006: 168). A competence involves, according to Ph. Perrenoud (2006), the existence of resources

mobilized, not identical with them, but on the contrary, it helps you taking the task of putting them in synergy in order for effective action and complex situations. It increases the value of resource mobilized, ordering them, putting them in a relationship, merging them into a whole richer than mere additive meeting. None of resources is exclusive competence but can be mobilized by other skills.

Competence is no longer just the ability to do something practical to apply by means of knowledge and skills, through the mobilization of resources, but the ability to exercise a role to resolve a situation / type of situation, to relate, own it or when it comes to skills, intelligence mention situations that continuously builds (Jonnaert, 2005 apud Joița, 2008: 28). To summarize, across multiple understandings of the term granted, most theorists agree to paradigm competence following fundamental characteristics that may be associated to competence: the competence is associated to an actional field; the components are indivisible (knowledge, skills, attitudes circumscribed to it its integrated); competences evolves, changes in content and are operational; skills require a continuous process of learning and development; interconnect and specific skills according to the context in which they are used; skills are refined by integrating new knowledge and share experiences, key skills development programs are effective by the identification of learning experiences to ensure the continued development of knowledge and skill sets associated with competence.

Teaching competence is a complex structure – organizing at the intersection of verbs to know, to know how to do, knowing how to be, to know how to become during teaching career (Chiș, 2005) and including a potential business performance – and dynamic, the event was effective as a function of equivalent experience. Workforce Development is an ongoing process and structuring acquisitions and restructurings. This approach starts stages of initial and continuing throughout the profession, integrating direct professional experience, but also through specific training approaches. In summary, we outline some features of competence: is inclusive – competence involves the integration of knowledge, skills, abilities, diverse attitudes; is the result, the end of the training: competence requires sufficient knowledge, relevant and organized, associated skills, capabilities and integrated models of situations; refers to the context of implementation; is a system of construction or reconstruction; develops (may be lost if it is not mobilized for a long time or if contexts, it changes a lot); involves implementation (combined) of different knowledge, skills.

The future teacher will have to get through the initial training not only knowledge and skills but also a set of attitudes necessary to practice the teaching profession in good condition.

Moving beyond the training aims at teaching pupils/students is evident in cognitive strategies that have developed a number of programs to stimulate the learning-motivated, a (self) school discipline, independent learning, to take on roles (Neacşu, 2006 apud Negovan, 2004).

The power of self-management requires the learner autoevaluation, both in relation to the learning tasks and in relation to ways of learning (Frăsineanu, 2014). In developing self-monitoring their knowledge building activities in achieving self-evaluation and restructuring default reaction to himself on the results recorded in the self comes metacognition whose role is decisive (Ștefan, 2014; Mogonea, 2014).

Research methods

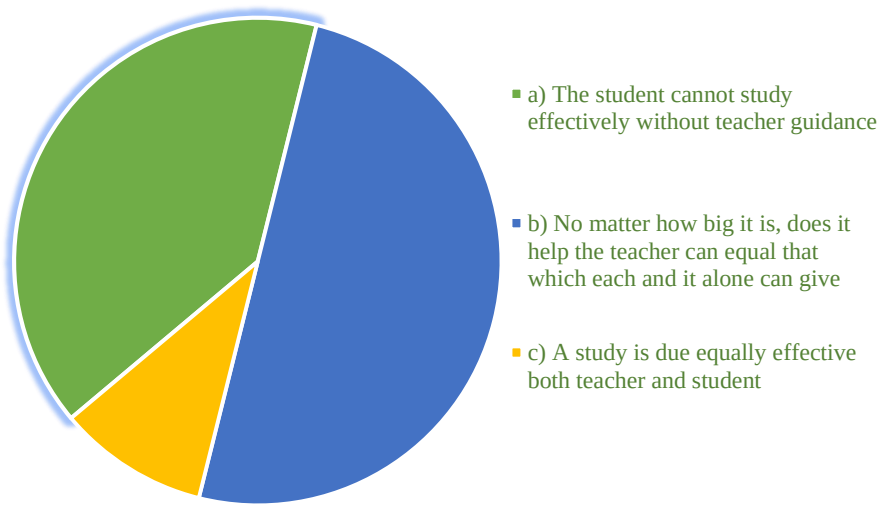
Within the research that we conducted on an optimization of teaching and methodical skills training, we intend to identify how these skills can be formed more efficiently. The research aims to highlight home made stage formative experiment. In ascertaining stage, pre-experimental to determine the existing level at the start pedagogical experiment, we set the following objectives: O.1. Identifying students' perception on initial psycho-pedagogical training and accountability and autonomy; O.2. Identifying ways to develop skills for the teaching profession.

To identify the extent to which students are aware of the need to assume personal responsibility in the process of self-formation to outline the pedagogical concept underlying the attitudes of students towards independent learning and study, we applied a questionnaire of opinion. Further we gleaned some of the data collected: the phrases that define students are summarized in Table 1 and represented in Figure 1.

Table 1. Results on the expressions representing students

Phrases representative for students	*Percentage*
a) The student cannot study effectively without teacher guidance	*40%*
b) No matter how great it is, teacher help equals that which each and it alone can give	*50%*
c) A study is due equally effective by both teacher and student	***10%***

Figure 1. Results on the expressions representing students



The results show that students (50%) realize the necessity of assuming personal responsibility in the process of self-training, yet placing emphasis on the role of teacher effectiveness in achieving academic study, as evidenced by student responses to the following question in the same questionnaire.

Table 2. Opinions of students on whether they consider that the marks received in a discipline are influenced by individual independent study

Question: To what extent do you think the marks received in a discipline are influenced by individual independent study?	***Percentage***
a) very much	*20%*
b) as appropiate	*60%*
c) a little	*14%*
d) not at all	***6%***

We mention that from the questionnaire identifying pedagogical concept underlying the attitudes of students to study and learning we recorded the following findings:

a) 50% of students surveyed believe that the teacher depends to a great extent, achieving efficiency of teaching; teacher must act in teaching, tactfully, with more creativity; he must have not only the role of emotional stimulus, but also lead the study of individual students; individual study techniques that students turn are effective reading, taking notes, annotations, descriptions composition study, consulting references, composition plan ideas to conspects or summaries, essays etc;
b) Students are aware that it is not efficient to receive knowledge for granted but requires personal effort, active involvement in knowledge and learning;
c) a negative aspect manifested in the way of studying of students is using exclusively the notes. The explanation lies in students' preference on their inclination notes for brevity and systematization qualities commonly encountered exposures teachers and sometimes, rarely, in the manual exposures;
d) a worrying aspect is that most of the students do not know how to use the course notes and printed; some mechanical saves notes as they could take during explanations, others memorize whole passages in the manual; exclusive use of notes and manual indicates serious shortcomings of individual learning strategy;
e) students (50%) admit mentor, facilitator of the teacher in knowledge construction;
f) students are aware and support the idea of systematic use of strategies focused on building self-knowledge, encouraging initiative, responsibility and reflexivity; they have made significant progress in terms of cognitive and metacognitive capacities. By appealing to different metacognitive procedures the students come to realize their own worth, strengthens their belief that they are able to overcome difficulties;
g) reflective practice is learned through systematic training, leading to the development of metacognition.

In summary, the data collected and analyzed by the following observation led all students although theoretically recognize the need to boost responsibility and autonomy in their learning, they are still affected virtually classical model that the teacher has the main role in achieving academic study efficiency; need for joint efforts towards the formation and development of independent study skills, more so since some students preparing to become teachers. In this regard we believe that the University by the Didactical Personal Training Department (DPPD), aims at contributing to the development of student autonomy: students learn by themselves to be autonomous professionals and strategists about the terms of their future professional

performance. Thus, each teacher individually or with the rest of the university teaching staff has the task of organizing the teaching-learning as an intervention that, fundamentally, organizes conditions facilitating progressive autonomous learning of students. Recorded findings from the questionnaire of data collection on individual independent students' study were supplemented by data collected through an interview focused on student perceptions of the teaching profession. Students who participated in the focus group are students of years III and IV enrolled in DPPD modules within the University of Craiova, in the academic year 2014-2015. The distribution can be seen in Table 6. Analyzing the responses of students interviewed in the focus group one can draw some lines on their perceptions of the teaching profession. Thus, according to the students, the teaching profession benefits can be divided into two categories:

Table 3. Distribution of subjects participating in the focus group

Specialization	Year of Study	Number of Subjects
Letters-English	II	37
Law	III	48
Public Administration	II	10
Total subjects: 95		

a) The first category reflects the perception and understanding of the purpose and mission of the teaching profession, noting that the responses recorded first advantage the opportunity to work in a pleasant, stimulating and energizing environment; the teaching profession is considered to be a noble profession, which is based on continuous learning, self-learning and intellectual effort, leading to joy and professional satisfaction;

b) The second category of responses confirms that the perception of the teaching profession is distorted. These can be retained replies that the advantages of this profession are: a lighter schedule, not very busy, which gives you the possibility to practice other activities also, in parallel with teaching; students' holidays are seen as overlapping fully with teachers leave, which is also considered an advantage; it is a secure job, once one entered the system it "goes by itself without much effort".

In the following we will try to summarize students' responses regarding the apparent disadvantages of the teaching profession. The most common response that was recorded was the too low wage level of the teacher. The disadvantage appears to be a mainly subjective perception; unfortunately on these issues it is not in our power to intervene, to increase the attractiveness of the teaching profession, it can only be noted that these disadvantages are mitigated counterweight to identify the advantage of recognition by other community members the importance and role the teacher.

We could also identify a category of answers that emphasize the teaching profession responsibilities that come with the entry into the teaching profession: the design of educational activities, obtaining or developing teaching materials, choice of training methods to facilitate student learning, empathy with students etc. Although these responses may seem to be surprising in our approach, we wish to emphasize that the mere knowledge and recognition by prospective teachers of responsibilities to assume is something to consider and show their knowledge of the peculiarities profession that might follow. Another category of responses aimed on the one hand at the long time required

for initial training of teachers and on the other hand the need for continuous training, "continuous improvement", "long term investment", "additional training", "training continues". These responses could lead to the conclusion that students do not want to invest too much in their preparation.

We see a series of answers which emphasizes that the teaching profession is a disadvantage of indiscipline on the one hand and the quality of training students on the other. We will highlight only a few such responses: "students are noisy, inattentive, absent from class", "disinterested students", "naughty students", "teacher has no authority", "low interest of some students in learning". Through effective action of teachers, most of these "symptoms" can be eliminated or at least mitigated. Lack of authority of the teacher in the classroom can highlight gaps in the psycho-pedagogical methods, teaching communication skills, leadership classrooms etc. The problems of students focused more coordinated relational: they cannot fix their timbre depending on communication situations arising in the lesson, do not know how to adapt communication style according to age peculiarities; although knowing various methods/ techniques of communication, didactic transposition of content does not always influence emotional behavior; reduced nonverbal language recovery; reduced ability to challenge/ maintain/ enhance continued interest, cooperation, prevention/ teaching conflict resolution etc. Finally, a last category of answers are those relating to the disadvantage of the teaching profession working under high stress: "continuous daily stressful preparing", "everyday stress", "one must have strong nerves daily". In the opinion of students, the characteristics of effective teaching can be summarized as follows (table 4):

Table 4. Characteristics of effective teacher in the eyes of students

Characteristics of effective teacher
A good specialized training
A good psiho-pedagogical and metodical training
Love for children
Communicativity
Open to novelty, innovation
Objectivity
Sociability
Calm, patient
Accountability
Creativity
Adaptability

The analysis of these answers reveals awareness of the importance of good preparation both specialist and psycho-pedagogical. The efficiency of the teacher depends on the presence/ absence of teaching ability with all the elements involved in it.

Regarding teaching methods appreciated by students in training activities answers can also be grouped in three categories relating to: (1) preference of traditional methods of teaching and learning (i.e. lectures, conversation, explanation), on the ground that are most effective in teaching and learning, giving the best results, and better understanding and retaining the content taught. Another motivation for prefering

traditional methods concerns the ease in their application compared to interactive methods that require more time and more teaching material, another class ergonomic organization of space, etc. Unfortunately, there were also students who mentioned choosing these methods because they saw as a mentor for their work hours demonstration; (2) the option to combine traditional methods with the active and interactive in this category may be mentioned methods, procedures and techniques for teaching: teaching the game, brainstorming, cube method, 5-minute essay, problem, bunch, reading explanatory know/ have learned, role play method quadrants, debate, snowball, competition, etc. (3) the third category includes responses of students who do not know the term "teaching methodology" in their responses actually identifying the components of the educational process teaching, learning, assessment.

In conclusion, the implementation of an intervention program focused on action learning methods (practical work method, role play) can lead to a correct perception of the teaching profession, on the one hand, and, on the other hand, the optimization of educational activities. In order to improve the training process and methodological skills to DPPD students in the experiment we proposed to achieve through action research, the relationship between the independent variables and the dependent structure are cause- effect related. For these experiments, we established *independent variables (VI):* Role play; *Dependent variables (VD):* Performance in assessment test; Perception of initial pedagogical training; Self-browsing capabilities formed after the training program.

Program teaching skills using action learning methods practice is designed and structured to target teacher training skills. Subjects in the experimental group obtained in the post-test phase significantly improved results, both in the perception of the teaching profession and methodological skills. Below, we present data obtained selectively.

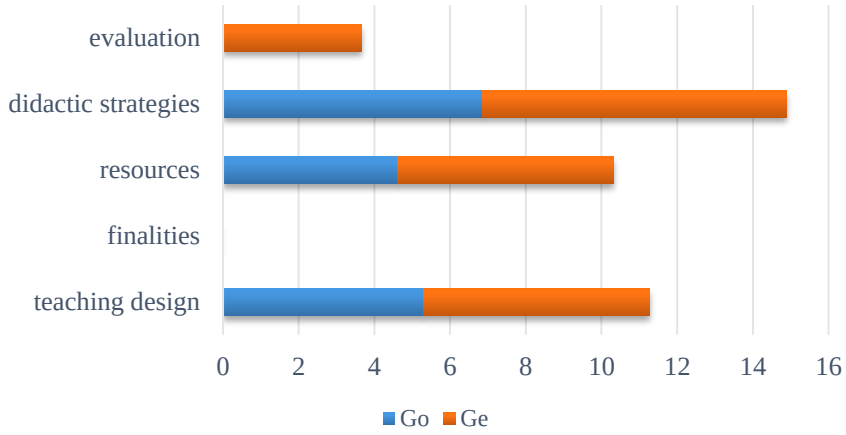
Results and discussions. Comparative data on the post-test assessment results

We present the results for the comparison between the experimental and control group post-test phase. For the results of the evaluation sample averages obtained for the two groups are different (table 5, diagram 1). For all evaluated subjects the experimental group achieved better results.

Table 5. Medium values for the sample size of evaluation in post-test phase

	teaching design	*finalities*	*resources*	*didactic strategies*	*evaluation*
Gc	5,30	l,7l	4,60	6,85	l,93
Ge	5,98	3,6l	5,71	8,05	3,65

Figure 2. Medium values for the sample size of evaluation in post-test phase



As a result of inferential processing we can say that there are statistically significant differences in terms of knowledge of the psychological and pedagogical approach. We can easily observe significant differences larger than one point for categories purpose and teaching strategies, issues that require a higher level of abstraction of the subjects.

Comparative data on self capacities formed after following the training program

Asked the extent deemed to have made the necessary capacities of teaching, during the post-test phase, subjects in the experimental group believe they would be able to a greater extent than those in the implementation control group for most aspects presented in the following item (Table 1).

Table 6. The average values for the item 4 in the post-test phase

	I4A	I4B	I4C	I4D	I4E	I4F	I4G
Go	3,68	3,93	3,63	3,75	3,95	3,75	3,71
Ge	3,90	4,15	3,91	4,10	4,16	3,98	3,91
Go	I4H	I4I	I4J	I4K	I4L	I4M	I4N
Ge	3,88	3,93	3,60	3,55	3,53	3,80	3,78

Legend

I4A to awake/ stimulate students' interest	**I4H to ask questions to help (support) leading to the desired response**
I4B communicate clearly and attractive the activity objectives	**I4I** to give clear examples
I4C to organize the front class activities	**I4J** to involve students in activities that require their learning effort

I4D to organize the class in individual activities	**I4K** to make clear and systematic scheme of the content
I4E to organize class/ group activities	**I4L to** drop, consolidate knowledge
I4F to present systematic and logical contents	**I4M** Assessment/ ask questions during and at the end of work
I4G to explain various phenomena, processes, principles, concepts	**I4N** to apply to the learning difficulties experienced by students
G0 control group	**Ge** experimental group

Statistical processing results highlight significant differences between the control group and the experimental group posttest phase for: awake/ stimulate student interest (p = .014), clear communication and attractive business objectives (p = .001), class organization in front activities (p = .001), organize the class into individual activities (p = .011), explain the various phenomena, processes, principles, concepts (p = .043), making clear and systematic scheme of contents (p = .034), using the methods of fixing and consolidation of knowledge (p = .045), need for the purposes of completing knowledge (p = .037). For item 5 where subjects were asked to what extent one has certain personal characteristics, we obtained different results for the experimental group and the control group for most of the aspects investigated. The subjects in the experimental group the average higher than those obtained in the control group for most of the characteristics (Table 7).

Table 7. The average values for the item 5 in the post-test phase

	I5A	I5B	I5C	I5D	I5E	I5F
Gc	3,96	4,15	4,13	3,63	4,26	4,10
Ge	3,96	4,36	4,35	3,96	4,40	4,26
	I5G	I5H	I5I	I5J	I5K	I5L
Gc	3,58	3,96	4,25	4,33	3,71	3,96
Ge	3,60	4,11	4,51	4,35	3,73	4,21

Legend

I5A logical thinking	**I5G** self-confidence
I5B enthusiasm	**I5H** accountability
I5C resistance to stress	**I5I** adaptability
I5D receptivity to new	**I5J** ability to respond positively to criticism
I5E optimism	**I5K** flexibility
I5Fempathic capacity	**I5L autonomy**
G0 control group; **Ge** experimental group	

In the post-test phase, 90.3% of students in the experimental group said they would like to pursue a teaching career, while for the control group this answer has a percentage of 64.3%. As a result of inferential processing, we can say that the percentage of students who would like or not to pursue a teaching career is significantly influenced by participation in the intervention program.

We calculated an index represented by the average of the answers to the size of each item (Table 8). We then compared these results to the experimental group and the

control group. As for all items in the experimental group subjects obtained higher mean, we asked to what extent the differences between the two groups are statistically significant.

Table 8. Mean values for questionnaire items to students during the post-test

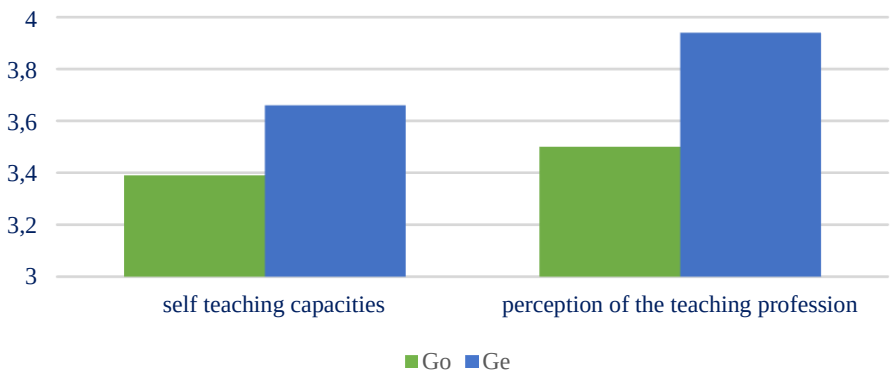
	I4	I5	I6	I7	I8	I9	I10	I11	I12	I13	I14	I15
Gc	3,55	3,71	4,10	3,70	4,03	2,43	3,85	4,09	3,54	3,08	1,86	3,25
Ge	3,96	3,90	4,22	3,81	4,23	3,11	4,31	4,33	4,04	3,61	2,03	3,34

Because distributions indices calculated for the 15 items are symmetric quantitative analysis, we tested the significance of differences using Student's t test for independent samples. We obtained significant differences at a threshold $p < .05$ for items 4, 5, 9, 10, 11, 12, 13. Then we realized an average of responses for each dimension corresponding items investigated by questionnaire to students: (a) self teaching capacity; (b) perception of pedagogical training. Descriptive processing results obtained show that the higher the average experimental group compared to the control group (Table 6). The differences are significant in terms of self teaching capacity ($t = -3.283$ $p = .001$), which means that the post-test phase, students in the experimental group considered to have a greater degree than students in the control group capabilities necessary to develop a teaching approach. We also have pedagogical training for the perception of significant differences for the control group and the experimental: $t = -.043$ $p = .000$.

Table 9. Medium values for dimensions in phase post-test questionnaire

	self teaching capacities	perception of the teaching profession
Gc	*3,39*	*3,50*
Ge	*3,66*	*3,94*

Figure 3. Medium values for dimensions in phase post-test questionnaire



The relationship between self-assessment and evaluation of knowledge

To investigate whether there is a relationship between the questions examined by "questionnaire to students" and "assessment test" we calculated Bravais-Pearson correlation indices. The analysis of correlation indices between self- and perception capabilities teaching and pedagogical training reveals a negative correlation ($r = -0.265$ $p < .01$), meaning that the higher the score obtained for the perception of pedagogical training the lower the score obtained for self-teaching capacities. Following inspection of the calculated correlation indexes we find significant positive correlations between performance on test and: evaluation of design of teaching necessary skills ($r = 0.314$ to $p < .01$); cast adopted teacher-student relationship ($r = 0.248$ to $p < .01$). Post-test stage results show that analyzed coordinates succeeded during an intervention to improve students' ability to evaluate objectively.

Conclusions

We conclude from our analysis so far that most of the students who participated in the study, despite all the disadvantages, difficulties and hardships of the teaching profession recognized and anticipated, are still willing to pursue this profession. Given this conclusion, we think it is our duty to ensure the prerequisites for a substantial and specific training of future teachers, so that the social and economic difficulties that they face in the profession do not add further difficulties such as failure in theoretical or practical accommodation with the school environment. In conclusion, the implementation of an intervention program focused on issues and self-directed learning methodology; the independent construction of knowledge can lead to a correct perception of the teaching profession, on the one hand, and on the other hand, the optimization of educational activities and gradual affirmation of student autonomy in learning.

This hypothesis can be a starting point for future experimental approach, in a formative experiment. All the theoretical considerations and radiography of the current situation by identifying these views of students had intended to indicate directions that we can follow the initial training of students-future teachers: (1) one must not neglect students' attitude towards their development: putting emphasis on responsible involvement in their education needs to develop conscious attitude towards the problem of learning in general and autonomous learning in particular; consider the need for students to take possession of enough information about learning self-importance, necessity, steps, strategies etc., and they must be presented so as to increase their interest in training/development; (2) students need a theory about specific academic learning in order to be aware of their own learning, to identify the main steps to be taken to develop self-management capabilities; (3) stimulating student motivation by developing self-esteem is an effective strategy in the work with students; (4) the choice of teaching and learning strategies must take into account the degree of independence among interviewed students; strategies used in educational activities must challenge the students to think critically about their own learning, to realize their own cognitive approach to identify the strengths and weaknesses of autonomous learning.

This study represents a completion of concerns on the initial formation of teacher training and is intended as a starting point to address and analyze the complexity of academic learning emphasizing the idea that professionalization of teaching requires capacity building of continuous education.

References:

Abdullah, M. H. (2001). *Self-directed learning*, Bloomington: IN: ERIC.

Bocoş, M. (2007). *Didactica disciplinelor pedagogice*, Cluj-Napoca: Presa Universitară Clujeană Publishing House.

Chiş, V. (2001). *Activitatea profesorului între curriculum şi evaluare*, Cluj-Napoca: Presa Universitară Clujeană Publishing House.

Chiş, V. (2005). *Pedagogia contemporană - Pedagogia pentru competenţe*, Cluj-Napoca: Casa Cărţii de Ştiinţă Publishing House.

Doron, R., Parot, F. (1999). *Dictionar de Psihologie*, Bucharest: Humanitas Publishing House.

Ionescu, M. (2003). *Instrucţie şi educaţie. Paradigme, strategii, orientări, modele*, Cluj-Napoca: Garamond SRL Publishing House.

Jinga, E. (2001). *Managementul învăţământului*, Bucharest: Aldin Publishing House.

Joiţa, E. (coord.) (2006). *Instruirea constructivistă – o alternativă. Fundamente. Strategii*, Bucharest: Aramis Publishing House.

Joiţa, E. (coord.) (2008). *A deveni profesor constructivist. Demersuri constructiviste pentru o profesionalizare pedagogică iniţială*, Bucharest: Didactic and Pedagogical R. A. Publishing House.

Joiţa, E. (2010). *Metodologia educaţiei. Schimbări de* paradigmă, Iaşi: Institutul European.

Le Boterf, G. (2000). *Contruire les competétences individuelles et collectives*, Paris: Editions d'Organisation.

Loyens, S., Gijbels, D. (2008). Understanding the effects of constructivist learning environments: introducing a multi-directional approach. *Instructional Science*, (36), 351-357.

Frăsineanu, E. S. (2012). *Învăţarea şi self-managementul învăţării eficiente în mediul universitar*, Craiova: Universitaria Publishing House.

Maciuc, I. (1998). *Formarea continuă a cadrelor didactice*, Craiova: Omniscop Publishing House.

Maciuc, I. (2005). *Şcoala democraţiei şi formarea profesorilor*, Bucharest: Didactic and Pedagogical R. A. Publishing House.

Marshall, L, Rowland, F. (2003). *A Guide to learning independently*, Buckingham: Open University Press.

McCombs, B. L., Miller, L. (2008). *The school leader's guide to learner-centered education: From complexity to simplicity*, Thousand Oaks: CA Corwin Press.

Mogonea, F. (2010). *Formarea competenţei de autoevaluare la elevii de liceu*, Craiova: Universitaria Publishing House.

Mogonea, F. (2014). *Premise teoretice şi metodologice ale valorificării metacogniţiei în activitatea didactică*, Craiova: Sitech.

Neacşu, I. (2006). *Învăţarea academică independentă. Ghid metodologic.* Bucharest. Retrieved from: http://www.unibuc.ro/uploads_ro/36833/Invatarea_academica_independenta.pdf.

Negovan V. (2004). *Autonomia, în învăţarea academică – fundamente şi resurse.* Bucharest: Curtea Veche Publishing House.

Parry, K. (1998). Grounded Theory and Social Process: A New Direction for Leadership Research. *Leadership Quarterly*, 9(1), 85-105.

Perrenoud, Ph. (1996). *Construire des compétences dès l'école*, Paris: ESF éditeur.

Perrenoud, Ph. (2000). *Dix nouvelles compétences pour enseigner. Invitation au voyage*. Paris: ESF éditeur.

Perrenoud, Ph. (2001). *Développer la pratique réflexive dans le métier d'enseignant.* Paris: ESF éditeur.

Perrenoud, Ph. (2006). *La universitat entre la transmissió de coneixements i el desenvolupament de competències. Quaderns de docència universitària* (Institut de Ciències de l'Educació de la Universitat de Barcelona), (5), 27-52.

Popescu, A. M. (2014). *Managementul conflictului în organizaţia şcolară.* Craiova: Sitech.

Siebert, H. (2001). *Pedagogie constructivistă.* Iaşi: Institutul European.

Schunk, D. H. (1996). Goal and self-evaluative influences during children's cognitive skill learning. *American Educational Research Journal*, (33), 359–382.

Ştefan, M. A. (2014). *Dezvoltarea competenţei de învăţare autonomă la studenţi*. Craiova: Sitech.

Article Info

Received: March 30 2015
Accepted: May 26 2015

RSP • No. 46 • 2015: 52-62

ORIGINAL PAPER

Restitution and Denationalization of Property in Serbia, as Part of Transition and Democratization of the State: A Legal and Historical Approach

Melina Rokai*

Abstract
This paper aims to analyze and present how several Serbian governments after democratic changes in Serbia in 2000 misused the need for restitution of confiscated property as the part of necessary changes for breaking with the socialist regime. This question was only one of the program promises of democratic political parties and was a tool for power. Both Serbian citizens and the European Union were repeatedly tricked that progress in the direction was made until it became absolutely necessary. The research was done with comparative method, where various laws pertaining to the restitution of the nationalized property were utilized. The laws employed in this paper were the three most important one: the Law on Property Restitution and Compensation, the Law on Restitution of Property and the Law on Reporting and Recording Seized Property. These laws will be analyzed and will be compared in terms of benefits they brought regarding restitution of confiscated property after the Second World War to the former owners who belonged to different categories. As the research using such methodology showed us, certain legal solutions were beneficial to particular groups of former owners in different laws. Such legal resolutions brought about often different, rather more benevolent solutions for churches and religious communities, on the one hand, and natural persons on the other. This in turn created possibility for discrimination. If these are put aside, all the laws had a beneficial effect in preparing citizens for the restitution, even those groups who were opposed to the idea, as they had benefited from confiscation.

Keywords: *restitution, transition, denationalization, confiscation, Serbia*

* Research Assistant, PhD, University of Belgrade, Faculty of Philosophy, Department of History, Phone: 00381643532521, Email: melina.rokai@pmb.oxon.org.

With the end of the World War II, SFRY, as well as other Eastern European countries, did not avoid the fate of gross violations and irreverence for property rights of individuals and legal entities, endowments, churches and religious communities. As it is stated in Article 2 of the Law on Property Restitution and Compensation (the Law on Restitution of Confiscated Property and Compensation in the Official Gazette No. 72/2011), the government of the time, by means of laws and by-laws, of which were forty-one, with one stroke of the pen, groundlessly, yet molded into the legal form, disowned the pre-war owners of immovable and movable property. The owners included the church and religious communities. Confiscation of the property of all categories of owners was performed by expropriation, confiscation, agrarian reform and nationalization as the most widespread methods of seizure of immovable property, and in smaller numbers of movable property (Stojanovic, 1995: 25). After the fall of the Milosevic regime in October 2000, new democratic political parties wanted to prove that they had broke away with relics of the past communist regime. The issue of nationalization and the need for the adoption of the law on denationalization had always been raised in all election campaigns starting from the 2000, 2003 and later. However, this question was only one of the program promises of democratic political parties and was a tool for power (Vodinelic, 2013: 5-19). Unlike the East European countries in transition that went through the legal overcoming of the past and that managed to establish mechanism of rule of law and legal state in order to overcome historical injustice and solve the delicate problem of denationalization, there was no real political will and readiness to start with solving issue of restitution in Serbia (Trkulja, 2009: 23).

Due to the lack of real political will, attempts to draft denationalization have brought no results. Instead of passing a law on denationalization, in 2005 Serbia passed the Law on Reporting and Recording of Seized Property under the pressure of the Council of Europe to implement the denationalization. The Law came into force on June, 8 2005 (the Law on Reporting and Recording of Seized Property, the Official Gazette No. 45/2005). This law only regulates the procedure for reporting and recording confiscated property (Article 1). Article 8 explicitly states that "the filing of seized property under this Law is not a requirement for entitlement to restitution or compensation for the property, the more the requirement that such demand is made in accordance with the law". The law stipulates that the application may be submitted by individuals, hereinafter designated as the previous owners, their heirs and successors whose property was confiscated by applying regulations referred to in Article 1 of the same Law (art. 3 par 1 of the Law on Reporting and Recording of Seized Property, the Official Gazette, no. 45/2005). The Law stipulates the application for registration of the property may be submitted by the 30th of June 2006. The Directorate for Property of the Republic of Serbia (art. 6 of the Law on Reporting and Recording of Seized Property, the Official Gazette no. 45/2005) has received tens of thousands of preliminary requirements (Glisic, 2008: 70-71). Although the Law explicitly stipulates that it concerns only reporting of the seized property, its passing gave hope to the former owners that the government would one day, when it would suit the government, pass a law on denationalization.

Also, by giving such name to the Law, the state indirectly committed itself to adopt a law on denationalization. Such obligation meant that a special law would be passed, which will solve the question of denationalization, and that denationalization would be arranged in the form of right to restitution of confiscated property and in the form of the right to compensation for expropriated property, as stipulated in article 9, paragraph 1 of the Law. Thus, the state "itself created a great and a legally firm expectation

of denationalization and simultaneously passed the point of no return" (Vodinelic, 2008: 18-20). Article 10 of the Law on Reporting and Recording of Confiscated Property envisages that "the return of confiscated property to churches and religious communities will be regulated by a special law".

If Serbia had ever wanted to prove to the EU that it had been respecting the fundamental principles of law and justice, this would have been the last moment, because the majority of post-communist societies had started the process of restitution long ago, and some had already completed it. For example, Czech Republic, Slovakia and Hungary started denationalization and restitution back in 1991, Bulgaria in 1992, Germany in 1994, Romania and Poland in 1996, Albania in 2004. Since the newly formed states in the former Yugoslavia, Serbia was the last to begin the process of restitution. Before Serbia, this had been done by Slovenia in 1991, Croatia in 1996, Macedonia in 1998, Montenegro in 2004, Serbian Republic in 2000 and the Federation of Bosnia and Herzegovina in 2002.

The adoption of this Law on Restitution of Property to Churches and Religious Communities as the next step on the road towards democracy and democratization of Serbia

In the framework of the reform process, which then began, and which Serbia aimed at joining the EU, it took the development of democracy and promotion of human rights, as defined by the European Convention for the Protection of Human Rights and Fundamental Freedoms (Convention for the Protection of Human Rights and Fundamental Freedoms). The first article of the Protocol to this Convention (Protocol to Convention for the Protection of Human Rights and Fundamental Freedoms, Paris), provided, among other things, to any natural or legal person is guaranteed the right to peaceful enjoyment of their property. That right was completely negated by all the previous forty-one laws and regulations, which are enumerated in Article 1 of the Law on Restitution of Confiscated Property and Compensation from 2011. Therefore, through denationalization and restitution, Serbia had to end the historic injustice caused to the seized property holders, of abuse of rights and of political power, because the property was taken without just fees having been reimbursed or due to nonpayment of any fee. Property confiscated thus had to be returned to the owners. The constitutional basis for the adoption of the Law on Property Restitution to Churches and Religious Communities, which had been seized under the regulations, starting from year 1945, was in Article 72, paragraph 1, item 4 of the Constitution of the Republic of Serbia of 1990 (The Constitution of the Republic of Serbia of 1990, Official Gazette No 1/1990). The said article of the Constitution of the Republic of Serbia regulates and ensures property and contractual relations relating to the protection of all forms of ownership.

For Serbia to prove that was ready to implement a modern reform process, in early 2001 a working group at the Ministry of Justice and local government was formed to draft a bill that would resolve the issue of restitution of expropriated private property. At that moment, the question whether this area of law was to be solved by one or more laws was not resolved.

Also, in early 2001, the Charitable Foundations of Orthodox Christians from Switzerland - HOCS initiated the first steps aimed at creating the necessary conditions for the return of property to churches. In late 2001 the Serbian Ministry of Justice formed the working group consisting of experts of the National Ministry of Justice and Local Government, Association of Lawyers of Serbia and Charitable Foundation of the Swiss-HOCS (Draskovic, 2002: 7-9). Their task was to prepare a Draft Law on Restitution of

Property to Churches and Religious Communities. In April 2002, the Draft Law was sent to all churches and religious communities for opinion by and put up for public discussion. A member of the working group and the most famous Serbian Law Professor- Slobodan Perovic, accompanied adoption of this draft law at the roundtable, organized for the occasion, with the words: "let me say the words of general and juristic our honor, the word of faith in the renaissance of natural and just law, words of faith in better and fairer days" (Perović, 2002: 68).

These words best reflect the desire of democratic elite to draft legislation according to which the property will be returned to the status quo ante, ie. to the previous owners, in this case the churches. The same Law envisaged that it starts being applied from July 1, 2002. It did not happen. Finally, the Law on Restitution of Property to Churches and Religious Communities was issued on June 2, 2006. It entered into force on the 10th of June 2006, and started to be applied from the 1st of October 2006.

Passing of this Law had not only political rewards, but its entry into force meant that a new chapter of Serbian history, which marked a turning point in relations between church and the state, was written. At the same time the state has proved that it started on democratic way, although this law regulated restitution only to one category of subjects: churches and religious communities, in case when their property was taken without just compensation or no compensation. Thus equally entitlement to the conditions, manner and procedure of returning the property to all churches and all religious communities was recognized, but only under the condition that the property was seized under regulations in the period from 1945 (article 1). Primarily, the enactment of this Law had importance in the formation on awareness of broader masses of the people, especially among the people who currently lived/held nationalized real estate (especially residential and commercial buildings), to adjust to the realization that what was forcibly taken away must be returned to its rightful owner. As the church property was created by gift or testament disposition of its believers, not an economic activity that could be equated with exploiting other people's labor (Ninkovic, 2002: 14), especially in the period that is important to us, that is, since the creation of the modern Serbian state, this law has not caused much public interest. The adoption of the Law on Restitution of Property to Churches and Religious Communities, the state made it easy for civil society to accept without major upheaval adoption of the Law on Property Restitution and Compensation five years later, i.e. 2011, despite the great dualism regarding the possibility of returning the property to individuals.

Another reason for the passing of this Law before the Law on Denationalization is in the fact that the country knew in advance the potential number of churches and religious communities and their legal successors that would lay claim to the seized property. Justification for the priority adoption of the Law on Restitution of Property to Churches was also seen in the fact that the time for submitting requests for restitution claims to the Directorate for Restitution was set for within 24 months timeframe, i.e. from the 1st of October 2006 to the 30th of September 2008. In that period, 3,049 restitution claims were submitted. In contrast to this issue, as noted above, the Republic Directorate for Property of Serbia has received tens of thousands of preliminary requirement according to the Law on Reporting and Recording of Confiscated Property (The Directorate for Restitution of the Republic of Serbia).

In the same time, church property was the easiest to be returned in natural form, as in the most cases the property in question were enormous estates, which only changed their owner, in sense that they were passed into state/ social property or property of cooperatives and large agricultural conglomerates. At the time of enactment of this Act,

the real significance of what the above mentioned institutions had for the country's economy in the postwar period disappeared. This was mainly monastic land, land and forest holdings (Gaćeša, 1984: 362), while the number of residential buildings, buildings and office space was insignificant compared to the expected number of tens of thousands of claims by individuals, when a Law on Denationalization is passed. It was known that the church had accurate records of their property confiscated and to whom Cadaster plots are located. Although the part of those assets over time came to change the number of parcels, the same are easily identifiable, because their position was accurately known to churches.

The law has set a basic principle that it is the priority for assets to be returned in its natural form, and only if it is not possible, monetary compensation in government bonds or in cash can be given (articles 4 and 8). This form of restitution is the fastest, easiest, and it does not represent an additional financial burden to the state. It underlines the political motive and desire of the new democratic system to correct the injustices of previous undemocratic regimes.

Among other basic principles which underpin this law are the principle of equal treatment of all churches and religious communities and the principle of respect for acquired rights of third conscientious persons, who have acquired the right of ownership on the basis of lawful acquisition. Thus, the principle of legal certainty that it can not cause damage to third parties is maintained (article 8). Section 10 of the Law has put churches and religious communities in a privileged position, because the law anticipates that the seized property has to be returned in approximately the same shape and condition in which it was at the time of seizure. It should be emphasized that paragraph 2 provides that the property will be returned in its completeness, and if it can not be returned thus, it is possible to be partially restored, provided that the difference in values will be compensated in full market value. In this way, a message was sent that in the future the right to property would be absolutely respected. This message was soon forgotten, because this option is not given in the Law on Restitution and Compensation to all other categories of former owners. Thus they are in relation to the church placed at a disadvantage.

The legislator in this law better protects the tenant of immovable property which is used for his business, because he has the right to use the immovable property for no longer than two years, while it will not be the case with the previous owners, according to the Law on Restitution of Confiscated Property and Compensation. It is interesting that the legislator stipulated in the final provisions of Article 36 paragraph 1 that in time period of a month and a half before the publication of the law (released on June 2, 2006): "from the 1st of May 2006, any disposal of assets under the provisions of this Act subject to restitution is not allowed". It is difficult to determine to what end this provision was stipulated to be applied before the Law came into force.

The Law established a separate institution that was supposed to act upon the submitted requests: the Directorate for Restitution (article 21). By forming a special directorate, legislature had intended to complete the return of the property as soon as possible, while respecting the principle of urgency procedure provided for in Article 2. It would not be the case had the process been entrusted to the courts, because the courts in Serbia due to overload with the already existing caseload are slow in treatment of new cases. Article 32 stipulates that "against the decision of the Directorate it can not be appealed". The legislature has complied with the principle of making several instances in which dissatisfied church or religious community can initiate an administrative dispute. From March 1, 2012 the Agency for Restitution took over the cases from the Directorate

for Restitution, as according to the Law on Property Restitution and Compensation (article 63, paragraph 2). On the Agency's website was pointed out at the great importance of the work of the Directorate for Restitution, considering that through this, as it called it "little restitution", property confiscated more than half a century was returned. Thus, the Directorate formed a specific legal practice in the area of property rights, which would be of importance for the upcoming "great restitution".

By December 31, 2010, 40.50% of the required land and 16:31% of requested objects was returned to the churches and religious communities. In this period, 26% of the total claims filed were resolved and 509 executive decisions were issued and 278 conclusions. According to a new report from the Agency, by April 2014, 55% of the required land and about 40% of required surface facilities was returned. At the decisions taken 171 complaints were invested to the Administrative Court of Serbia. Of that number, 68 complaints were filed on court solution (39%) and 103 complaints were made on court conclusions (61%). By the December 1, 2010 the Administrative Court brought 53 judgments in administrative disputes. In 50 cases it rejected the charges as unfounded and upheld the decision of the Directorate for Restitution as a proper and lawful. According to the final outcome of an administrative dispute, the Administrative Court's decisions confirmed that 94% of the decisions of the Directorate for Restitution correct and based on law. Only in 6% of the cases, filed lawsuit was adopted and the decision of the Directorate canceled and returned to the Directorate for retrial. This indicates a high degree of professionalism, expertise and legality in the work of restitution bodies. According to a new report, by April 2014, the Agency has returned 55% of the requested land and about 40% of the requested surface facilities (Republic Agency for Restitution).

We can conclude that the fact that the Law on Restitution of Property to Churches and Religious Communities has been undoubtedly of great importance. The law had character of democratic change and emphasized the economic motive for improvement of materially-financial position of churches and religious communities. The state has proved that this law raised the issue of respect for the protection of property rights and thus indirectly committed itself that the Law on Denationalization of Property of the original owners – private individuals has to provide the same principles, the same criteria, conditions and manner of restitution, in order to avoid the discrimination of various categories of former owners in relation to the return of seized property. The principles laid down in this Law represented a condition sine qua non which must be respected by the upcoming Law on Denationalization when it becomes adopted.

The next step on the road towards democratization

After the adoption of the Law on Reporting of Confiscated Property and the Law on Restitution of Property to Churches and Religious Communities, the real conditions that would start addressing denationalization were created. After 2000 the Government avoided to approach solving inherited problems of communist rule. Due to the general political climate and the negative media campaign, the government feared that with the enactment of such a law it could lose support of a large number of voters, who on various grounds, had acquired or had purchased nationalized property (land, flats, etc.). Under the Law on Housing of 1990 (the Law on Housing of 1990, Official Gazette No. 50/1990), the masses of citizens had acquired and took the opportunity to buy out homes where they lived with their families and which represented social property. A number of these in fact were nationalized apartments, which were bought by tenants under more favorable conditions than the market stipulated. Thus, former proletarian tenants, living in flats in

social ownership, became their owners. Their proprietary right was confirmed with their entry in the land register or cadastre, as the owners. Former proletarians, and now the owners of apartments, which they would have never be able to buy, had it not been for the possibility of the buy out under conditions far below the market, spread and supported the negative campaign that aimed to fail passing of a law on denationalization.

The ruling party's coalition, scared for its survival in power, delayed the resolution of this issue. Under pressure from the Council of Europe, which Serbia is a member since 2003 and which insists on avoiding any form of discrimination of various categories of citizens, the fourth democratic government Kostunica-Djelic adopted the Draft Law on Denationalization on the government session of the 10th of May 2007 (Nacrt zakona o denacionalizaciji, 2008: 89). The same is put to a public hearing on the 4th of October 2007, i.e. seven years after the first democratic change in Serbia. During the public hearings, numerous critics have been made on the Draft Law. The draft was compared with the Law on Reporting and Recording of Confiscated Property and the Law on Restitution of Property to Churches and Religious Communities. Some of the envisaged solutions were equitable in relation to these laws, while some have a discriminatory character (Vodinelic, 2009: 167). Unlike the Law on Reporting and Recording of Confiscated Property, which had predicted that reporting relating to property seized, pursuant to regulations and legislation on nationalization after the 9th of March 1945 (article 1) the Draft law extended the right to denationalization of property to property confiscated from the 6th of April 1941 without charges and without the application of regulations (article 1). The Law in article 3, paragraph 1 stipulated that the right to lodge complaints have only natural persons, only for Draft Law to extend the circle of eligible applicant parties to non-commercial entities (article 9, paragraph 4 of the Draft Law). The Draft Law has alleviated the situation envisaged in the Law on Reporting and Recording of Confiscated Property in as much that the right to report was lost if the application was not filed until the 30th of June 2006. This is mitigated by article 85, since it allowed the right to lodge complaints to persons that for justified reasons failed to report (life abroad, illness, etc.), and who had the right to apply. Certain provisions of the Draft Law gave fewer rights to the previous owners than the rights given to churches and religious communities. On the same issue of denationalization, the Draft La provides in some cases less favorable solution than what is provided by the Law on Restitution of Property to Churches and Religious Communities. It is unjustified that the Law sees the church as one category of the owner and puts them in a more privileged position than the previous owners. The church assets are to be returned as whole, and if not in whole, churches and religious communities are entitled to obtain the difference in values in the remuneration to the full market value of (article 4). Unlike churches and religious communities, citizens only have a limited right to compensation under the pre-limited fund of 4 billion euro (article 55, paragraph 5). It was felt that with such legislation discrimination was made at the expense of citizens.

The greatest discrimination at the expense of citizens defined by the Law on Restitution of Property to Churches refers to cases when the legal individual proves that their property acquired freight legal transaction, in accordance to the market price, then the entity remains the property of the owner, and the Republic of Serbia is the payer who will pay monetary compensation (article 7, paragraph 2). In contrast, under article 18, paragraph 1 and article 17 paragraph 3 of the Draft Law, Republic of Serbia is exempt from paying the market value of monetary compensation, but must pay compensation through the state bonds. By certain provisions of the Draft Law individuals are placed in

a more favorable position than the position the churches and religious communities had been given by the Law on the Return of Property. One of the provisions is the right of tenant of property that returns to the church remains under 2 years of return (article 12), while the draft law stipulates that this right remains for citizens only for one year (article 24). From the comparative analysis of these laws, it can be established that the ruling political parties made discrimination between different categories of the owner using legal provisions, i.e. churches and citizens. Discrimination is manifested in the scope of property restitution, even though all of them were owners of the property confiscated as by the communist regime. Enforcement of this law has created a social prerequisite for the democratization of the society, but left it at that. The Draft Law was not sent to the Government for approval. Thus, neither legal conditions for accession to the denationalization were not created in Serbia, nor was fulfilled one of the essential conditions for accession to the European community – respect of property rights as inalienable human rights. This endless delay of the adoption of the Law on Denationalization did not go unnoticed neither by the Council of Europe, which called for urgent adoption of the Law on Restitution.

Towards the Final of Restitution

In March 2011, the president of the reconstructed Serbian government Mirko Cvetkovic, in his keynote address, stated as the first priority of the government that it is "fully committed to the rapid entry of Serbia into the European Union" (Government of the Republic of Serbia). Had the Government actually wanted Serbia to become the EU member state, it had to adopt a law on denationalization after years of delay and deception of the European Union.

The eleventh government since the democratic changes in Serbia, pressed by the requirements of the EU, could no longer delay the adoption of a law on denationalization. On July 29, 2011 the Government Committee for Economy and Finance adopted the Draft Law on Property Restitution and Compensation and sent it to a public hearing. That the adoption of the draft was one of the proofs of transition and democratization of Serbia, was confirmed at a press conference held on the occasion by the then Deputy Prime Minister Bozidar Djelic. In his address to reporters he said that "this is a significant requirement for candidate status for EU membership. With the adoption of this law Serbia will correct a great historical injustice. Serbia will be recognized as a modern European country that respects private property as an important part of human rights. This will strengthen the legal security of our country and contribute to attracting investment". (Djelic, 2011).

Two months after the promulgation of the draft, the Law on Property Restitution and Compensation was announced on the 28th of September 2011. Law was adopted on the basis of the principles set out in the Law on Restitution of Property to Churches and Religious Communities, which principles, as noted above, were the same representing a condition sine qua non (Markovic, 2009: 14). Although this long-awaited law after many promises saw the light of day, most of the former owners did not believe in democratic intentions of the government. Evidence for this is that over the half of applications for nationalized property was filed in the last month set as deadline for application for restitution.

In passing this law, the government was guided by three key principles. The first is to correct the injustice that had been done to many families due to ideological reasons and who had been waiting for decades on this moment. The second is that it does not

create new injustice, but to respect the legally acquired property of current owners of the requested property. The third principle is to align the law with the property available and with financial resources of Serbia, so that the law is applicable and that does not threaten the financial stability of the country i.e. the expense of salaries, pensions and other budgetary accessories. The Law, as opposed to the previous law, introduces the concept of former owners under which implies a natural person or legal entity that was the owner of the seized property at the time of nationalization (article 3, item 10).

The most democratic solution of this Law is that "the right to submit a claim in accordance with the Law shall have all former owners of confiscated property, their legal inheritors or legal successors, regardless whether they submitted a claim in accordance with the Law on Reporting and Recording Seized Property" (article 41. Paragraph.3.), effectively abrogated the illegal provision of the Law on Reporting. The process of restitution of nationalized property or compensation shall be initiated at the request of the parties, and not ex officio (article 39). Article 1 of the Law limits the right to apply for restitution. Those with the right are natural persons or legal entities whose property was confiscated by the acts of nationalization and only in time period after March 9, 1945 (article 1, Paragraph 1). In doing so, the Law did not leave space for interpretation of what those 'regulations' are, but they were exhaustively enumerated in article 2. This means that only property, whose confiscation was based in any of the numerated forty-one regulations, could be a subject to restitution (Rakitic, 2011: 213). The deadline for submitting applications was two years from the date of publication of the Law on the website of the Ministry responsible for finance (article 42, item 1).

The Law stipulated fair and democratic solution in Article 14 and in such way that it stipulated that "the compensation paid to the former owners in cash or securities shall not be taken into account when determining the right to property restitution and/or compensation". Thus provided solution is the result of facts that remuneration had not been paid to the owners, despite the fact that it had been prescribed. If someone had indeed received compensation or indemnification, it was symbolic and absolutely inadequate as market compensation. The Law was set up on three principles: the principle of priority of natural restitution (article 8), the principle of the protection of the acquirer (article 10) and the principle that the payment of compensation must not jeopardize macroeconomic stability of the country and its economic growth (article 30, Paragraph 2). Assets are to be primarily returned in form of the natural restitution. The seized property is to be returned to the former owner and only if it is not possible, compensation in the form of government bonds is given. Unlike the Law on Restitution of Property to Churches and Religious Communities, where it is stipulated that if the property can not be restored to churches and religious communities, it can be agreed that they obtain other property (article 16, paragraph 2), provided solution for the former owners is much less favorable and unfair, because the monetary compensation is limited and can never replace restitutio in rem. The total amount of compensation amounts to two billion euros for all users of compensation (article 30, paragraph 2) (Simonetti, 2003: 109-122). Compensation per former owner may not exceed the amount of 500,000 euros (article 31, paragraph 2). The Agency for Restitution was founded in order to conduct the proceedings, to decide upon requests for restitution of property, the payment of cash benefits and compensation. It began its operations on January 1, 2012 (article 51).

Reasons which made the former tenants of nationalized properties led the negative media campaign against the adoption of the law, were resolved in their favor. Having in mind that restitution aims to return property rights to that category of people

who over half a century ago had suffered injustice and since restitution is being carried out with respect for the law and human rights, the Law stipulated the most democratic solution for the masses, in the way that it takes into account acquired and current rights to the property which is the subject of restitution. The apartment buildings and houses, which are condominium property in accordance with the law, are not to be returned to former owners; this is also the case if the right of ownership former owners of the building or apartment ended (article 27, paragraph 2).

The exercise of democracy never goes smoothly and in straightforward way. In December 2014, the Law on Amendments of the Law of 2011 was adopted, postponing financial obligations of the state in terms of compensation.
In practice problems occur in restitution of agricultural land, but regardless of all related issues that must be addressed along the way, Serbia has demonstrated that the protection of property and property rights is the basis without which there is no possibility of joining the family of European nations. The issue of confiscated property conducted after World War II through economic and political measures, and for which the previous owners did not receive the compensation, has become topical with the opening of the transition process. This issue had to be resolved for reasons of respect for the principles of fairness and respect for human rights, which form the basis of any democratic society. Head of the EU Delegation to Serbia, Michael Davenport said that in three years a great progress has been in the implementation of the Law on Restitution of Confiscated Property and Compensation, which is very important from the standpoint of respect for fundamental human rights and the rule of law (Sekulic, 2014), which elements are proof of the successful democratization of society.

References:

Drašković, M. (2002). Predgovor. In *Restitucija oduzete crkvene imovine*, 7-9.

Djelic, B. (2011). Zakon o vraćanju oduzete imovine i obeštećenju, Konferencija za novinare. Retrieved from: http://skgo.org/files/fck/File/vesti 2011 /Nacrt zakona o vracanju imovine - Djelic, 29 07 2011.pdf.

Gaćeša, N. L. (1984). Agrarna reforma i kolonizacija u Jugoslaviji 1945-1948. *Matica Srpska*, 362.

Glišić, S. (2008). Analiza Baze podataka o prijavljenoj oduzetoj imovini. *Hereticus*, 70-71.

Marković, R., (2009). Ustav Republike Srbije iz 2006- kritički osvrt". *Anali Pravnog fakulteta u Beogradu*, (2), 14.

Nacrt zakona o denacionalizaciji (2008). *Hereticus*, vol. VI, 89.

Ninković, D. (2002). Neophodni uslovi za uspešno ostvarivanje reformskog preporoda. *Restitucija oduzete crkvene imovine*, 14.

Perović S. (2002). Restitucija oduzete crkvene imovine, The round table minutes dedicated to the Draft Law. *Udruženje pravnika Srbije*, Belgrade, 68.

Rakitić, D. (2011). Analiza osnovnih elemenata opšteg zakonskog rešenja restitucije u Srbiji iz perspektive prakse Evropskog suda za ljudska prava. *Anali Pravnog fakulteta u Beogradu*, (2), 213.

Sekulić, S (2014). Radna grupa predlaže izmene Zakona o restituciji. Retrieved from: http://www.blic.rs/Vesti/Politika/520752/Radna-grupa-predlaze-izmene-Zakona-o-restituciji.

Simonetti, P. (2003). Pravila denacionalizacije u republici Hrvatskoj. *Anali Pravnog fakulteta u Beogradu*, (1-2), 109-122.

Stojanović D., (2003). Pravo na svojinu kao univerzalno zajemčeno pravo. *Pravni život*, (10/95), 25.
Trkulja, J. (2008). Downfalls of Denationalization in Serbia. *Hereticus*, vol. VI, (1), 9.
Trkulja, J. (2009). Rehabilitation as a Measure of Legal Overcoming of the Authoritarian Past in Serbia. *Restitution and rehabilitation in Serbia*, 23.
Ustav Republike Srbije (1990). *Sluzbeni glasnik Republike Srbije*, (1), Vodinelić V. (2008). Denacionalizacija:Veliko iščekivanje izvesnog. *Heretikucus*, vol.VI, 18-20.
Vodinelic, V. (2009). Restitution of property- greater expectations of certainty, Rehabilitation and Restitution in Serbia. *Zbornik radova sa okruglog stola*, 167.
Vodinelic V. (2002). Prošlost kao izazov pravu. *Centar za unapređivanje pravnih studija*, (9)13, 5-19.
Zakon o stanovanju (1990). *Službeni glasnik RS*, (50).
Zakon o prijavljivanju i evidentiranju oduzete imovine (2005). *Službeni glasnik RS*, (45).
Zakon o vraćanju oduzete imovine i obeštećenju (2011). *Službeni glasnik RS*, (72).

Article Info

Received: March 31 2015
Accepted: May 28 2015

RSP • No. 46 • 2015: 63-72

ORIGINAL PAPER

Reinforcing Democracy through Internet and Social Networks Participation: Votes, Voters and Elected Behavioral Outcomes in Romanian Presidential Elections (2014)

Marina-Irina Lazăr*

Abstract
The "epidemic" of democracy that "infected" the world and the European countries, corroborated with the evolution of technology and science leaded to a great challenge, which can be summarized into several questions: how can we use the new communication techniques (such as Internet or social networks) for reinforcing and strengthening our contemporary democracy? How could technology engage a large segment of citizens in meaningful deliberation about regulatory policy issues? How real and efficient is such an attempt to modernize democracy? In this paper I will analyze the necessity of institutional stability, as a basic condition for an authentic reform in terms of re-inventing the civic participation in the policy making process, followed by the valorisation of internet and social networks, as an instrument for participatory democracy. At this point, I will analyze, as a case study, the Romanian Presidential elections from 2014, when the social network played a major role for the victorious candidate, with an attempt to discuss the general application over the Romanian and European society of these techniques. Despite the optimistic references about the future impact of social networks on democracy, we prefer to keep a more realistically perspective, by concluding that Internet and technology are not likely to transform or to revolutionize the rule-making process from local, national or European level, but merely to create a broader connection between citizens and institutions, to mobilize resources in order to acquire a civic culture and to reinforce the institutional stability.

Keywords: *participatory democracy, social networks, Internet, legitimacy, information.*

* Postdoctoral researcher, PhD, University of Craiova, Faculty of Law and Social Sciences, Public Law specialisation, Phone: 0040740518283, University of Craiova, E-mail: irina_lazar15@yahoo.com.

Introduction into the field of study

Our democracy should be a "market place of ideas and opinions" (Ravaz, 2006: 29), where the citizens and public institutions freely discuss and analyze the social problems, in order to find and implement the best solutions and public policies. At this point, the good governance (as an autonomous concept from European regulations) is bound by three cornerstones: citizens (as a source of power into a democratic state), the public institutions (as executors of the citizen's will) and the channel of communication between citizens and institutions. Our study will be focused on this channel of communication which became essentially into a healthy democracy: it facilitates the transfer of power from citizens to political representations (from local, national or European level) and it ensures the permanent communication between them.

The discussion about the channels and tools for reinforcing our contemporary democracy is intimately linked with another hot topic from the European public agenda, the participatory democracy – seen as a remedy for the decline of representation and the low level of citizen's confidence in the public institutions and representatives. Besides the still very fluid and experimental form of its realizations (Porta, 2008: 15-42), participation implies a variegated spectrum of models and procedures involving different actors and powers (Blondiaux, 2005: 116).

This new tool was created as an isolated experiment in '70 at local level and spread as a general tendency of public policy and moreover, as a necessity of nowadays democracy. Participation takes place in contexts of considerable and fairly complex change in public intervention. The policy approaches spreading through many European countries side by side with rescaling processes stress the need to intervene in an incisive, coordinated way in scenarios where problems emerge, emphasizing criteria such as territorialisation/integration and trust in the possibility of mobilizing networks based on sharing and cooperation (Lascoumes, Le Gales, 2004: 42-47). As we are living a decade where the internet is the most convenient market to share and spread ideas, political convictions, social mobilization, we must analyze the role of social networks into the process of governing and its impact on participatory democracy.

Still speaking about democracy… in search of institutional stability

Our aim, through this research, is not to call into question the democracy, in general, or to treat what is a veritable democracy, but merely to analyze the conditions of a stable/unstable democratic institution. Generally, there are two types of approaches about democracy: a procedural and a substantive one. In the Anglo-Saxon literature and in the democratic transitions countries, it dominates the conception about the greater significance of the procedural definition of democracy (Schumpeter, 1977: 57-74*).*The other approach steps towards liberalism, where the political regime's connections to the other social spheres are inadequately represented or are totally lacking (Morange, 2009: 59). On the other hand, we can speculate that that the inadequacy of the purely procedural approach is in its inability to pose the question, "What forces would be mobilized, what sacrifices would be made in the name of democracy's protection?" Democracy cannot exist if it is not based on a belief in the political freedom. In this sense, "the real democracy" is far from being a formal political market which competes for the votes of the citizens. It presupposes the existence of a shared social experience, language, traditions, and way of life. Without this "ethos" there will not be any sense of collective identification nor the aspiration to collective action. Without stable beliefs there will be neither stable institutions nor stable society (Touraine, 1991: 275-286).

The widespread democratic progress started in the western European countries since 1970 and in the Central and Eastern ones, after the falling of the communist regime, in the end of 1989. In recent years, especially after 2000, demands of political freedom, representation, participation and accountability resonated in various regions. But while there is an emergence of a general consensus on the desirability of democratic societies, there has yet to be a profound understanding on the means to bring about democracy and entrench it. The question as to how democratic systems in various countries are established often remains dominated by the response that democracy is only possible under certain cultural, economic and social conditions, which are not universal. In order to assess the possibility of democratic practice and to fully comprehend the mechanisms which nurture the development and maintenance of democracy, it is important to encourage the generation of new knowledge which questions the prevailing paradigm and which will endeavour to show that democracy can be nourished everywhere despite the different traditions and cultures which ground societies. There are, in fact, two basic democratic values which stand as twin pillars of the entire democratic value system: competition and participation. These twin basic values have been formulated most markedly in the works of Robert Dahl, but many eminent political scientists have agreed upon the equal importance of these basic values: namely, both the competition of elites and the active participation of the whole population in the political process. It has been sometimes formulated in its simplest version as the principle of free election, but sometimes other terms have also been used for these two basic values. There is broad agreement, however, that these values are the fundamental requirements of all democratic politics, albeit with a distinction between direct and indirect representative democracies. In the realm of civil society, where direct democracy dominates, participative and cooperative values play decisive roles in the formation of associations and the motivation of their collective actions; in macro-politics, according to the rules of representative democracy, competitive or adversarial rules are decisive and shape the majority decisions, although in the developed countries consensus and compromise are becoming more and more important in conjunction with the minorities right for veto in the vital matters (Dahl, 1971: 7).

Equally, economic development raises income levels, improves access to education and nurtures an independent press, which will then lead to a civil society mature enough to foster democracy. Also, it is important to build a society in which anyone with aspirations can receive a qualitative education. In such a society, government corruption and lack of transparency in policy-making are rectified, and good governance achieved (Discourse at Democracy Forum II). And the cornerstones for all these values are the stable democratic institutions, which sustain a coherent system, where the economic and democratic values may coexist and enhance the social development. We can characterize the democratic institutions through all cases of democratic interaction which include formal and informal norms which are practiced as procedures that are embodied in temporary structures or constant organizations (Tiryakian, 1991: 165-198). In contemporary complex societies they carry out the critical functions of mediating, uniting and representing social interests. Their *stability* means first and foremost a stabilization of expectations, demarcation of temporary limits for actors' planned, goal-directed and rational action (Vladimirov, 1997: 5). Having in mind these aspects, we can assume by opposite, that institutions' weakness is their inability and/or inefficiency to function the way they have been established. Besides, in the new democracies there is a very real danger of perverse institutionalization which manifests in the existence of the so-called tutelary powers and reserve domains of power (Valenzuela, 1992: 57-104). Hence, the

elimination of all other institutions, practices and expectations which are not compatible with their functioning has a critical significance for democratic institutions' stabilization. Institutions are always established as a response to certain social needs. This is the natural historical avenue for their emergence (Malinowski, 1960: 22-40). However, the opposite way is also possible – the deliberate creation of new institutions which will help the formation and the verification of new needs. This option for institutions emergence from top to bottom could be effectuated in two ways – the evolutionary reformatory and the revolutionary ones. H. Schelsky believes the stable change is the way of reforming institutions because it does not immediately demolish the old institutions and rules but changes them gradually. In his view, the revolutionary elimination of all old institutions leads to "overloading" the new ones with meeting the still existent old needs and thus destabilizing them (Schelsky, 1952: 15-17).

The conditions for the new democratic institutions' stability could generally be grouped according to the feature "internal/external" to the political system. The new and still consolidating democracies are also characterized by the typical for the developed democracies internal dilemmas: (i) danger of political parties' oligarchyzation; (ii) transformation of politically concerned citizens into politically disinterested "free riders"; (iii) cyclic recurrence in government changes which leads to unstable majorities; (iv) functional autonomy and interdependence with the other primary institutions; (v) dependence on the international context (Schmitter, 1994: 57-74). Despite the fact that as if each of us understands the harmful consequences of institutional instability, "assuming control of a particular institution and extending its formal powers becomes a new form of political contestation in consolidating democracies" (Zielonka, 1994: 87-104). Its overcoming presupposes meeting of certain conditions which are almost identical with the above-mentioned external dilemmas. First, calming down the political conflict to the extent of reasonable concessions which are needed for stabilizing the formal power of state institutions. The consensus among the political parties which is necessary for the successful consolidation has three dimensions: consensus on (i) ultimate values; (ii) the rules of the game, and (iii) the specific for the time being governmental policy. According to G. Sartori, the first type of agreement helps consolidation but does not have crucial significance because the second type of agreement is the fundamental prerequisite for the successful democratization. The third one is just part of the problems every democratic government faces (Sartori, 1999: 67). The second important condition of democratic consolidation is the management of social conflicts. The most important ones today are connected to the redistributive role of the state. That is why democratic consolidation requires the institutionalization of all distributive and re-distributive conflicts. The strong pressure for immediate consumption on the one hand, and the necessity of restrictive budget policy on the other hand, requires first of all a stable and explicit social "pact" with the trade unions (Mainwaring , O'Donnell, Valenzuela, 2000: 82).

Third, an equally important condition for the successful democratic consolidation is the legitimation of the new regime both legally, ideologically and morally through the new values, language, symbols, or in other words, through the new democratic "ethos" (Vladimirov, 1997: 8). It is only the strong legitimization of the new democratic power that could stand up to the social and economic crises which are characteristic for every major transformation. The desire and the necessity for institutional stability, as a framework for healthy and stable democracies, is intimately linked with a stable legal order, with a continuity in public policies. The expressed political orientation is an attempt by the civil society to "ground" abstract democratic and economic values through uniting

them with the real practical problems of everyday life. This new civil consciousness is much more democratic in purely practical terms because it is a manifestation of people's desire for stable democracy (Vladimirov, 1997: 9-10).

The role of social network in finding a democratic stability

In the last decade we observe a growing and spreading tendency all over the globe, starting with the earliest ages and involving even the most conservative elders, to spend a lot of time and to live on social web sites. Thus, the media, in general, and the internet in particular become a market of ideas, of observation and participation on different degrees of personal involvement to different social, political, environmental, etc. problems and disputes. Social web is essentially a place of relationship and, as such, it can be lived in diverse, complex ways. It is a place where weak bonds typical of post-modernity (Granovetter, 1998: 22-41) originate, are fed and dissolve, not according to criteria of separation and clear distinction from offline dimension, but rather according to a sense of continuity, of constant connection with it, as the recent literature has outlined (Castells, 2009: 55).

"Social, relational capital expansion that social media offer to people has an important impact on the way of feeling and behaving as a consumer (see the concept of pro-sumer or consumeractor and the development of participating advertising), as well as of feeling and living the territory as "citizen", that is to say on the way of tackling themes of general interest and interact with public institutions: the possibilities of increasing information and of expressing publicly one's opinion without intermediaries, increasing mainstream logics (citizen journalism*)*, of sharing thoughts and initiatives which translate in some case in movements, in political actions (often in contrast to something or someone), of creating communities operating on the solidarity side" (Ducci, 2011: 11).

The international doctrine (Bodin, Crona, 2009: 9-15) has identified the existence of social networks as a common and important denominator in cases where different stakeholders have come together to effectively deal with different social, economical or environmental problems, sometimes the role of internet and social networks being more important than the classical institutions, even if these ones are functioning in conditions of stability and transparency. As a matter of consequence, interaction in social networks influence the way that citizens participate and exercise their democratic role because it creates opportunities for individuals to gather information about politics that allows them to live beyond personal resource constraints, thereby supporting the political activity of many people. Additional analysis shows the substantive and theoretical importance of such interaction by explaining how it is distinct from the effect of social group memberships and how it enhances the effect of individual education on the probability of participation (Mcclurg, 2003). The social networks have the advantage that it could be a perfect place to initiate or to transfer from the real life initiatives on different fields, in order to disseminate on a large scale and to give the possibility for those who were usually not heard, to express themselves and to have a clear opinion and perspective on a social or political topic.

The evolution of web technologies has led to important changes: everything that happens on the public scene (at local, national, European, international level) is immediately on the webs and social network, all the institutions and political personalities have public accounts to share their activity, experiences and ideas. Internet it is a fertile field to have a relational administration, more transparent, closer to the citizens, more reliable and less expensive in order to obtain the administrative information. "The debates,

the dialogues taking place on institutional blogs, on facebook, through twitter, the possibility of creating and downloading images and videos engender an unparalleled dynamism. This make it possible not only to bridge the gaps between institutions and citizens, to create more familiarity, but also to catch what is called the citizens' humus by institutional players, to notice the different positions and opinions regarding administration initiatives or choices, on the way" (Ducci, 2011: 21).

Since the 90's, when the internet boosted and until now, we came to have scientific concepts such as e-government or e-democracy. In 2005, the UN-sponsored World Summit on the Information Society defined e-governance as "the development and application by governments, the private sector and civil society, in their respective roles, of shared principles, norms, rules, decision-making procedures, and programs that shape the evolution and use of the Internet".

It is shown that significant differences in governance processes and outcomes can be expected among networks experiencing structural differences in terms of density of relations, degree of cohesiveness, subgroup interconnectivity, and degree of network centralization. Furthermore, the review shows that none of these structural characteristics present a monotonically increasing positive effect on processes of importance for resource governance, and that favouring one characteristic likely occurs at the expense of another. Thus, assessing the most favourable level and mix of different network characteristics, where most of the positive governance effects are obtained while undesired effects are minimized, presents a key research and governance challenge (Bodin, Crona, 2009: 53).

The change of the "sense of position in communication" (Boccia Artieri 2012: 448-468), the valorization of relation and participation concept in social web seem to create the conditions for a real change of perspective: the citizen's transformation from observers, accustomed with a top-down way of making politics and implementing public policies, into a participant, a generator of creating and spreading institutional information (Ducci, 2013: 432), and moreover, a contributor to the implementation of public policies at local, national or European level. In fact, if the concept of civic participation tends to modify with regard to the past, it expands assuming unheard features, because of pushes "from the bottom", at the same time an undergoing process is evident at public institutions which have started to use social web in order to favour a bigger transparency, participation, but above all to establish a dialogue and cultivate relations with citizens (Ducci, 2011: 12).

Case study: Romanian presidential election from 2014

In November 2014, Romania raised the attention of the European Union's Member States with the Presidential election, characterized by a large mass mobilization (especially from Romanians living abroad), with a campaign strategy took especially on the internet (mostly on Facebook) and with a new civic spirit, which proved a big capacity of regeneration of Romanian society, spread as a wave on the internet, especially among youth and perceived as a strengthening of Romanian democracy.

After many years of silence mixed with fury and anger against the governants, on November 2014, the Romanian people (from inside and outside the country) used their right to vote as a weapon for redefining the spirit of liberty against the arrogance of a general trend for making politics, and moreover, has coagulated a civic spirit, unseen in the society since December 1989. Maybe for the first time after the entry into European Union, Romania can be presented as a positive example to the other member states for its civic culture, that defied any statistic, polls and even the most optimistic expectations of

the "powerless citizens". The case fact is that on the second electoral tour, Mr. Klaus Iohannis won with a turnout of 62%, against Victor Ponta, the Socialist prime minister who was the front-runner in all the opinion polls and ran a fiercely nationalist campaign. The difference was immense, because in the first round of elections the classament was inversed, Mr. Iohannis has had only 30.4% and Mr. Ponta took 40.4% of the voters. At this reversal of situation contributed the social media and its strategy on Facebook, which makes him the most popular European politician, overcoming Angela Merkel, David Cameron or Vladimir Putin as Facebook likes and followers.

Moreover, the Prime Minister used a large amount of semi-legal tools in order to ensure its success in election: the Government that he conducted adopted an emergency ordinance that allowed the political migration of local representatives; he adopted some popular fiscal reform for several budgetary categories before the elections, as a stimulative to gain their votes; he tried to control the exercise of the right to vote from Diaspora (where it was well knows the dissatisfaction of the electors toward its campaign) by establishing an insufficient number of polling stations in most European countries. Thousands of Romanians from abroad were queuing for hours at overcrowded embassies and they were unable to express their vote because of a faulty organization of the electoral process. Unfortunately, the negative experience of the first round of election (November 2nd 2014) didn't lead to a better organization for the second one. A series of solidarity protests were organized in the country, as a sign of support for Diaspora, which leaded to the resignation of the Foreign Minister – as an only "remarkable" solution for solving this problem.

The images seen on TV and internet with thousands of people waiting for hours to vote encouraged more voters at home. In parallel, these unforgettable and unforgivable experiences related to the expression of a fundamental right, were speculated by the victorious candidate and by its campaign staff, that leaded a strong social media campaign and hashtags (such as #yeslavot, #alegeri2014 and #diasporavoteaza) supported by Romanian personalities from different fields, music, sport, business, etc, that sprang up across several social platforms, with the aim of raising awareness of the importance of going out to vote. Regarding the social media campaign, it was organized by a team of young, which found collaborators in every foreign city where there were problems in the first election round, so that the information, images and videos with impact on people can be uploaded on social network on a real time.

From a managerial and strategic point of view, the target was to attract young aged between 18-35, as regular users of Facebook, and to influence them to be supporters of the candidate Iohannis, by sharing and posting different information on their personal profiles, by gaining their confidence and involving a lot of enthusiasm in the messages delivered on-line. As more that 7 million Romanians have profiles on at least one social network and more that 70% of those one were active daily, the campaign was focused on the development of the civic participation through internet and social networks, by delivering simple and clear messages that could attract persons not involved in politics, but who, instead, could disseminate those messages. For the first time in Romanian history, because of the huge mobilization in on-line and the use of social networks as source of information and mobilization, the virtual victory of a candidate was transposed into a victory in election. The most surprising fact is that none of the persons involved into the on-line campaign has ever done such a thing before.

One other surprising thing about this presidential election is that on a European ground scored by extreme nationalism (as it has been seen in recent European or national election – see the French example), on a very conservative Romanian electorate towards

aspects such as religion, family, ethnicity, the internet and the message disseminated on social networks wiped the fact that Mr. Iohannis is a protestant and descendent of Saxons and with no kids. These aspects were object of denigration, came from the other side, but which finally didn't have an impact on the electorate.

Beyond optimistically approaches…

Although it is very convenient, starting from few positive examples, to generalize that the application of technology and the so-called e-democracy to the rulemaking process will strengthen our democracy, we must release the theoretical optimism and analyze in depth if the internet and social networks are capable to create a strong democracy, or just to expand the information and to create channels of communication between citizens and/or institutions, without no clear influence over the quality of the democracy. The rule-making process and furthermore, the e-rulemaking process are very complex and dependant on multiples variables, so that significant barriers between citizens and public institutions will still persist, despite the desire of both parties to strengthen the connection in order to re-enforce the democracy through technology. Most ordinary citizens in Europe are disengaged from politics and from the rule-making process. Moreover, depending on the economical degree of development, not all national administrations are functioning according to a good transposed e-transparency and ordinary citizens are not so interested to follow on social networks or on web-sites the daily activity of national or European institutions. In the absence of strong emotions, impact campaigns, personal or group interest, citizens are not very motivated to participate because civic participation suppose active "citizens who have imaginatively reconstructed their own values as public norms through the process of identifying and empathizing with the values of others" (Barber, 2003).

E-rulemaking holds much greater promise for expanding the pluralist process so that a larger group of experts and interested organizations can help inform regulatory decision-makers. If e-rulemaking accomplishes this goal, its impact will be more incremental than revolutionary, but over time it will enable government to make better regulatory decisions (Coglianese, 2007). At the moment we cannot surely affirm that Internet and social network leads to a stronger democracy, but at least, to strong information of citizens. From information to real political participations of citizens to the rule-making policy there are a lot of variables such as education, motivation, civic culture, the specialized knowledge requisite to a meaningful participation and the desire of public authorities to fully valorise the potential of technology, in terms of costs and efficiency.

Acknowledgement

This work was supported by the strategic grant POSDRU/159/1.5/S/133255, Project ID 133255 (2014), co-financed by the European Social Fund within the Sectorial Operational Program Human Resources Development 2007 – 2013.

References:

Barber, B. R. (2003). *Strong Democracy: Participatory Politics for a New Age*, Berkeley: University of California Press.

Blondiaux, L. (2005). L'idée de de´mocratie participative: enjeux, impensés et questions re´currentes. In Bacqué, M. H., Rey, H., Sintomer, Y. (eds), *Gestion de proximité et de´mocratie: une perspective comparative*, Paris: La Découverte.

Boccia, A. G. (2012). Productive publics and transmedia participation. *Journal of Audience & Reception Studies*, Vol. 9 (2), 448-468.

Bodin, O., Crona, B. I. (2009). *The role of social networks in natural resource governance: What relational patterns make a difference? Global environmental change*, Elsevier.

Castells, M. (2009). *Communication Power*, New York: Oxford University Press.

Coglianese, C. (2007). Weak Democracy, Strong Information: The Role of Information Technology in the Rulemaking Process, *Public Law and Legal Theory Research Paper Series*.

Dahl, R. (1971). *Polyarchy, Participation and Opposition*, New Haven and London: Yale University Press.

Della Porta, D. (2008). La partecipazione nelle istituzioni: concettualizzare gli esperimenti di democrazia deliberativa e partecipativa. *Partecipazione e Conflitto*, (10), 15–42.

Ducci, G. (2011). *Public communication and social web: how public administrations promote citizen sharing and participation*, Conference EUROPCOM, Bruxelles, 19-20 october 2011. Retrieved from: cor.europa.eu/en/events/.../Ducci_bis.pdf.

Ducci, G. (2013). Digital Public Communication in Europe for a European Public Sphere. *Sociology Study*, 3(6), 425-436.

Granovetter, M. (1998). *La forza dei legami deboli e altri saggi*, Napoli: Liguori.

Jenkins, H. (2006). C*onvergence Culture. Where Old and New Media Collide*, New York: New York University Press. Retrieved from: http://faculty.georgetown.edu/irvinem/theory/Jenkins-ConvergenceCulture-Intro.pdf.

Lascoumes, P., Le Gales, P. (2004). L'action publique saisie par ses instruments. In Lascoumes, P., Le Gales, P., *Gouverner par les instruments*, Paris: Presses de Sciences-Po.

Mainwaring, S., O'Donnell, G., Valenzuela, J. S. (2000). *Issues in Democratic Consolidation*, Notre Dame: University of Notre Dame Press, pp. 105-152.

Malinowski, B. A. (1960). *Scientific Theory of Culture* (1st edition 1940). New York.

Mcclurg, S. D. (2003). Social Networks and Political Participation: The Role of Social Interaction in Explaining Political Participation. *Political research quarterly*, 56(4), 448-65.

Morange, J. (2009). *La liberté d'expression*, Bruxelles: Bruylant.

Peña Gonzales, C. (1992). Poder Judicial y Sistema Politico: Las Politicas de Modernization. *Cuadernos de Analisis Juridico*, (22), 11-55.

Ravaz, B., Retterer, S. (2006). *Droit de l'information et de la communication*, Paris: Edition Elipses Marketing.

Sartori, G. (1999). *The Theory of Democracy Revisited*, Iași: Polirom.

Schelsky, H. (1952). Die Suche nach der Wahrheit. Hamburg, cited in Za stabilnostta na institutziite i v chastnost na konstitutziite. In Ideas of Culture (1993), Sofia: Sofia University Press, Vol. 2, apud Vladimirov Z. (1997). *The value crisis and the weakness of democratic institutions in the posttotalitarian societies in Eastern Europe* (the Bulgarian case).

Schmitter, P. C. (1994). Dangers and dilemmas of democracy. *Journal of Democracy*, (5): 57-74.

Schumpeter, J. (1977). Two Concepts of Democracy. In Quinton A. *Political Philosophy*. Oxford: Oxford University Press, pp. 153-188.

Tiryakian, E. A. (1991). Modernisation: Exhumetur in Pace (Rethinking Macrosociology in the 1990's). *International Sociology*, (6), 165-198.

Touraine, A. (1991). Qu'est-ce que la democratie aujourd'hui? *Revue Internationale des Sciences Sociales*, (128), 275-286.

Valenzuela, J. S. (1992). Democratic Consolidation in Post-Transitional Settings: Notion, Process, and Facilitating Conditions. In Mainwaring, S., O'Donnell, G., Valenzuela J. S. (eds.). *Issues in Democratic Consolidation*, Notre Dame: University of Notre Dame Press, pp. 57-104.

Vladimirov, Z. (1997). *The value crisis and the weakness of democratic institutions in the posttotalitarian societies in Eastern Europe* (the Bulgarian case). Retrieved from: http://www.nato.int/.

Zapf, W. (1991). *Modernisierung und Modernisierungstheorien*, Frankfurt: Campus.

Zielonka, J. (1994). New Institutions in the Old East Bloc. *Journal of Democracy*, (5), 87-104.

Article Info

Received: February 28 2015
Accepted: May 15 2015

RSP • No. 46 • 2015: 73-83

ORIGINAL PAPER

Bridging the Gap in Defining Corporate Reputation: An Extensive Literature Review

Dragoș Alexandru Bălan*

Abstract
In the past several years, the business environment has witnessed an increasing competitiveness and more and more companies have shifted their focus towards intangible assets in an attempt to optimize budgets, processes and financial performance, with the solely goal of gaining a positive, sustainable market advantage. In this ever global market landscape, what corporate reputation is and how it can be best measured has been recognized as a central business question and attracts the attention of management community. Despite of this growing interest of both researchers and practitioners in the field of corporate reputation, there is no consensus when it comes to defining the concept. Although the existing management experience agrees upon the importance of corporate reputation and its contribution to the overall market value of a business, a common agreed definition is still lacking. Thus, how reputation is formed and how its components are defined remains a controversial debate. In this context of ambiguity, the present research paper builds on the existing literature and proposes an extensive evaluation and analysis of the prior work conducted in this field of interest. This paper examines diverse definitions related to corporate reputation and seeks to offer a broader image of the concept and the constructs behind it. Drawing upon the literature approaching the concept of corporate reputation, the paper connects the dots between various approaches, integrating different angles of interpretation. Developing on the role of corporate reputation, the purpose of the study is to fill up the blind spots and to bring theoretical clarity in this field of research.

Keywords: *corporate reputation, intangible assets, stakeholders*

* PhD Candidate, University of Craiova, Faculty of Economics and Business Administration, Phone: E-mail: dragos_balan2005@yahoo.com.

Introduction

Within the past several years, business environment has witnessed a rapid pace of globalization, becoming more dynamic and competitive. Increasing market pressure, the shift in requirements and rise of sophistication of different stakeholder groups have determined companies to actively search for drivers that will support their efforts in achieving sustainable competitive advantages and positively differentiate in the context of a fast changing business world. Although companies are focused on finding ways to strengthen their market positioning through competitive product offerings, the "new normal" environment, caused by 2008's financial turmoil and economic recession, forced them to remodel the business strategy. To have success in today's complex market landscape, it is crucial for all organizations to recognize and understand stakeholders' permanently changed behavior (Mitu, 2015). This fundamental change is now reflected into a growing awareness of what companies stand for and how they decide to conduct their business operations, going beyond the products themselves and encouraging management executives to move back their attention into the field of intangible assets. To this end, it is not surprising that CEOs, permanently seeking to uncover new sources of growth and engagement, commonly recognize corporate reputation as a valuable resource (Walker, 2010; Hall, 1992) that helps companies to "achieve business goals and stay competitive" (Argenti, Druckenmiller, 2003: 2). Thus, attaining economic performance through being better regarded than competing players has gained prominence in the recent years (Davies et al., 2003). Consequently, more and more executives have moved the battle ground into the direction of being able to build a favorable reputational status in the eyes of their stakeholders. Technology and social media platforms are rapidly shaping the day-to-day interactions and stakeholders, confronted with a huge amount of contradictory information available about a company or its products and services, make use of corporate reputation as a foundation for their choices (Mitu, 2015). In this new highly connected world, the information abundance is redefining the rules and determines attention scarcity. Subsequently, the business interest is increasingly oriented towards perceptions formed by different public audiences about organizations which draws the conclusion that corporate reputation could, then, turn into a valuable "filter" of the overall decision-making process (Genasi, 2002).

The relation between corporate reputation and the organization's financial well-being is, therefore, widely accepted by the existing academic and business literature. Many researchers and practitioners alike have already investigated the strategic impact that good corporate reputation has in altering the emotional and behavioral loyalty of stakeholders and in the process of facilitating economic and financial operations (Bromley, 2002; Chun, 2005; Helm, 2007; Frooman, 1999). Hence, a positive corporate reputation has been associated with superior corporate equity performance (Roberts, Dowling, 2002), higher intentions to buy a business service (Yoon et al., 1993) or company's ability to charge premium prices, as a promise of high quality products and services (Fombrun, Shanley, 1990). Extending on the benefits associated with a positive corporate reputation and moving into the organizational behavior zone, the existing body of studies indicated that company's capacity to attract, recruit and retain top talents is also heavily driven by the organizational reputation (Cable, Turban, 2003). The success of the employment process is presumed to be facilitated by the company's reputation. The influence of corporate reputation appears to go beyond the recruitment stage and impacts the employees' productivity and their identification with the values promoted inside organizations (Dutton et al., 1994).

In light of these financial, economic and organizational benefits, triggered by corporate reputation, increased attention has been devoted to a better understanding of the importance of this intangible asset. The management community has strongly emphasized on the pivotal role that it has in generating value for the company that possesses it. Being able to create, develop and maintain a good reputation has become a central concern for both scholars and organizations, whether for-profit or not-for-profit. In line with this idea, Barnett, Jermier and Lafferty, in their work "Corporate Reputation: The Definitional Landscape" (2006) emphasize on the momentum gained by this new business focus and noticed that "during the period of 2001-2003, the average number of scholarly articles on corporate reputation more than doubled in frequency compared with the year 2000". Moreover, "the average number of scholarly articles on corporate reputation published during the period 2001-2003 is nearly five times as large as is the average for the period 1990-2000" (Barnett et al., 2006: 26-27). Yet, despite the increased attention towards the field of corporate reputation, there is no consensus when it comes to defining the concept. Although the existing management experience agrees upon the importance of corporate reputation and its contribution to the overall market value of an organization, a common agreed definition is still missing. Investigating the impact of corporate reputation has become a major area of research in the past years; however, many authors still call for further attention directed into the field of a better understanding of how reputation is formed and what its components are (Mahon, 2002; Brown et al., 2006; Walker, 2010).

In this context of ambiguity, determined by a fragmented approach in defining the concept of corporate reputation, it becomes difficult to advance the research work on the role that the construct has in altering the stakeholders' future behavior and modeling the path to future success (Burlea-Șchiopoiu, 2007). Therefore, the present research paper builds on the existing literature and proposes an analysis of the prior efforts conducted in this area of interest. The paper reviews many definitions of corporate reputation and seeks to offer a broader image of the concept and the theories behind it. Drawing upon the literature approaching the corporate reputation, the paper connects the dots between various approaches, integrating different angles of interpretation. Developing on the role of corporate reputation, the purpose of the study is to fill up the blind spots and to bring more theoretical clarity and a common understanding in this field of research.

Corporate reputation framework

As previously noted, it is generally accepted that reputations play a crucial role for the survival and long-term growth of any organization. What was initially considered as a simple business term, emerged during early 1990's, corporate reputation has nowadays evolved into a dynamic concept that has received more and more management attention and has been variously defined. The large academic and business interest surrounding the corporate reputation and the efforts devoted into the direction of constantly deepening the significance of the concept underline the critical importance that it is presumed to have for the future success and market development of organizations (Deephouse, 2000; Robert, Dowling, 2002; Fombrun, Shanley, 1990). Therefore, the topic of corporate reputation has been subject to fragmented cross-disciplinary research conducted by different groups of scholars representing a wide range of academic fields. These perspectives are: economics/management, business strategy, sociology, organizational behavior, accountancy and marketing (Davies et al., 2003, Fombrun, Van Riel, 1997).

The richness in reputation theories makes difficult for practitioners to unify various views. Therefore what is truly intended by this concept remains a source of ambiguity. Chun (2005: 93) considers that "the interdisciplinary or cross-disciplinary nature of research into reputation… is also a source of problems" and although the diverse definitions partially overlap, using common terms and references, they also conflict in many aspects. Hence, the mission to develop a clear, straight-forward definition of corporate reputation has become even more challenging. The research work undertaken by Fombrun and Van Riel (1997) appears to be the first effort in unifying the disparate knowledge surrounding the concept of corporate reputation and seeking for a comprehensive definition. According to the discipline of economics, the construct of corporate reputation and its features are disputed among game theorists and signaling theorists. From the analysis of game theoretic models, reputation is described as character traits, able to differentiate and distinguish between companies and to further explain their future behavior towards stakeholders. Signaling theorists bring into discussion a different understanding of the construct of corporate reputation. They formalize reputation as being the information signals that managers could make use of in an imperfect informational market in order to increase the attractiveness of their firm (Fombrun, Van Reil, 1997).

An early work conducted by Weigelt and Camerer (1988: 443) reviews game theoretic models and defines reputation as "a set of attributes ascribed to a firm, inferred from the firms' past actions". This approach indicates that in game theory, the reputation is formed through a process in which all past actions, implemented in the market, released signs that other competitors can use to anticipate the future strategic behavior. To this end, corporate reputation in repeated games is supposed to "establish links between past behavior and expectations of future behavior" (Mailath, Samuelson, 2006: 459). Signaling approach draws on the informational role of the reputation which appears to be essential in gaining the audience trust and confidence in the products and services offered by the company (Fombrun, Van Reil, 1997).

In the discipline of strategy, reputation plays a key role in consolidating one firm's competitiveness. For strategists, corporate reputation represents a market entry barrier, and a limitation for other players to develop and expand their business operations (Dowling, 2001). Moreover, it is one of the company's intangible resources which is difficult to imitate, holds an intrinsic value and it is able to provide a sustainable competitive advantage (Mahon, 2002; Fombrun, Shanley, 1990). Reputation helps companies to achieve a differentiated positioning in the marketplace by providing competitive benefits. In this sense, Helm (2007: 24) concluded that a "company with a good reputation is perceived to be less risky than companies with equivalent financial performance, but a less well-established reputation". Consistent with the above perspective, Davies et al. (2003) outline the key role that corporate reputation plays in enhancing the performance of the company. The authors position the construct on the same line of importance in the group of sources of strategic advantage through which companies achieve competitiveness, alongside (1) – infrastructure (owning better stocks of physical assets), (2) – better and lower access to financial services, and (3) – attracting better human resources.

The sociological view considers reputation as a substituent for the incomplete information content available on the market. Sociologists draw the attention towards the fact that reputational rankings emerge as a natural consequence of a process of an aggregated evaluation of a company's performance which takes place into a social-cognitive context. Hence, the sociological approach of corporate reputation interprets the

concept as an "indicator of legitimacy: they are aggregate assessments of firms' performance relative to expectations and norms in an institutional field" (Fombrum, Van Riel, 1997: 9).

According to the accounting discipline, corporate reputation is defined in the form of an intangible asset, holding a vast value to the organizations that hold it, developed through "sustained social interactions in which past impressions affect future behaviors" (Fombrun, Rindova, 1999: 706). To organizational practitioners, corporate reputation takes a different meaning and definitions emerged from this discipline place the company's employees in a central role. Human resources define the culture and the identity of an organization, which finally influences the way the company will interact and establish relations with other groups of stakeholders. Therefore, employees act as representatives of corporate reputation and enhance it (Gotsi, Wilson, 2001). However, insights from previous research work demonstrated that the relation is bi-directional, thus it works both ways. In the field of organizational management, corporate culture appears to exert an influence on staff's perceptions and attitudes, while corporate identity shapes manager's capacity to interpret the information available in the market and impacts their reactions towards stakeholders (Fombrun, Van Reil, 1997). Alongside, stakeholder theory considers reputation as being the tool used by companies in order to gain legitimacy among different groups of public and consolidate its future performance.

Marketing-study theories are mainly focused towards one group of stakeholders – customers and reputation is often labeled "brand image" (Fombrun, Van Reil, 1997). Marketing practitioners draw upon the potential that corporate reputation has in generating incremental value to organizations through fostering behavioral loyalty and emotional attitudes among consumers – brand focus and facilitating the interaction between companies and its customers at the product or service level (selling-buying process focus). Moreover, in the field of marketing discipline, corporate reputation is considered to be equal to corporate image and corporate identify.

The distinction pointed out by various academic disciplines comes to confirm the fragmented approaches in defining the concept. The lack of cooperation of scholars and practitioners in offering a commonly agreed perspective (Mahon, 2002) raised the need to look more closely at multiple features of the concept and clearly state what is meant by corporate reputation. In an attempt to shade light into the reputation issue, Fombrun and van Reil's pioneering research (1997) calls for a more integrative view of the concept by categorizing the shared features observed across the six theoretical perspectives. Developing from these similarities, corporate reputation is interpreted as a "collective representation of a firm's past actions and results that describes the firm's ability to deliver valued outcomes to multiple stakeholders. It gauges a firm's relative standing both internally with employees and externally with its stakeholders, in both its competitive and institutional environments" (Fombrun, Van Reil, 1997: 10). An interesting alternative perspective is offered by Chun (2005). Continuing the efforts to clarify the multiple, fuzzy aspects associated with corporate reputation, the author suggested a fresh, new line of thinking and explores the concept within a different. The framework advanced by the author argued that it is possible to distinguish between three main schools of thoughts – evaluative, impressional and relational – that could bring more clarity in understanding the reputation. In contrast to Fombrun and Van Riel (1997) who investigate diverse interpretations of the construct, in various academic sectors, Chun (2005) introduced a shift approach regarding how corporate reputation should be understood and turns her

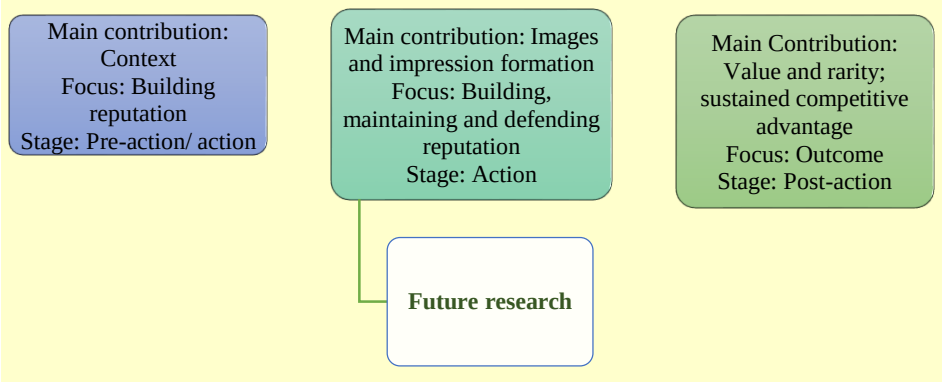
attention towards the relationships developed by different groups of stakeholders with the companies. Therefore, the stakeholders become the central focus of this approach.

The evaluative school examines the reputation from a financial standing and focuses on the interest of single stakeholders, such as shareholders, the CEO or investment advisers are concerned. While the evaluative line of rationing mainly emphasizes on the financial value of the company, the other two clusters of definitions, falling into the impressionable or relational schools, are gradually shifting the attention on the influence that the emotional association with the company has on its long term financial competitiveness. This thinking introduces mentions to terms such as image, identity and personality and the most important stakeholders are the employees and customers. Hence, this line of rationing describes the reputation as the overall impression of an organization and indicates how the construct relates to organizational behavior, respectively to marketing and media efforts. The third major way of thinking addresses the gaps between the internal view and external view (images) created by stakeholders. The feature of this school is the multiple stakeholder approach in describing the reputation and indicates the equal importance of various internal and external voices (stakeholders) to the success of the firm. For a greater understanding of corporate reputation, the concept is further discussed from a different angle of interpretation. Barnett et al. (2006) conceptually and empirically reviewed 49 different approaches aiming at separating the nature of reputation and providing an integrative perspective. In their work, they captured the various meanings associated to corporate reputation and pointed out three major clusters of definitions: reputation described as a state of awareness, reputation as an assessment and reputation as an asset (Barnett et al., 2006). Reputation as a state of awareness is defined by similar used terms and common language. It consists of aggregate expressions such as perceptions, global perceptions, perceptual representations or collective representations. These features of corporate reputation draw the attention on a general level of awareness that different groups of stakeholders have of a company. As indicators of awareness of the organizations, all these references to corporate reputation do not make any judgments about it – whether it is bad or good or to what extent. The second cluster of definitions concern corporate reputation described as an assessment. The language used is defined through terms indicating an evaluation, a measurement, estimation or a judgment of specific or general things related to the firms. These definitions also incorporate terms related to esteem, attractiveness of the company or regard in which the firm is held. Although adding a valuable contribution to the construct of corporate reputation, these two major clusters fail to seize the whole potential of corporate reputation and do not explain how corporate reputation impacts the competitiveness of the company. These definitions proved to be adequate in terms of gauging reputations; however, they show limitations in establishing a linkage between the value that a good reputation and the company's financial competitiveness. Therefore, the research efforts expanded into the direction of defining the concept as an asset. These definitions delineate a new focus in understanding the corporate reputation and describe it as a financial or economic asset that creates value.

Following the in-depth examination of the existing references describing the corporate reputation, in various theoretical perspectives, Barnett et al. (2006) refine the concept and pointed out towards corporate reputation as representing the "observers' collective judgments of a corporation based on assessments of the financial, social, and environmental impacts attributed to the corporation over time" (Barnett et al., 2006: 34).

Another interesting perspective regarding the concept of corporate reputation is provided by Walker (2010). The author takes a different approach by reviewing the numerous definitions and narrowed the existing literature by creating an analysis model focusing on three of the most prominent theories in this field. According to the Walker's framework (presented below), these theories are: institutional theory (used in five papers) resource-based theory – RBV (used in five papers) and signaling theory (used in three papers).

Figure 1: Theories used in examining the corporate reputation



Source: Author's compilation based on Walker's theory on examining the corporate reputation (Walker, 2010)

As depicted from the above model, the central idea of gaining a better understanding of what corporate reputation stands for is a process where the theoretical view is built around a transfer "from pre-action, to action, to post-action" (Walker, 2010: 376). In this new line of rationing, these movements offer a comprehensive conceptualization of reputation's constituents and its role in enhancing the competitive advantage. Following this idea, the institutional theory is focused on building reputation. Its main contribution to the existing body of studies consists in setting up the context and it corresponds to both pre-action and post-action moments. This group of definitions helps practitioners and scholars alike to better investigate the process through which companies achieve "legitimacy and cultural support within their institutional contexts to build their reputations" (Walker, 2010: 376). On the other, signaling theory offers insights into a better understanding of how the strategic behavior adopted by companies on the marketplace influence the process of forming impressions among stakeholders (Burlea Șchiopoiu et al., 2009). Consequently, the focus of this theoretical approach is directed towards a complex process of building, maintaining and defending the organization's reputation. Consistent with Fombrun and Van Riel's (1997) insights, corporate reputation is defined as a composite construct which derives from projected images. Thus, the signaling theory is often used in the action context and investigates the influence of "firms' signals on various stakeholders" (Walker, 2010: 377).

Referring to the third group of theories, the resource-based view is used in the post-action stage and describes reputation as a valuable intangible resource, difficult to copy due to its ambiguous, rare nature. Resource-based theory is placed in the post-action

stage, and it is mainly concentrated on examining the benefits brought by reputation to companies that possess it and which finally lead to gaining a sustainable competitive advantage. Of all organizational outcomes highlighted by this line of thinking, profitability, as outcome of the financial performance, has received the highest attention.

To conclude, Walker's approach in examining the concept is based on Fombrun's definition (1996). However, Walker enriches this early interpretation and adds, alongside the attributes already ascribed to corporate reputation (it is an aggregate perception of all stakeholders, it is based on perceptions and it is comparative) two more features identified as defining reputation: the type of corporate reputation (either positive or negative) and its temporal nature (durable, enduring). This contribution led to a comprehensive interpretation of corporate reputation which is described as "a relatively stable, issue specific aggregate perceptual representation of a company's past actions and future prospects compared against some standard" (Walker, 2010: 370).

Towards a state of art

Corporate reputation represents a universal topic that has been discussed from wide-ranging academic disciplines. In a fast-changing business word, providing a better understanding of its role in shaping the company's future market development has become of essence. Describing the concept from a single, isolated theoretical perspective is, therefore insufficient and the need for an integrated definition that captures the overall mechanism of the complex relationships between organizations and stakeholders has been consequently brought in the attention of the business community. What was initially referred as "a set of attributes ascribed to a firm, inferred from the firms' past actions" (Weigelt, Camerer, 1988: 443) or "public cumulative judgments of firms over time" (Fombrun, Shanley, 1990: 254), corporate reputation has evolved into "a global perception of the extent to which an organization is held in high esteem or regard" (Weiss et al., 1999: 75). The theory of corporate reputation has received diverse definitions which have tried to explain the construct by constantly incorporating new features. From this perspective, it is worth mentioning Argenti and Druckenmiller's work (2003: 3) who argued that reputation embodies the "collective representation of multiple constituencies' images of a company built up over time" or Deephouse (2000: 1093) who stressed that reputation represents the "evaluation of a firm by its stakeholders in terms of their affect, esteem, and knowledge". Consistent with this idea, Brown et al. (2006: 101) also note that corporate reputation refers to "mental associations about the organization actually held by others outside the organizations". Through the process of systematic review of the definitions offered to the construct and most important frameworks developed across time, a number of common similarities into what it is meant by corporate reputation can be identified: firstly, it can be noted the general agreement upon interpreting the construct of corporate reputation in the form of a collection of perceptions or representations that different stakeholders hold about companies. Thus, it is important to indicate the cumulative nature of corporate reputation - one individual's assessment towards a company can only be considered an attitude or judgment and it cannot be generalized into a reputation held by that company on the market. In line with this observation, Wartick (2002: 375) stresses that "the empirical truth of corporate reputation comes from whatever the respondents say"; multiple "stakeholders" is also a fundamental common term that illustrates the concept of corporate reputation. The complex internal structure of companies and the influence that publics have on to the business development have shifted the attention from customers, as main focus, on the diverse groups of audiences of the companies, both

internal or external. Developing on this idea, Caruana and Chircop (2000: 43) indicated that "corporate reputation emerges from the images held by various publics of an organization": 1. another common theme in defining corporate reputation is encompassed by the temporal nature of the construct. As emphasized by Walker (2010) and Barnett et al. (2006), reputation is created and developed over time and companies' past actions contribute to the overall esteem or regard held by the public about them. Gotsi and Wilson (2001b: 28-29) support this observation and describe reputation as an advantage which takes time to build and manage and define it as "stakeholder's overall evaluation of a company over time. This evaluation is based on the stakeholder's direct experiences with the company, any other form of communication and symbolism that provides information about the firm's actions and/or a comparison with the actions of other leading rivals"; 2. in close relation with the strategic behavior adopted by companies, another frequent word that describes corporate reputation is "market competition". Various research findings (Fombrun, Van Reil, 1997; Barnett et al., 2006) indicate that companies are engaged in a constant competition with other players in order to gain a status – the reputational status – in the eyes of multiple stakeholders; 3. other keywords that come to unify the theoretical perspectives surrounding the concept are "esteem", "regard", "image" or "reliability". The past behavior exhibited by companies in the market through their decisions is noticed and interpreted by different groups of stakeholders providing valuable information about future development. Therefore, stakeholders are able to gauge the company's trustworthiness based on the past actions taken in different market situations. 4. another source of ambiguity surrounding corporate reputation is related to the interchangeable use of the terms of reputation, identity and image as synonyms (Wartick, 2002; Barnett et al., 2006; Walker, 2010; Bromley, 2000). In this view, Fombrun, Van Riel (1997) consider that identity and image represent the basic constituents of reputation.

Moreover, they present identity as being the perception held by the internal stakeholders – the employees and board of management, while the image incorporates the perceptions that external stakeholders have of the company. Coming to enrich this theoretical perspective, Barnett et al. (2006: 33-34) delineate from the above interpretation and describe identity as the "underlying core" or basic character of the firm, while image is defined as "observer's general impression of a corporation's distinct collection of symbols, whether that observer is internal or external to the firm". In line with the above perspectives which distinguish the construct of image and identity based on different stakeholder groups, Walker (2010) introduced new evaluation criteria in the form of desired perception. In this approach, there is a clear distinction between desired identity, respectively desired image (what companies want internal stakeholders, respectively external stakeholders to know/consider about the firm) and actual identity or image (what actually internal and external stakeholders know/consider about the firm). The lack of a clear theoretical differentiation between the constructs of reputation, image and identity and the fact that there are still authors that tend to considers them as synonyms or equal terms calls, therefore, for further research efforts. Hence, two different schools of thought can still be identified, although the focus is mainly directed towards seeing the constructs as distinct, yet interrelated concepts (Gotsi, Wilson, 2001).

Conclusion

The purpose of this article was to review the diverse theoretical perspectives related to the concept of corporate reputation and to bring tog ether different schools of thought into a unified, representative framework. The analysis proposed by this research

work synthesizes the existing reputation literature and the major concepts used by practitioners across academic disciplines.

Despite of the general agreement upon the importance of corporate reputation and its crucial role in company's future growth and success, the academic and business community has not concluded on a common interpretation. Corporate reputation is still understood as a concept of a multidisciplinary richness and broad meanings and continues to be variously defined. Thus the process through which reputation is formed and what its components are remains a controversial debate. In this context of ambiguity and lack of an agreed theoretical basis, the task of defining corporate reputation and developing a clear understanding of the concept becomes ever-more challenging. In order to be able to compete in a highly globalized economy, corporate reputation appears to be the strategic instrument that paves the road to market growth. To effectively use it, business executives are, however, required to understand the notions that stand behind the construct and how company's past behavior and actions shape the stakeholders' attitude and perception about it. Therefore, the present study reflects the current state of efforts directed towards examining the corporate reputation (without pretending to be an exhaustive list) and contributes to a higher theoretical clarity. By identifying commonalities and differences in describing the construct of reputation, the framework proposed constitutes itself into a theoretical basis that will benefit future research efforts, especially those undertaken in the direction of developing a good, reliable foundation of corporate measurement. In the absence of a clear, comprehensive understanding of elementary notions that stand behind corporate reputation, advancing into the field of relating the value of reputation to the market value of companies will continue to represent a challenge and a drawback.

References:

Argenti, P. A., Druckenmiller, B. (2003). Reputation and the Corporate Brand. *Tuck School of Business Working Paper*, (03-13), 1-16.

Barnett, M. L., Jermier, J. M., Lafferty, B. A. (2006). Corporate Reputation: The Definitional Landscape. *Corporate Reputation Review*, 9 (1), 26-38.

Bromley, D. (2002). Comparing Corporate Reputations: League Tables, Quotients, Benchmarks or Case Studies. *Corporate Reputation Review*, 5 (1), 35-50.

Brown, T. J., Dacin, P. A., Pratt, M. G., Whetten, D. A. (2006). Identity, Intended Image, Construed Image, and Reputation: An Interdisciplinary Framework and Suggested Terminology. *Academy of Marketing Science Journal*, 34 (2), 99-106.

Burlea-Șchiopoiu, A. (2007). An Approach of the Knowledge Management for the Development of the Organisational Commitment. In Maygar, G., Knapp, G., Wojtkowski, W., Wojtkowski, G., Zupancic, J. (eds.), *Advances in Information Systems Development*, Springer US, pp. 313-323.

Burlea-Șchiopoiu, A., Radu, C., Ionașcu, C., Siminică, M., Craciun, L., Mitrache, M. (2009). The Corporate Social Responsibility on the Romanian. *Revue Management & Avenir*, 23 (3), 59-69.

Cable, D. M., Turban, D. B. (2003). The Value of Organizational Reputation in the Recruitment Context: A Brand-Equity Perspective. *Journal of Applied Social Psychology*, 33 (11), 2244-2266.

Caruana, A., Chircop, S. (2000). Measuring Corporate Reputation: A Case Example. *Corporate Reputation Review*, 3 (1), 43-57.

Chun, R. (2005). Corporate reputation: Meaning and measurement. *International Journal of Management Reviews*, 7 (2), 91-109.

Davies, G., Chun, R., Da Silva, R. V., Roper, S. (2003). *Corporate Reputation and Competitiveness*, New York: Routledge.

Deephouse, D. L. (2000). Media Reputation as a Strategic Resource: An Integration of Mass Communication and Resource-Based Theories. *Journal of Management*, 26 (6), 1091-1112.

Dowling, G. (2001). *Creating Corporate Reputations: Identity, Image, and Performance*, Oxford University Press.

Dutton, J. E., Dukerich, J. M., Harquail, C.V. (1994). Organizational Images and Member Identification". *Administrative Science Quarterly*, 39 (2), 239-263.

Fombrun, C., Rindova, V. P. (1999). Constructing Competitive Advantage: The Role of Firm-Constituent Interactions. *Strategic Management Journal*, (20), 691-710.

Fobrum, C., Shanley, M. (1990). What's in a Name? Reputation Building and Corporate Strategy. *Academy of Management Journal*, 33 (2), 233-258.

Fobrum, C., Van Riel, C. (1997). The Reputational Landscape. *Academy of Management Journal*, 1 (1), 5-13.

Frooman, J. (1999). Stakeholder Influence Strategies. *Academy of Management Review*, 24 (2), 191-205.

Genasi, C. (2002). *Winning Reputations: How to Be Your Own Spin Doctor*, London/New York: Palgrave.

Gotsi, M., Wilson, A. M. (2001a). Corporate reputation management: living the brand? *Management Decisions*, 39 (2), 99-104.

Gotsi, M., Wilson, A. M. (2001b). Corporate reputation: seeking a definition. *Corporate Communications: An International Journal*, 6 (1), 24-30.

Hall, R. (1992). The Strategic Analysis of Intangible Resources. *Strategic Management Journal*, 10 (1), 22-37.

Helm, S. (2007). The Role of Corporate Reputation in Determining Investor Satisfaction and Loyalty. *Corporate Reputation Review*, (13), 135-144.

Mahon, J. (2002). Corporate Reputation: Research Agenda Using Strategy and Stakeholder Literature. *Business & Society*, 41 (4), 415-445.

Mailath, G. J., Samuelson, L. (2006). *Repeated Games and Reputations*, Oxford University Press.

Mitu N. E. (2015). Taxation policies: Evidence from Flat Tax vs. Progressive Tax Pathways, *Revista de Științe Politice. Revue des Sciences Politiques*, (45), 200-210.

Roberts, P. W., Dowling, G. R. (2002). Corporate Reputation and Sustained Superior Financial Performance. *Strategic Management Journal*, (23), 1077-1093.

Walker, K. (2010). A Systematic Review of the Corporate Reputation Literature: Definition, Measurement, and Theory. *Corporate Reputation Review*, 12 (4), 357-387.

Wartick, S. L. (2002). Measuring Corporate Reputation: Definition and Data. *Business & Society*, 41 (4), 371-393.

Weigelt, K., Camerer, C. (1988). Reputation and Corporate Strategy: A Review of Recent Theory and Implications. *Strategic Management Journal*, (9), 443-454.

Yoon, E., Kijewski, V., Guffey, H. J. (1993). The Effects of Information and Company Reputation on Intentions to Buy a Business Service. *Journal of Business Research*, (9), 215-228.

Article Info

Received: March 20 2015
Accepted: May 25 2015

RSP • No. 46 • 2015: 84-91

ORIGINAL PAPER

Active and Passive Legal Standing in the Division Process: A Radiography of Property Rights and Judicial Procedure

Raluca Lucia Cismaru*

Abstract
Ownership state involves, by definition, the existence of several persons who jointly owned in property one or more goods. These persons are not forced to remain in joint tenancy, they may request the sharing of the common property right. This right may be exercised both by voluntary partition, conventional, and by legal partition, and each joint owner, exercising this right virtually realizes the power it has on the state of shared ownership, causing it to stop. Active and passive procedural legitimacy have, in the first place each joint owner. They can demand anytime the sharing of the common property. Besides those persons in the partition process, active and passive procedural legitimacy can also have other people who have legal relationships with the joint owners and who pursue the common good. This study aims to analyze the particularities of the parties in a request of partition, and to highlight the issues arising in the judicial practice who faced with the solving some complexes partition request.

Keywords: *request for partition, active legal standing, passive legal standing, parties, third parties*

* Assistant Professor, PhD, University of Craiova, Faculty of Law and Social Sciences, Law Specialization, Phone. 0040742 808693, E-mail: ralucaluciapaul@yahoo.com.

General considerations

The Code of Civil Procedure does not offer a legal definition of the concept of party and because of these legislative gap, this concept has been and will be an object of doctrine dispute (Leș, 2012: 195); in exchange, the dispositions of article 55 state that the quality of parties in the civil trial belongs to the plaintiff, defendant and third parties that intervene voluntarily or by force in the civil trial. Regarding the intervening third parties, we mention that they become parties only after the admission in principle of the intervention request through a conclusion pronounced by the court. Thus, in the event of a contentious procedure, the parties of the civil action are represented by the natural or legal persons between whom there is a litigation regarding a subjective civil right or a juridical situation which can only be solved through a trial and which is subject to the effects of the court order pronounced in the cause. In the case of a non-contentious procedure, the parties in the civil trial are represented by the persons addressing the court with a request, without aiming to obtain an opposing right in front of another person as well as, if there is the case, the persons summoned to trial in order to solve the respective request. Next to the court and the prosecutor, the witness, the experts, interprets, translators, lawyers or representatives of the parties are not considered parties of the civil action, but participants to the trial.

Particular aspects regarding the parties in the partition process

Taking into account the fact that the joint ownership or co-ownership implies, by their definition, the existence of several people, the juridical partition cannot be conceived without the existence of at least one plaintiff and at least one defendant (Leș, 2010: 890). In fact, as stated in the doctrine as well, the possibility of each co-owner to request the partition represents one of the important particularities of this action (Comăniță, 2002: 47; Leș, 2010: 890). In case of a mandatory co-participation, it is possible to meet more than one plaintiff and one defendant (Leș, 1982: 116-120). Obviously, we discuss about an active co-participation if one of the co-owners request the partition, as plaintiff and passive if other co-owners are summoned to court as defendants. The participation of all the co-owners to the partition process is mandatory due to the necessity to pronounce a unitary decision to all the co-owners regarding the goods in joint ownership. Specific to the partition access is the fact that each party is, at the same time, plaintiff and defendant, the partition issuing a double judgment "*duplex iudicium*", irrespective of which of the co-owners has the initiative of the partition action (Leș, 2012: 1245). Thus, the defendant may obtain the conviction of the plaintiff, without even placing a reconventional request in this direction. This fact has consequences regarding the costs, which, in principle, will be compensated.

Despite this fact, in practice it has been decided that the defendant from the partition action does not have the possibility to appeal the decision by which the request had been denied, as it does not have an interest (Ciobanu, 1972: 549). In case one of the co-owners had been omitted from the request whose object is the juridical partition, this omission can be repaired during the trial in court. In this situation, the initiative can belong to any of the parties or even the co-owner that had been omitted. If the initiative belongs to any of the parties, the right procedural path to follow in order to introduce the co-owner in the trial is the one of summoning other people to trial, under the conditions stated by article 68 and the following from the Code of Civil Procedure. If the initiative belongs to the co-owner that had been omitted, this one may use the procedure of voluntary intervention, under the conditions of article 61 and following from the Code of Civil

Procedure. Even the court, based on its active role in finding out the truth, regulated by the dispositions of article 22 from the Code of Civil Procedure, is obliged to submit to the parties the necessity of introducing all the co-owners in the cause.

Besides, according to the dispositions of article 684 align (2) from the Civil Code, one of the specific conditions of validity for the partition of the participation of all the co-owners. The violation of this condition is sanctioned with absolute nullity of the partition act. The Supreme Court has pronounced likewise, considering that in the contrary case, we would have a validated partition during which another person's rights have been disposed, without their agreement, which is unacceptable.

Active legal standing belongs, firstly, to the co-owners, article 669 from the Civil Code providing that a co-owner can request the partition at any time. From here, a series of practical consequences result, among which the fact that once invested, the court must complete the partition, while the defendant cannot oppose to the admission of the partition request, because the advantage is his and no other person can be obliged to remain in joint ownership. Also, if the parties declare that they no longer request a partition, and wish to continue to own the goods in joint ownership, the solution is to take act of the plaintiff's giving up the action and not to deny the partition request as remaining without an object (Deak, 1999: 163). As mentioned above, the quality of plaintiff in the partition request belongs firstly to the co-owners. Concretely, depending on the partition type, the quality of plaintiff is specific to each form of the partition. Thus, in case of common goods, this quality belongs to the spouses or ex-spouses. In the situation of common property, any co-owner can be plaintiff. In exchange, in the case of partition, the heirs can be legal heirs, universal legatees, the ones with universal title and the legatees with particular title.

Irrespective of the partition type, we keep the rule according to which the plaintiff who places the request to summon for partition will have to summon all the other co-owners, as defendants, otherwise the partition is void. The consequence of failing to fulfil this obligation is the fact that the decision pronounced like that is not opposable and the missing co-owner will be able to formulate under any term a partition action, and the defendants from this latest action will not be able to use the initial partition decision, summoning the authority of *res judicata*. In this case, we mention that the nullity can only be invoked through the appeal ways and not through a separate action for annulment. Also, if a succession is debated, the heir co-owner who had not taken part in the partition of the goods in the first place, as not having been introduced in the trial, but owning goods from that succession, may summon the unenforceability of the decision through the appeal to enforcement. In the case of community of goods between spouses, if the confiscation of property has been disposed for one of them, the partition can be requested both by the state and by the other spouse (Deak, 1999: 163). If one of the spouses dies during the partition of common goods during the marriage, their heirs will not be introduced in the cause, but the case will be closed, the marriage ceasing, and the rights of the heirs will be capitalized during the succession procedure.

An active procedural quality in the partition trials may belong, besides the co-parties and their successors in rights, to other people as well, such as the personal creditors of the spouses, the personal creditors of the co-owners, the assignee of succession rights and the creditors of the inheritance. Regarding the personal creditors of the debtor spouse, they can request the partition of the common goods under the conditions imposed by article 353 align (1) and (2) from the Civil Code, "common goods cannot be followed by the personal creditors of one of the spouses. In spite of this, after following the personal goods of the debtor spouse, their personal creditor may request the partition of the

common goods, but only in the necessary measure to cover their debt". Their right is restricted two times, in the sense that their action is admissible only after they have followed the personal goods of the debtor spouse and only in order to satisfy their claim and it is an incident only in the case of the matrimonial law of the legal or conventional community and only in the case of the common goods in co-ownership. Indeed, article 353 align (2) is placed in the context of the regulations consecrated to legal community law and based on article 368 from the Civil Code, if the spouses do not decide otherwise, it is also applicable in the conventional community law.

The situation changes for the personal creditors of the debtor spouse married under the regime of separation of goods, they might request the partition of the common goods on quota-parts under the conditions imposed by article 678 align (1) from the Civil Code, under the mention that the partition has as an object the common property right. Practically, under the conditions of this legal disposition, the creditors of a co-owner may follow their quota-part from the right on the common good or may request the partition of the good to the court, case in which the prosecution is made on the quota of the good, or after case, on the amount of money due to the debtor.

The order of the prosecution of imperative, at first they follow the debtor spouse's personal goods, then the ones which became personal through partition, with the mention that the solution of dividing the common goods, usually partially, is applied only after the pursuit of the personal goods has been exhausted, without having managed to cover the debt. The doctrine (Florian, 2006: 164) has stated that since the law forbids the pursuit of the common goods only by the personal creditor, it is admissible to provisionally render certain common goods unavailable by taking precautionary measures such as precautionary sequester or precautionary deduction, regulated by the Code of Civil Procedure in articles 951-970. Thus, the juridical practice (Timișoara Court of Appeal, civil matters judgements, Decision no. 498/12 may 2009) decided that it is admissible to take the mortgage inscription based of article 154 from G.O. 92/2003 regarding the Code of Fiscal Procedure on the co-owned common property estate in order to guarantee the debt that one of the spouses has, as long as this measure is a precautionary one and not a foreclosing one.

The doctrine has stated that the right to request the partition of the common goods of the debtor spouse belongs to all the creditors and not only to the ones who possess the quality of unsecured creditors. There has been a contrary opinion as well, according to which only the unsecured creditors of the debtor spouse would have the right to request the partition of the common goods (Albu, 1997: 167). Presently, the conclusion is easily drawn from the analysis of the laws which in the previous regulation (article 33 align (2) from the Family Code) as well as in the present regulation (article 353 align (2) as well as article 678 align (1) from the Civil Code), use the phrases "personal creditors", respectively "creditors of one of the co-owners" without making a distinction between them. On the other hand, if an heir gives up their succession rights to a third party, the assignee of the acquired rights, with a universal or particular title, substitutes in the rights of the assignor who had the quality of co-owner, therefore acquiring the right to request the partition also.

As mentioned above, in the situation when an inheritance is partitioned, the following entities may be plaintiff: legal heirs, universal legatees, the ones with universal title and the legatees with particular title. Regarding the plaintiff quality of the legatee with particular title, the doctrine expressed different opinions. Thus, according to one of them, the legatee with particular title cannot have the quality of co-owner and implicitly,

the one of plaintiff. Contrary to this idea, we consider that the legatee with particular title can acquire the quality of co-owner and implicitly the one of plaintiff in a partition request if the deceased owned a good or two or many goods, taken *ut singuli*, in favor of two or many people. Thus, from the practical point of view, the legatees with particular title are in the same situation as the spouses or ex-spouses reported to their common goods, which do not form a patrimony or a fraction of patrimony, distinct from their patrimonies (Bodoaşcă et al., 2013: 95).

Still in the domain of inheritance, according to the dispositions of article 1156 from the Civil Code, prior to the succession partition, the personal creditors of one of the heirs cannot follow their part from the inherited goods before the partition of the entire succession inheritance is performed. The partition can be performed even at their request, based on align 2 of the same article, which expressly allows the heirs' personal creditors and any person that justified a legitimate interest to request the partition in the name of their debtor, but also to request to be present in the partition through good agreement or to intervene in the partition process. These creditors do not exert the right in their own name, but in the debtor co-owner's name. The personal creditors of the heirs and any person that justifies a legitimate and moral interest may request the partition in the debtor's name may request to be present to the partition or may intervene in the partition process. Also, the creditors may request the revocation of the partition without having to prove the fraud of the co-parties only if, although they requested to be present, the partition took place in their absence and without having been summoned. Because, by agreement, the co-owners may try to fraud their creditors, article 1156 align (4) from the new Civil Code offers them the possibility to intervene in the partition procedure through the opposition to partition, trying in this way to prevent the ineffectiveness of the partition by subsequently introducing the *paulian action* by the creditors. The opposition gives the creditors the right to participate to the partition and express their interests towards it.

Reported to the conditions that must be fulfilled for the creditors that request the revocation of the partition, the rule states that the action in revocation of the partition remains subject to the general dispositions regarding the revocation action and the creditors have to prove the prejudice. By exception, when the creditors requested to be present, and the partition took place in their absence and without having been summoned, the creditors may request the revocation of the partition without having to prove the fraud of the co-parties. Regarding the form, the law does not provide a special condition, the opposition having to result unequivocally. If during the partition action the payment of the debts is performed, it may not continue, as it lacks the interest for the personal creditors of the successors. Thus, article 1156 align (3) of the New Civil Code admits the possibility of the other heirs to obtain the rejection of the partition action requested by the personal creditor of one of the debtor co-heirs, by paying the debt in the name of the debtor heir.

In doctrine, certain authors (Deleanu, 1999: 340-341; Chirică, 1999: 297) consider that the creditors of the inheritance are also entitled to request the partition through oblique action, motivated by the fact that they are in the same situation as the personal creditors of the successors.

Other authors share the contrary opinion, according to which the creditors of the inheritance have no interest to request the partition, because their right to follow all the goods of the inheritance is an exception from the principle of the division by law of the inheritance liability (Toader et al., 1996: 157). Thus, according to these authors, the creditors of the inheritance have no reasons to request the partition, namely to divide their follow as long as they can follow the entire succession mass, without opposing the

principle of division by law of the succession liability, according to the dispositions of article 1155 from the Civil Code, according to which the succession liability is incurred proportionally with the succession quota assigned to the universal heirs or the heirs with universal title. In reality, taking into account the principle of the availability, specific to the private law juridical reports, we cannot exclude the inheritance creditors' possibility to request the partition. Indeed, in order to satisfy the debt, in is necessary to follow certain goods regarded as *ut singuli*.

In doctrine it is mentioned that the acquirer with a particular title of certain succession goods may not request the partition, considering wrong the opinion according to which the acquirer of a good from a joint ownership may request the termination of the joint ownership based on the fact that they would acquire the quality of co-owner (Georgescu, Oproiu, 1993: 105). For instance, if a good from the joint ownership is sold by a co-owner, the buyer will not have the quality of co-owner, but just an acquirer with a particular title. In reality, the right acquired by the buyer is subject to a resolution condition, whose fulfilment takes place of the good had not been attributed, when going out of the joint ownership, to the co-owner who alienated it (Mihuță, 1976: 125-126; Mihuță, 1986: 127). In this situation, the acquirer may formulate an intervention request in their own interest, under the form of a main intervention, as regulated by the dispositions of article 61 align 2 from the Code of Civil Procedure and will have the interest that the acquired good be attributed to the co-owner who transmitted it to them. Also, in the same sense, we can analyse the dispositions of article 679 align (1) from the Civil Code, according to which in order to prevent the situations in which the partition may take place under conditions that would fraud their rights, the personal creditors of a co-owner will be allowed to intervene in the partition process, irrespective if it had been requested by a co-owner or another creditor. The intervening creditor will bear their trial costs, without being able to recover them from the other parties from the trial. In principle, the personal creditors who did not intervene in the process cannot appeal the juridical partition. According to article 679 paragraph (1) the personal creditors will still be able to appeal the partition if this took place in their absence and without taking into account the opposition they made, as well as in the cases when the partition was either simulated or performed in such a way that prevented the creditors from intervening in the process. Against the act or voluntary partition, concluded in the fraud of their rights, the personal creditor will be able to formulate the revocation action, according to article 1562 from the New Civil Code. The acquirer of an undivided quota from a good in a joint ownership is equal to the acquirer with particular title of a good from the joint ownership and thus, they cannot request the partition. Such acquirer has the quality of co-owner only in report with the good out of which they have a quota-part, thus being able to request the partition only regarding the respective good and obviously, under the condition that the respective good is not a part of an undivided mass (Deak, 1999:45).

Article 679 paragraph (2) from the New Civil Code admits that the creditors who have a guarantee right on the common good, but also on the goods whose debt resulted from its preservation or administration, have the right to intervene in the partition process. Also, they will be able to appeal a partition performed, under the same conditions as the personal creditors of a co-owner. The issue that emerges in this situation is that such a request from the creditors that have a guarantee right on the common good or on the one whose debt resulted from its preservation or administration may be rejected by the court as having no interest, taking into account the right of foreclosure, irrespective of the present owner, both before and after the partition, admitted through the dispositions of

article 678 align (3) from the Civil Code. Another aspect that posed interpretations issues in the specialized literature was the existence of the usufruct's possibility to request the partition. In doctrine, it was shown that the usufruct cannot request the partition because they are not in a joint ownership with the legal owner (Stoenescu, 1982: 211) or, in other words, there is no joint ownership in the situation of rights of different nature.

Other opinion, accepted also in the foreign juridical doctrine (Braudry-Lacantinerie, 1894: 808; Terre, Lequette, 1998: 765) it is stated that there is a joint ownership regarding the usufruct when there are two or more usufructuaries on quota-parts from a good or universality of goods (Comăniță, 2002: 53). Actually, generally, the partition is allowed when it is exerted fractionally by two or more people on a good or universality of goods (Leș, 2010: 891; Leș, 2012: 1246). The Ex Supreme Court expressed in favour of this opinion and from the procedural point of view, in such situations it is necessary to summon the owner of the rented right, in order for the decision to be opposable to them as well (Supreme Court, civil matter judgements, Decision no. 2263/1998). In the partition processes, it is sustained that the prosecutor may also have an active quality in the process (Comăniță, 2002: 48). According to article 92 align (1) from the Code of Civil Procedure, the prosecutor does not act in their own name, but in order to exert a right or a legitimate interest of an underage person, under juridical interdiction or missing. Thus, in case of a partition action, the prosecutor may request its execution only if the minor, the person under juridical interdiction or the missing person have this right. If the prosecutor started the partition action under the conditions imposed by article 92 align (1) from the Code of Civil Procedure, based on article 93 from the same code, the owner of the right will be introduced in the process and will be able to prevail from the acts of disposition offered by the law maker, respectively giving the trial up (article 406), giving the right up (article 408) and will be able to conclude a transaction that would cease the litigation (articles 438-440). If the prosecutor retires the request, they will be able to request the continuation of the trial or foreclosure.

Regarding the *passive legal standing*, in the partition process, it may be recognized to any person that has the quality of co-owner, namely any person who may be summoned to court by the one who has the right to request the partition. In concrete, any of the spouses or ex-spouses, universal heirs, universal legatees and legatees with universal title as well as the assignee of the succession rights and the people that benefit from excessive liberalities may be plaintiff in the partition process.

Acknowledgement

This work was supported by the strategic grant POSDRU/159/1.5/S/ 141699, 1411 699 ID strategic project co-funded by the European Social Fund through Sectorial Operational Programme Human Resources Development 2007-2013.

References:

Albu, I. (1997). *Dreptul familiei*, Bucharest: Didactic and Pedagogical Publishing.

Bodoaşcă, T., Drăghici, A., Puie, I., Maftei, I., (2013). *Dreptul familiei*, Bucharest: Juridical Universe Publishing.

Braudry-Lacantinerie (1894), *Précis de droit civil*, vol. I, Paris: Recueil Sirey Publishing,

Terre, F., Lequette, Y., (1998), *Droit civil. Les succesions. Les libéralitées.* Paris: Dalloz.

Chirică, D. (1999). *Drept civil. Succesiuni*, Bucharest: Lumina Lex.

Ciobanu, V. M. (1972). *Drept procesual civil*, Bucharest: Didactic and Pedagogic Publishing House.
Comăniţă, G. (2002). *Partajul judiciar*, Bucharest: Lumina Lex Publishing House.
Deak, F. (1999). *Tratat de drept civil. Contracte civile speciale*, Bucharest: Actami Publishing House.
Deleanu, I. (1999). *Tratat de drept procesual civil*, vol. 1, Oradea: Servo Sat.
Florian, E. (2006). *Dreptul familiei*, Bucharest: C. H. Beck Publishing House.
Georgescu, M., Oproiu, A. (1993). Note to the Decision no. 1279/1992 Olt Court, *Dreptul*, 10-11.
Leș, I. (1982). *Participarea părţilor în procesul civil*, Cluj Napoca: Dacia Publishing House.
Leș, I. (2010). *Tratat de drept procesual civil*, Bucharest: C. H. Beck Publishing House.
Leș I. (2012). *Noul cod de procedură civilă. Comentariu pe articole*, Bucharest: C. H. Beck Publishing House.
Mihuţă, I. (1976). Repertoriu de practică judiciară în materie civilă a Tribunalului Suprem şi a altor instanţe judecătoreşti pe anii 1969-1975, Bucharest: Scientific and Enciclopedic Publishing.
Mihuţă, I. (1982). Supreme Law Court, Civil matters judgment, Decision no. 673/1972, Reports of Decisions in 1980-1985, Bucharest: Scientific and Enciclopedic.
Mihuţă, I. (1986). Repertoriu de practică judiciară în materie civilă a Tribunalului Suprem şi a altor instanţe judecătoreşti pe anii 1980-1985, Bucharest: Scientific and Enciclopedic Publishing.
Stoenescu, I. (1982). *Transmisiunea si împărţeala mostenirii în dreptul RSR*, Bucharest Proarcadia Publishing.
Toader, C., Stănciulescu, L., Popescu, R., Stoica, V. (1996). *Moştenirea testamentară. Transmisiunea şi împărţirea moştenirii*, Bucharest: Actami Publishing House.

Article Info

Received: March 27 2015
Accepted: May 22 2015

RSP • No. 46 • 2015: 92-101

ORIGINAL PAPER

Perception of Russians, Ukrainians, and Belarusians in Slovakia: Are They Still Seen Similar?

Antanina Siamionava*

Abstract
Historically, due to the relative cultural and linguistic similarities, the people of Russia, Ukraine and Belarus were seen as rather similar to each other or even the same. The epoch of the Soviet Union made the differences between those nations even more blurred (the same political and social system, usage of the Russian language, Soviet propaganda, etc.). The aim of the present research was to find out what are the common opinions and beliefs regarding Russians, Ukrainians and Belarusians among two different generations of Slovaks: university students (aged 18-28) and elderly adults (aged 70 and older), grown in different historical contexts: communism and post-communism. The research was particularly focused on the issue, whether they see any differences between Russians, Ukrainians, and Belarusians nowadays, many years after the fall of communism, and whether the collective image of "Soviets" or "Russians" is still alive. The case of Slovakia was chosen because of its predominantly positive historical attitudes towards Russia. For Slovaks, the early image of Russia was shaped by the Pan-Slavism ideology, which suggested the unity of the all Slavs based on their common origin. That made the case of Slovakia different from the other Central-European states, e.g. Poland, or Lithuania, which mainly saw Russia as the main threat to their national and political independence throughout the history. Secondary data analysis and focus group interviews were applied as the research methods. Six focus group interviews were conducted in Bratislava (three with elderly adults and three with university students). The results of the research show certain differences in the perception of the target nations by different age groups. Historical heritage and historical memories were much more important for the older generation of Slovaks; the young participants more often build their opinion on the present social, political, and economic situation of those states.

Keywords*: Russians, Ukrainians, Belarusians, Slovaks, attitudes, perception*

* The author is currently completing Doctoral studies at the Graduate School for Social Research, Polish Academy of Sciences, E-mail: antalina1@gmail.com.

Division of Europe on *East* and *West*

There are so many ways of how people and even the whole nations can be labeled based on the characteristics prescribed to them. For instance, Europe is often divided on "old" and "new", "poor" and "rich", "hard-working" and "lazy". The formation of the images of the others – people, who, by any criteria differ from *us*, is hardly ever based on pure facts or experience with them. As it was first defined by Lippmann, there are "mental images" or "pictures in our head" which help to simplify the ambiguous information coming from the outside environment:

> *"For the most part we do not first see, and then define, we define first and then see. In the great blooming, buzzing confusion of the outer world we pick out what our culture has already defined for us, and we tend to perceive that which we have picked out in the form stereotyped for us by our culture"* (Lippmann, 1946: chapter VI).

Speaking about contemporary Europe, one of the best examples of such generalization could be found in its symbolic division on *East* and *West*. In fact, there is no clear definition of it, as different approaches apply various geographical, political, cultural, socioeconomic, and other criteria. However, very often the level of socioeconomic development of the state becomes decisive when it comes to its association with *East* or *West.* In general, there is an image of a rich and well-developed *West* and poor, less developed *East*. While the term *West* or *Western Europe* is associated with the modern structures of the EU, NATO, and high level of economic, political, and cultural development, the term *East* or *Eastern Europe* is connected with an Eastern Block, former Soviet Union, and a rather low level of achievements in all spheres of life. So called "new EU states" (e.g. Czech, Poland, Slovakia, Hungary), which have been the satellite states of the USSR in the past, nowadays are fully integrated into European political and economic structures. In general, their definition of *East* and *West* of Europe depends on the geographical location of the own state. For the majority of the Central-Eastern European states, the own country is seen as the *center of Europe*, while the *East* starts just behind its Eastern border. Thus, Czech Republic is the *center of Europe* for Czechs, but might be seen as an *East* for Germans; Slovakia is a *Central Europe* for Slovaks but an *East* for Czechs; Poles see the real *Eastern Europe* starting just behind their Eastern border (Ukraine and Belarus), while for Germans or Czechs Poland itself is an *East*.

In spite of the fact that Slovakia has no immediate borders with Russia or Belarus and just a tiny border with Ukraine, situated very far from Bratislava (the capital), the case of Slovak attitudes towards its Eastern neighbours is interesting and important for several reasons: 1) predominantly positive historical image of Russians in Slovak national discourse (based on Pan-Slavism ideology); 2) negative experience of Slovaks with Russians during the twentieth century (First and Second World War, Soviet domination over Czechoslovakia); and 3) a lack of systematic previous research studies in Slovakia focused on the perception of the other nations (Czechoslovak and Slovak attitudes are not the same).

Special role of Russia in Slovak history

The term *historical memory*, or *collective memory* is understood as the shared memories held by some community or group about its past (Hunt, 2010: 97). Historical memory plays a very important role in both the national identity and the perception of the other nations. It is interconnected with social and political identities of people and could be reshaped according to the needs of the current situation. Thus, historical memory is not

fixed, but rather undergo gradual changes, depending on the historical and political necessity (Siddi, 2012: 80). The different nature of historical relations with Russia, especially during and after the Second World War, created different images of Russians in Western, Central, and Eastern European states (Siddi, 2010: 96).

Slovakia constitutes an example of rather favorable historical attitudes towards Russia and Russians, which played an important role in the Slovak national discourse. It was based on the ideas of *Pan-Slavism ideology*, presented in the nineteenth century by such leaders of the Slovak national revival as Ľudovít Štúr, Ján Kollár, Pavel Jozef Šafárik, and others. *Pan-Slavism ideology* suggested the unity of all Slavs in order to protect themselves from the domination of non-Slavic hostile neighbors (mainly Germans and Hungarians). The common Slavic roots, including cultural and linguistic similarities, constituted the background for predominantly positive historical attitudes of Slovaks towards Russians (Štúr, 1995: 173; Ivantyšynová, 2011: 7). According to the *Pan-Slavism ideology*, Russia had a special role among the other Slavic states:

> *"If the Slavs are not allowed to organize themselves and to develop in the federal states under Austria, there is only one possibility left, which has a future. Tell me frankly, brothers, was it not Russia, lighting our sad past like a lighthouse in the dark night of our life?"* (Štúr, 1995: 150, own translation of original text).

Moreover, it blamed anti-Russian tendencies of the other Slavic nations, for instance Poles and Czechs. Some ideas of the *Pan-Slavism ideology*, presented in the book "Slovanstvo a svet budúcnosti" by Ľudovít Štúr in the beginning of the nineteenth century remain relatively popular in Slovak national discourse till nowadays. Thus, Slovakia constitutes rather an exception compared to the other Central-European states, as it did not perceive Russia as the main oppressor for the national independence throughout the history. In Poland, for instance, the dominant role of Russians constituted the background for generally negative perception of Russians in Polish national discourse (Nowak, 1997: par I; Zarycki, 2004: 595; Levintova, 2010: 1339; CBOS, 2015: 11).

However, the October revolution in Russia in 1917 which dismantled the Tsarist regime and led to the creation of the Communist government became the starting point for the change of the traditional Russophile attitudes of Slovaks towards more negative meaning. The Soviet Russia was seen in a completely different way:

> *"Russia is big, powerful, and rich, but there is no order in it. Some innate characteristics of Russian men, adverse historical conditions, and at the moreover times the lack of people's education - all that intercepted the cultural development of Russia - Russia lagged behind the other states"* (Gacek, 1936: 81, own translation of original text).

Even though the fact of liberation of the majority of Slovak territories by the Soviet Army was portrayed as a positive element of Slovak-Russian relations, the actual attitudes towards Russia and Russians was definitely much more negative than before. During the times of the Soviet domination in Czechoslovakia, attitudes towards Russians were, to a high extent, limited to the attitudes towards the political system of the Soviet Union. However, even after the aversive development of Czechoslovak-Russian political relations, Russian culture remained relatively popular and was evaluated positively. Orientation towards the West after the Velvet revolution in 1989 weakened the general interest in Russia, including culture, language, and other spheres of life. However, analysis of the Slovak printed mass-media from the beginning of the 90th showed rather favorable

attitudes towards Russian culture, at least among the elder generation of Slovaks (Ivantyšynová, 2011: 8).

After the break of the Soviet Union, Russia, Ukraine, and Belarus were often seen as very similar to each other or even the same nations. However, historically, only Russia was a significant actor for Slovak national discourse. The other Eastern European states, including Ukraine or Belarus, were nor well-known either significant for national or political development of the Slovak lands. Ukraine, instead of its geographical and cultural proximity to Slovakia, remained relatively unknown till nowadays: *"Historically, Ukraine has been viewed in Slovakia as «something behind the Carpathian Mountains» which does not have a direct impact on important events on «our side»* (Duleba, 2000: 96-97). Moreover, anti-Russian elements of Ukrainian Cossack identity constituted the background for historical "coolness" of Slovaks towards Ukrainians (Duleba, 2009: 33). During the Soviet domination in Czechoslovakia, Ukraine was presented through the prism of the Soviet propaganda. Especially negatively was portrayed the activity of Ukrainian Insurgent Army, active during and after the Second World War in the bordering to the Western Ukraine territories. Later on, those images reinforced the negative characteristics of Ukrainians, associated mainly with the mafia and criminal activities.

Another factor, contributed to rather negative images of Ukrainians, was the flow of migrants, coming mostly from the Western Ukraine to the neighboring to Slovakia territories in search for a job. That made the competition on the Slovak labor market even tougher. Despite the fact that Slovakia is the country with one of the lowest number of incoming migrants among all EU member states, the number of foreigners, coming to Slovakia, is constantly growing (Divinský, 2009: 107). Very often foreigners in Slovakia experience difficulties in integration into the labor market from legislative, administrative, cultural, and other reasons (Bargerová, Divinský, 2008: 74-77). Research showed (Vašečka, 2009: 105), that the labor migrants in Slovakia are mostly perceived in a negative way. Thus, competition on the labor market reinforced the negative images of Ukrainians, especially in those places, where the level of unemployment was very high. According to the *realistic conflict group theory*, the conflicts between the groups over a limited amount of sources or goods, including social and economic welfare, constitute the favorable conditions for the antagonistic attitudes towards the other groups. The reduction of the conflicts or satisfactory amount of the resources for all of the members leads to the normalization of the relations between the groups (Sherif, 1962: 8; Valentim, 2010: 587).

Belarus and Belarusians remained rather unknown for Slovaks not only throughout the history, but also nowadays. The Russophile orientation in Belarus as well as low level of Belarusian national identity, made Belarus seem particularly similar to Russia in the eyes of the other nations (Ioffe, 2003: 1267). That nation was included in the present research in order to compare the attitudes of Slovaks towards three states, which often were seen as similar to each other.

Nowadays there are about three thousand Russians, seven thousand Ukrainians, and two hundred Belarusians resided in Slovakia. However, their real number, including illegal migrants, is estimated as much higher (MV SR, 2014I: 11). The lack of information about their cultural, social, and other spheres of life, and the current political situation in the region (Russian-Ukrainian conflict) made the criminality, labor migrants, and the political conflicts the main topics associated to the Eastern European states. Thus, in 2003 only 8.1% of Slovaks expressed opinions that they are very familiar with Ukrainians; 24.6% were rather familiar, 27.5% were not familiar neither unfamiliar; 31.2% - rather unfamiliar; and 9.7% very unfamiliar with Ukrainians. The rest 3.5% had no opinion about

that question (SASD, 2003). Thus, among all neighboring nations, the most familiar to Slovaks were Czechs, followed by Hungarians, Poles, Austrians, and the least known Ukrainians. Even less Slovaks found Ukrainians to be a trustable nation: only 1,5% of respondents found them trustworthy; 12,3% - rather trustworthy; the majority of respondents found Ukrainians to be equally trustworthy and untrustworthy or rather untrustworthy (29,1% and 29% respectively), and 14,9% - very untrustworthy (SASD, 2003).

Historically, Ukrainians and Belarusians became visible as separated national groups much later than Russians. Moreover, for a long time they remained in the shadows of Russia. Information about them was often coming to the Slovak mass-media through the prism of Russia. In spite of the geographical proximity of Slovakia and Ukraine and the fact that Ukraine is the biggest Slovak neighbor in terms of the state's territory and population, it remained rather unknown for Slovaks even after the disintegration of the Soviet Union. Due to the lack of significant historical contacts with Ukrainians, and Belarusians, Slovak opinions about that states mostly originated from their modern images.

Methodology

The present paper aimed at answering the following research questions:

1) What are the contemporary attitudes towards Russians, Ukrainians and Belarusians in two generations of Slovaks (university students and elderly adults)?

2) Are there any differences (and, if yes, what are they?) in the attitudes towards Russians, Ukrainians and Belarusians between two generations of Slovaks (university students and elderly adults)?

As the university students and elderly adults were raised in different socio-historical contexts: communism and post-communism, we assume that their opinions, common beliefs, and attitudes towards the nations under investigation would differ. The first age cohort – university students, aged 18-28 at the moment of the research, represents the younger generation of Slovaks, who does not have their own memories of the Soviet times; they are rather not familiar with the languages and/or cultures of Eastern European states. Since Slovakia is the member of the EU and Schengen Area, they have a broad possibility to travel abroad, which elderly adults did not have in their young ages. The second age cohort encompassed elderly adults, aged 70 and older at the moment of the research. Some of them may remember the life before, during and after the Second World War and the Czechoslovak Socialist Republic; they (or some of them) may have personal experiences and memories with different nations of the former Soviet Union (predominantly Russians), be familiar with Russian language and culture.

In order to allow detailed and deep analysis of the common beliefs and opinions about the target nations, the method of *focus group interview* was applied. The main advantage of this method is that it allowed collecting rich and detailed information over a short period of time. The respondents give their answer *in their own words*, what is crucial for studying the attitudes. It also allowed the observation of participants' reactions and non-verbal signals concerning the topic of the interview. However, the results of the *focus group interview* method cannot be applied over the whole population in general.

Six focus group interviews were conducted for the purpose of the present research: three with university students and three with elderly adults. In total, 46 participants took part in the research (18 and 28 university students). The participants were chosen randomly: elderly adults were recruited among the Universities of the Third Age

and the other organizations for seniors; young generation – among the university students. All of the interviews were conducted in the capital of Slovakia – Bratislava.

Data analysis and interpretation

The analysis of the focus group interviews allowed drawing general tendencies in the attitudes towards each of the nations under investigation by two generations of Slovaks. Thus, the attitudes declared by the elderly adults had often quite opposite meanings – their answers were polarized between positive and negative opinions; moreover, sometimes the same person declared both sympathy and aversion towards the target nations in different contexts of their speech. The examples of the common answers were as follows:

> *"They are close, definitely, absolutely close to me* [exited]. *Better nations as are Russians, Belarusians, and Ukrainians, we don't know. Thus, they are the closest to us nations which we have. And we also belong there… And even Czechs belong there, but, I don't understand, why Czechs are separating and go more towards West? It is not normal!"*[irritated] (Participant 1);
>
> "*[…] after the Soviet Army came here there are no reasons why we should love them…"* (Participant 8).

The attitudes of university students were more neutral or ambiguous. They did not have very positive nor very aversive attitudes towards the nations under investigation. The most common answers were as follows: *"I don't have anything against them"* (Participant 39); or "*I don't have bad attitudes towards them, but I can't say I feel close to Russians, or Ukrainians"* (Participant 23).

University students and elderly adults had a different understanding of division of Europe on East and West. For young people, Slovakia was definitely seen as the center of Europe: *"Everything Eastern from us is an Eastern Europe. We are the center, and everything starting from Ukraine is an East… So Slovakia is the center, exactly, the heart of Europe"* (Participant 44). Elderly adults presented a different view about the place of Slovakia and the other states in Europe. One of them said:

> *"Eastern Europe are, actually, Poland, Slovakia, Hungary, Romania, Bulgaria, and further Czechs. That is probably it, the Eastern Europe. Not speaking about Germany or France, which, according to the old system, were also an Eastern Europe [...] [Russia, Ukraine, and Belarus do not belong to the Eastern Europe. They belong, to some extent, to the Soviet Union. Even If they are independent, they are just in the process of integration to the Eastern Europe…"* (Participant 1).

University students, in contrary to the elderly adults, did not want to be associated with the Eastern Europe; they saw it as something behind the borders of the EU. Both verbal and non-verbal communication showed that Western European states were much more attractive for the young participants than Russia, Ukraine, or Belarus:

> *"There* [in Western Europe] *there are more opportunities… and for personal growth… compared to the East, at least concerning the job. But if I have to say, who is closer to me, German or Ukrainian, maybe I would said that Ukrainian, because he is a Slav, and I would understand him more, at least concerning the language…"* (Participant 30).

> *"I would like to know* [about Russia, Ukraine, and Belarus], *but rather for the general development. For me those Western states are rather more interesting"* (Participant 21).

However, there was a tendency, that the youngest among the university students (18-19 years old) have the least amount of knowledge and interest about nations under investigations. They were more likely to switch their attention to the other topics:

> *"Russians? I don't know much about Russia. For me England or other Western countries are more important. I can earn a lot of money there, and if to study, I would also choose those states, not Russia…"* [laughing] (Participant 42).
>
> *"Even despite that we are neighbours with Ukrainians, they are distant to me, I do not know that state at all, and I am not planning to visit it… maybe just Russia. They are not that close to us, young people, rather to the elder people, but not to us"* (Participant 29).

Speaking about the perception of similarities and differences between the nations under investigation, a very interesting tendency was mentioned: elderly adults more often used the words like *"they", "all of them", "Eastern Bloc", "Soviet Union",* etc. to address the Eastern European nations. That can mean that they are still seen as the group of similar to each other nations. Some of the participants said:

> *"We took it everything as the Soviet Union… the same… Ukraine, Belarus… We took it all as Russians. It was the Soviet Union, thus they were Soviets. Not the Russians, in fact, but they were Soviets […] I always thought, that Belarus, I mean Ukraine, was the part of Russia, that they were lands united forever. Now I am surprised, that something like that happened* [Russian-Ukrainian conflict], *that they separated from one another. In my opinion, it is very bad"* (Participant 1).
>
> *"We were thinking that it was […] that it was everything together, everything united, but, in my opinion… Russians dominated everything, those lands were not so free […] Everything was blurred; we learned it at school in geography classes about Soviet Union"* (Participant 2).
>
> *"I don't know if I met any Ukrainians, because I took it all in such way that they all were Soviets, they were not Russians, not Ukrainians - they were Soviets. Whether he was form Azerbaijan, Ukraine, or Russians, we did not realize it"* (Participant 4).
>
> *"Former Soviet Union? Former Soviet Union was the nations of the whole Russia, wasn't it?"* (Participant 4).

University students did not have a tendency to perceive all Eastern European nations as somehow connected to the former USSR or Russia. However, young participants did not know much about the differences between the target nations. It can be explained by the fact, that information, coming through Slovak mass-media has a selective character – it is mostly concentrated on the sensations in political and economic life. There are almost no information about culture, history, science, and social life of ordinary people. Some of the participants from young generation said:

> *"I don't know, because I am not familiar with those nations, but I think those Ukrainians are the closest one to me..."* (Participant 41).
>
> *"So probably, each of that states had the own culture, but I don't know what were the differences...because I don't know that states closer. But each state had the own language, even if they were very similar probably…*

they came form the same language roots, from the Slovak roots…" (Participant 29).

"For sure they are very similar [the language]. *Even if you will compare Ukraine and Russia, they are rather similar"* (Participant 41).

Thus, university students did not know much about generation of Slovaks was not very familiar with the Eastern European nations. It can be explained by the fact, that information coming to Slovakia has a selective character – it is mostly concentrated the sensations in politics and economy. There information about cultural and social life, as well as the information related to the ordinary people is rather limited: *"I don't know, because I am not familiar with those nations, but I think those Ukrainians are the closest one to me..."* (Participant 39).

Russians were definitely the most well-known for the elderly adults. The majority of them had personal contacts with Russians and/or were able to speak and understand Russian language. They had a very positive opinion about Russian achievements in world culture, literature, and art: "*I really admire, really appreciate intellectual and cultural achievements of Tsarist Russia […]"* (Participant 8). Elderly adults more often used the historical memories as the background for their attitudes towards the nations under investigation, especially in case of Russia and Russians: *"In my opinion, they* [Russians] *should be people... and they are people, which have big ambitions, and they are ready to fight a lot for their ambitions, that's why it was used to call them «russkij hoziajin»* [Russian owner] (Participant 2). The common Slavic root of Russians and Slovaks constituted the background for the positive perception of Russians: *"Those Russian roots are still the same, Slavic. We shouldn't forget it. Those roots are still Slavic, and this is important, I think so…"* (Participant 1). Ukrainians and, especially, Belarusians, were less familiar to the elder generation of Slovaks.

University students did not mention history so often. They had much less knowledge and experience with the nations under investigation, which remained relatively unknown to them. However, for university students the most familiar were Ukrainians, whom they met during study or work in Slovakia or other European states. They knew Russians mostly from the politics, books, and movies. University students also mentioned the common Slavic roots as an element which unites them with the nations under investigation, however, it was not so important as for the elderly adults:*"but they* [Eastern Europeans] *are not close to me, they are not close to me just because they are Slavs…"* (Participant 33).

Conclusion

Slovakia constitutes an example of the state with rather favourable historical attitudes towards Russians, which started changing towards more negative meaning in the twentieth century. Regardless of the fact, that historical memories are still very important, they play different roles in the perception of the other nations among different generations of people. The results of the focus group interviews showed, that elderly adults much more often recalls the historical memories and personal experiences, while university students rather based their opinions and beliefs on economic, political, and social characteristics of the other states. Common Slavic roots were also much more important for elderly adults than for university students.

The results of the research showed that elderly adults and university students had different attitudes towards Eastern European nations, what confirms the assumption of the present research. Thus, the attitudes declared by the elderly adults were often polarized

between positive and negative meanings; moreover, sometimes the same persons declared both sympathetic and aversive attitudes towards some of nations under investigation. The attitudes of university students were more neutral – they avoid direct positive or negative judgments.

The present images of Russians are still connected with the former Soviet Union, especially among the elder generations of Slovaks. While the cultural achievements of Tsar Russia were evaluated very positively, the period of Communism and the Soviet domination over Czechoslovakia was seen in very negative lights. Surprisingly, but recent revolution in Ukraine and Russian-Ukrainian conflict was not mentioned by the participants of both age cohort almost at all.

Russians, Ukrainians, and Belarusians are still seen rather similar to each other by the elderly generation. Speaking about them, elderly adults often said: *"they", "all of them", "Eastern Bloc", "Soviet Union",* etc. University students did not express such opinions; however, they had much less opinions or beliefs about Russians, Ukrainians, and Belarusians.

Nowadays the eastern border of Slovakia is also the border of the EU and NATO; hence Slovak attitudes towards Russians, Ukrainians, and Belarusians are of high importance due to political and economic factors. Different political development of Russia and Ukraine nowadays (e.g. the Orange Revolutions in 2004, revolution in Ukraine in 2013-2014 (Euromajdan), Russian-Ukrainian conflict, and the steps taken towards the integration of Ukraine with Western institutions) provided the likelihood, that the perception of different Eastern European states and their nations may change: probably, they would not be seen as one and the same, but rather as separated states with different national identities.

Acknowledgement

This work was supported by the Civil Society Scholar Award (CSSA) from the Open Society Foundation, which enabled the author to collect the empirical data for the purpose of the present research.

References:

Bargerová, Z., Divinský, B. (2008). *Integrácia migrantov v Slovenskej republike: Výzvy a odporúčania pre tvorcov politík,* Bratislava: Medzinárodná Organizácia pre Migráciu.

CBOS (Centrum Badania Opinii Społecznej). (2015). *Stosunek Polaków do innych państw i narodów.* Research report no. 5131.

Divinský, B. (2009). *Migračné trendy v Slovenskej republike po vstupe krajiny do EU (2004-2008)*, Bratislava: Medzinárodná Organizácia pre Migráciu.

Duleba, A. (2000). The Slovak-Ukrainian-Russian Security Triangle. In Balmaceda, M. (ed.), *Central European-Russian Security Triangle*, Budapest: Central European University Press.

Duleba, A. (2009). Slovakia's relations with Russia and Eastern neighbours. In Fóti, G. and Ludvig, Zs. (eds.), *EU-Russian relations and the Eastern Partnership – Central-East European member state interests and positions, East European Studies*, Budapest: MTA, Világgazdasági Kutatóintézet.

Gacek, M. (1936). *Sibirske zápisky*, Martin: Rovesník.

Hunt, N. (2010). *Memory, war and trauma*, Cambridge: Cambridge University Press.
Ioffe, G. (2003). Understanding Belarus: Belarusian identity. *Europe-Asia Studies*, 55 (8), 1241-1272.
Ivantyšynová, T. (2011). Peripetie priateľstva. In Ivantysynova, T., et. al. (eds.), *Mýtus - stereotyp - obraz: Rusko v slovenských dejinách a kultúre*, Bratislava: Pro Historia.
Letvinova, E. (2010). Good Neighbours? Dominant Narratives about the 'Other' in Contemporary Polish and Russian Newspapers. *Europe-Asia Studies*, 62 (8), 1339-1361.
Lippmann, W. (1946). *Public Opinion*, New York: Penguin Books.
MV SR ([Ministerstvo Vnútra Slovenskej Republiky/ Ministery of the Internal Affair of the Slovak Republic). (2014). Prezídium Policajného zboru, *Štatistický prehľad legálnej a nelegálnej migrácie v Slovenskej republike* – semester I.
Nowak, A. (1997). The Russo-Polish Historical Confrontation, *Sarmatian Review*. Retrieved from: http://www.ruf.rice.edu/~sarmatia/197/Nowak.html.
SASD (Slovak Archive of Social Data). (2003). *Collective Identity in Contemporary Slovakia*. Research report no. 2003001.
Sherif, M. (ed.) (1962). *Intergroup relations and leadership*, New York: Wiley.
Siddi, M. (2012). Russia and the Forging of Memory and Identity in Europe. *Studia Diplomatica*. LXVI (4), 77-103.
Štúr, L. (1995). *Slovanstvo a svet budúcnosti*, Bratislava: Slovenský inštitút medzinárodných vzťahov.
Valentim, J. P. (2010). Sherif's theoretical concepts and intergroup relations studies: notes for a positive interdependence. *Psychologica*. 52 (2), 585-598.
Vašečka, M. (2009). *Postoje verejnosti k cudzincom a zahraničnej migrácii v Slovenskej republike*, Bratislava: Medzinárodná Organizácia pre Migráciu.
Zarycki, T. (2004). Uses of Russia: The Role of Russia in the Modern Polish National Identity. *East European Politics & Societies.* 18 (4), 595-627.

Article Info

Received: April 8 2015
Accepted: May 29 2015

RSP • No. 46 • 2015: 102-110

ORIGINAL PAPER

Communism and Condominium: Cultural Determinants and Development Policies in Romanian Traditional Villages

Cristinel Trandafir*

Abstract
The aim of this paper is to clarify why in the Romanian history, the communist state has proved to be the most unsuited and incompatible institution with the mechanism of the Culture of Commune to Diffuse Tradition (*Cultura Obștei de Tradiție Difuză*), specific to the Romanian agrarian communities; furthermore, the article investigates why the communist state and the free rural communities were in structural and functional contradiction, impossible to be removed both theoretical and practically. Furthermore, the article argues that despite the fact that the city has benefited for more than 150 years of privileged and full attention of the Romanian public opinion, housing the capitalist-economic activities of the Romanian free market and those of the political and administrative centralized state in inner or along, it remained an unarticulated social creature, ground and disturbed in the inner, an environment devoid of identity during this entire period.

Keywords: *communism, condominium, devălmaș property, freedom, traditional Romanian village*

* Lecturer, PhD, University of Craiova, Faculty of Law and Social Sciences, Philosophy Specialization, Phone: 0040762248184, Email: cristinel.trandafir@gmail.com.

Introduction

A significant percentage of Romanians have lived and still live in villages. According to the latest data of the INS, nine million Romanian (about 40% of the population) still lived in rural areas in 2011, although 81 years ago before the date of this record more than 80% of them had been living in rural areas. Despite modernization projects, transformations and historical evolution, the village remained through its durable and resilient nature, the most characteristic way of inhabiting for the Romanians. This statement is especially true since it is based on the observation of the fact that its younger relative, the Romanian city, failed, despite the passage of time, to overcome its initial condition of hybrid, unstructured and incoherent socio-cultural organizational form, a condition which was still present at the middle of the nineteenth century, once with the beginning of modernization in Romania. This ingrate situation of the Romanian city, which affected our rural life, is, as noted by H. H. Stahl referring to the village in 1938, a paradoxical one (Stahl, 1938: 70).

Despite the fact that the city has benefited for more than 150 years of privileged and full attention of the Romanian public opinion, housing the capitalist-economic activities of the Romanian free market and those of the political and administrative centralized state in inner or along, it remained an unarticulated social creature, ground and disturbed in the inner, an environment devoid of identity during this entire period. Although the causes of this adherent history of the Romanian city to civilization are numerous, in this article we will have to remember only one of them, which we consider to be most relevant to our study: the building of the Romanian modern city against the dates of the rural and autochthonous environment, the burial of an urban culture based on ignorance or collective repression of the culture's mechanisms of Romanian villages, domestic political will to overcome and removal of Romanesque history of the latter. Indeed, infiltration and installation from the nineteenth century in the Romanian collective mentality of prejudice and opposition regarding structural and functional split between the city and the culture of the village was one of the most harmful collective conceptions specific to the period of Romania's still unfinished modernization.

Today, however, the historical realities reveal the new damaging limits of this prejudice even in our case. Formed as a result of misunderstanding of the mass industrialization process, a process that generated important mutations in agricultural activities of the peasantry, but together with this, also an inner tension in its traditional culture, where agriculture played millenary role as basic economic activities, bias in question is firstly based on the economic abstract impression of the association reaching the identification of villages with agriculture as opposed to city with industry (Raubaud, 1971: 511). We are talking about a collective feeling that has prevented the Romans to observe industrial potential of villages but also the agricultural dominant of the Romanian cities. Second impression that fueled this fatal to prejudice rooted in the political ideal of the first generation of politicians who assumed Romania's modernization: the belief in the omnipotence of the state. Opportunity for urban culture and the idea of progress for them, the powerful state had the decisive role to urbanize in force and at all costs the Romanian villages in their conception. It was so induced the feeling of a background opposition between the state and the Romanian village.

In their opinion, the Romanian city was built on the political process of dismantling the traditional life of the village, process undertaken using state institution which – as it was found out – because of their superficial organization did not influence, through their work, the mentality's deep layers of specific rural Romanian communities,

from whose rows most of our townspeople came. The third impression that stays at the root of prejudice of the opposition between villages' culture and the one of the cities is related to misunderstanding the connection and continuity between the life of villages and the one of towns, upon which we can consider the first as the base for formation and evolution of the second. It is a misunderstanding that alters the way in which the urbanization process was represented to Romanians, namely in a simplistic and distorted way, as a socio-cultural process through which the city, through a mechanical action exerted from outside required its own culture based on the one of the village, and not vice versa, as an internal process of transformation and modernization, through which the village itself created or acquired and integrated new goods and values in its life, selected from among those whom the culture was able to recognize and assimilate. Indeed, in all processes of urbanization, not the city, but the village plays the active factor, the central factor. Urbanization, as process of modernization of Romania depends, therefore, firstly, on the resorts and resources of the villages' culture, and not as it is believed, on those of towns. In this context, any project of modernization of Romania is related in principle and must be linked to a more thorough knowledge of the culture of villages, without which the built on or linked to it life of the city is meaningless and lacks durability.

Unfortunately, excluding the few notable exceptions offered by members of the Romanian Social Institute, scientific knowing of the Romanian village, although admitted by the Romanian intelligentsia as a national debt since the late nineteenth century, has remained ever since a simple desideratum. The reasons are relatively simple: the scientific research of Romanian village was hijacked on every occasion from its real purpose, being subordinated to political objectives and interests of Romanian intellectuals. First issue of the villages was put under political image as "agrarian question". Iorga's writings, of Radu Rosetti, Gheorghe Panu, C. Dobrogeanu Gherea, S. Zeletin or of the representatives of the "Junimea" and "semanatorist" movements are proof of this. Then it was imagined as "problem of the national Romanian destiny". Redrafted after the construction of Great Romania in 1918, the problem of the Romanian village became a favorite hobby of representatives of indigenous nationalist movements. After 1945 the peasant problem was again put under discussion. This time it was formulated in the language of Marxist ideology of class struggle, as problem of scientific materialism, from where was removed only after 50 years of communist regime. Today, Romanian intelligentsia is bound to raise again the issue of scientific knowing the Romanian villages. It is required by the responsibility towards the modernization of Romania but also by and historical circumstances favorable to scientific research, circumstances arising on the background of gradual democratization and loss of politicization in the Romanian public life.

Historical Aspects and General Considerations on the Romanian "devalmaş" village

Scientifically knowing Romanian villages is not a simple problem to solve. Its solution involves a long series of theoretical difficulties from those in the methodology to practical ones. First is known that any scientific research cannot be conducted in the absence of identifying and assuming a problem that it seeks to solve, the problem through which the theoretical research acquires the practical character. There is to know that any scientific research depends on the existence of a prior general theoretical concepts from which it starts, a design issue determined both in the working hypotheses stage, in the choice of research methodology, and especially in stage of practical use of the methodology for testing working hypotheses. Recognizing the specific needs of scientific

research, we seek to determine in this article the core cultural structures of the Romanian village, structures that, despite various historical statutes which has undergone, have been preserved in time, ensuring a certain level of freedom to the peasant life.

So what characterizes the Romanian village? First of all, the fact that its existence is spread over a period of time. For this reason any current scientific research on this must take place in the inner of a social-historical investigation: post-socialist Romanian village today cannot be understood, for example, only with reference to the old traditional Romanian village whose structural elements keep them still, messy and dysfunctional. These elements are the more important for us to identify as long as starting with them we discover, what we believe to be, the sources of unconscious resistance of the Romanian society to the historical process of modernization, a process only possible to the extent that these cultural elements are recognized as the base of the Romanian's daily life mechanisms.

The fact that the Romanian village has an existence stretched over more than a thousand years, shows that the nature of Romanian peasant is unitary, homogeneous, with unique features in European social history. Unity, uniformity and strength of the peasantry are not its natural virtues. Their emerge and sustainability depended on the proper functioning of the rural culture of origin. We speak about a culture built and maintained not around specific activity of individuals but around the village community's collective activity, a fundamental institution, deeply rooted in the collective mentality of villagers, one of which binds the possibilities of social memory to their oral invoice. From the unity and homogeneity of peasant mentality provided by the culture of traditional broadcast congregation (Stahl, 1983: 250), derives the strong character and endurance of Roman peasantry to historical changes. Subconsciously, tied to each other through an organic network of functional connections, not one that allows them to act effectively only through collective action of the community, Romanian farmers develop a stubborn enmity towards any attempt to rape them by a force foreign to the community. "On a citizen one can exercise terror and compel him to do what you want. One can change his consciousness and in this way, all the gestures that he has under the supervision of this consciousness. But the shaking of an individual consciousness is not enough to break the collective conscience of the community, for that one is not controlled by individual, but something deeper and more mysterious" (Stahl, 1983: 80). Communist political regime watched continuously over 50 years the obedience and the change in force of the Roman peasantry. However, denying them landownership, weak consciousness of belonging to the local culture, long rehabilitation process to which it was subjected to during this time did not allow them to achieve their objective. On the contrary: today, we find not only that the peasantry remained unchanged in substance, but also that, in equal amount, the failed communist project provoked and made chronical a severe reaction among its people, manifested as a mixture of skepticism, pessimism and docility under which that, in the absence of its links with the congregation and the earth, actually hides a stubborn and resistant to change without precedent. Romanian peasantry is primarily a purely indigenous population who organized pastoral and agricultural production processes in communitarian - agrarian formations. Because of this we can say about Romanian villages that they cannot be considered at all the product of the establishment processes of earlier tribal formations, nor that of acculturation processes, a process of crossing these social – agrarian communities from a culture to another. Their appearance is explained rather as a result of indigenous communities of reaching a stage of cultural development, which enables them, respecting certain gnosiological level, but also a set of geographical,

biological, historical and mental structural frameworks capable of creating and organizing their specific spiritual, economic, legal and administrative activities. It is a stage of cultural development in which their spiritual constitutive production, but also the legal and administrative one, is developed around agriculture. We refer to an itinerant agriculture, agriculture whose technique did not allow continuous cultivation of land, but only two or three years of it, after it had been deforested and after the end-of-life, abandoned to regain fertility. In this situation, work was conducted on common land, forests, pastures, fields, joint property in possession of another individual, and on the individual properties used permanently (house, yard, garden), all under the supervision of local collective bodies (Stahl , 1980: 171).

Although historical documents do not help us determine the precise historical moment when the Romanian agricultural community was formed, we can determine with certainty upon their entering in dissolution. Starting from here, namely the nineteenth century, the century of decline for the last privately-owned-property villages, and descending the ladder to the previous centuries of history, these documents prove their existence also during the 13th century, the century when the first Romanian state formations were constituted. However, there are sufficient historical aspects which make us believe that the genesis of Romanian agricultural communities took place earlier than the thirteenth century: "In other words, unable to date chronologically the stage of social development in which these rural community formations could have their genesis, we push their time until times when in truth, only then, they could derive from the prehistoric primitive communism" (Stahl, 1980: 172).

The age of the Romanian common-property villages, quite remarkable when compared with other European agricultural communities has, in our opinion, primarily to do with the Romanian peasantry's character. Contrary to the specific trait of agrarian populations everywhere, Romanian peasantry was not an amorphous mass and inertia of farmers (Stahl, 1980: 171). On the contrary, it was characterized by inner division, warrior capacities and its organization as confederation. First we learn about it from "The diploma from Tihani" (1055), from documents dating from 1108 to 1109 mentioned in the "Codex diplomaticus Hungariae Ecclesiasticus needle civilis" of Fejer, etc, but especially from "The diploma of the Ioanit knights" (1247), the most representative document which sends to the period of pre-constituting the Romanian states through direct references which it makes to those "majores terrae" judicial captains, princely and royal, representing the interests of agricultural Romanian communities towards the Hungarian and Tartar states. We refer to a military professionalized social class, which through processes of labor division functionally separates itself from the great mass of Romanian farmers and builds-up the first Romanian political forms of co-federal organization of Romanian agrarian communities: "In this regard we believe that those majores terrae, those chieftains of the country, about which the Ioanits Diploma speaks, were heads of village confederations with princely and princely character. In this status of native aristocracy, blanket warriors, nobles in the band, they could have in the villages they were part of, the rights to subsidies that persist even before the foundation of the reign and that could continue after the kingdom was founded" (Stahl, 1980: 184). Once with military specialization, released from the cares and responsibilities incumbent the agricultural landowners, and without owning any emines dominium, which first appeared with the establishment of the rule (Arion, 1938: 28), these native warlords are not involved in any way in the production processes of agrarian communities. However, their economic base is not, as believed, secured by exploiting the peasant agrarian communities, whether we speak of a feudal

exploitation or a tribute one. The economic basis of this warrior aristocracy is in fact represented by the stipends provided by agrarian communities in exchange for protection services benefiting from it. Military professionalization of this aristocracy, favored by the warrior virtues of the peasantry coming from, did not lead to a weakening of the heroic mood among members of the Romanian agricultural communities; on the contrary, it has remained until late peasants with military purposes, who participated significantly, along centuries, to the big army of the Romanian countries.

The age of the Romanian agrarian communities of judicial or princely type lets itself explained, in the third row, by their character as confederation. Conserved until the late nineteenth century, the organization as confederation of the privately-owned-property villages, mentioned for example by Dimitrie Cantemir a century earlier with reference to the famous peasant republics of Campulung Vrancea and Tigheciului (Cantemir, 1973: 224-226), although underwent many changes over time remained one of the fundamental structures of the free Romanian villages. Organized by countries (country Olt, Bârsa country Maramureş, Oaş, Vrancea, România Câmpulung, etc.) meaning under the form of village confederations or detours, the Romanian villages have kept their autonomy from the central state and ruled and worked late separated from it. In their capacity as "quasi-state organizations, relatively independent, as opposed to the Lord" (Stahl, 1998: 11) they are older than Romanian cnezate and voievodate.

How did it happen that although the warrior nobility who founded the old medieval state came from the ranks of local Romanian peasantry, the state institution promoted by it did not really managed to impose agrarian life in our communities? How to explain this secular parallelism between the life of the Romanian village and the one of the princely state? The answer to these questions is bound to noticing that if the Romanian political aristocracy was largely domestic in nature (Djuvara, 2011), the structure of the Romanian medieval state was an exogenous one. Indeed, for us, the impermeability of the peasant communities against the political- administrative intrusion of the Romanian feudal state is due to the absence of any communication between the internal mechanism of the culture of a community of disseminate tradition, specific characteristic of the Romanian common property villages and of the medieval state's values. Created by the invading populations, especially of the Cuman one, the first type of civil organization of the Romanians was taken over and used by the autochthon aristocracy in its working related relations offered to the agrarian communities of origin, immediately after warding off the nomadic conquerors. Over time, however, this foreign age-based structure with tribal role and then feudal, superimposed to the peasant indigenous culture led to a change, even to an alteration of the relations between the nobility and the community of peasants, that based on relationships supported by military services, as they were at first, turned into relations of direct economic exploitation of the peasantry staring with the eighteenth century. The degradation of the relations between the political class and the peasant community has increased over time, leading to a chronic rupture and separation between them, one that not only did not stop with the modernization of the Romanian state in the mid-nineteenth century, but which reached paroxysmal cotes with the instauration of the communist regime since the mid-twentieth century.

Prior to clarifying why the communist state in the history of the Romanian proved to be the most foreign institution and the hardest to adapt to the mechanisms of the culture of a community of disseminate tradition specific to our agrarian communities and why does a radical contradiction exists between the communist state and the peasant

community, we have to make a more concrete image about what actually common property Romanian village ("sat devalmaș") means.

Structural and typological considerations of the Romanian *devălmaș* village

As previously said, the Romanian villages have done not just the subject of social history research but also that of direct surveys on land. Field surveys were to find them in an advanced stage of dissolution, and consider them to be, rightly, a continuation of the old local peasant common property communities. How should we represent ourselves, however, these ancient peasant communities considered to be the origin of the late Romanian villages?

First of all, as a socio-cultural product emerged from a process of territorialization of a native population, a process thought to be the final stage of dissolution of tribal congregation, in which it was organized before. Indeed, the condominium (common property) Romanian village should not be seen neither as a social unit of tribal aspect, nor as historical achievement of a founding hero, but as a social creature appeared in the bosom of the existing socio-cultural life. Autonomous territorial social formation, the common property village was imposed in Romanian history through usual character and technical solutions with specific economic character, as an organic and mandatory framework for life that will work beyond the will of peasants, nobility or the one of the Romanian wheel of state. Framed in which Alexander A. Tschuprow called Feldgemeinschaft, "all households, owner of a territory, which are linked between themselves by such relations so that" all "has the power to mix, according to precise rules, in the economic and legal rights of every household in particularly" (Tschuprow, 1902), the common land village distinguish itself from the south Slavs' "zadrugas", a purely family formation, or from any other form of coexistence of private farms, which were isolated from the capitalist nature, "is nothing but the clotting together of households in one congregation or pack" (Stahl, 1944: 321), meaning into an "aggregate" with administrative role able to interfere in the economic and legal life of every household.

Arisen from the processes of territorialisation and dissolution of the community tribal village, the common land village was above all «a democratic egalitarian communal village, vaguely colored gerontological and with a homogeneous population, composed exclusively of natives, forming one "pack" closed to the nonnatives, using the body of the estate in "absolute condominium" through "local dominions" and exceptionally, through "the amount of fathoms", based on a natural economy, dominated by "using" the land through direct labor, in primitive techniques of deforestation and permanent grubbing» (Stahl, 1998: 13) or to use another definition extracted from the works of H. H. Stahl, "is a form of social life, the flesh of the estate of a closed biological group, often linked by kinship of pack, living in family households, associated in one congregation, which through its decisions taken by its general assemblies, has the right to interfere in the privacy of each household, according to the judicial rules, according to the congregation's psychological mechanism based on diffuse traditions" (Stahl, 1944: 328).

However, its historical evolution generated by the development of its own technical capacities (Trandafir, 2011: 66) but also by the intervention in its center of the political mechanisms for operating the noble class, made it a village with a rural community in which farmers ended up by having significant differences in wealth and by cleaving so in bands and multiple social categories, compiling their various public rights (ownership, freedom, equality, responsibility, etc) not on the principle of affiliation to native population, but on the basis of written contracts in frames of economy exchange

and work techniques which allow both privately land use and continuation of their exploiting.

Common property villages, whose cultural structures were compromised by the impact of exploiting mechanisms of feudal, capitalist or communist origin, ended up breaking up with the tradition of the Romanian villages and significantly distinguishing themselves from the previous.

In conclusion, following this historic process occurred "clăcășești" villages, Romanized, subservient villages owned by the state, boyars or monasteries. For a long time, alongside these subservient villages continued to be free peasant communities (such as "moșnenești" and "răzășești": "Moșnean is, in Wallachia, a generic name given to the descendent of a "moș", which once mastered the entire border and designates the owner who remains in the condominium, unlike the word nobleman, word to designate the one who individualizes and decides upon the estate. Furthermore, in Moldova, to the word "mosnean" word corresponds with the same meaning, the word "razes", from whose linguistic family is the word "razoras" , that you meet for example in "Ypsilanti's Store", with the meaning that arises from this disposition when you want someone to sell the thing still, to have the duty to let first relatives know that they will to be part of that estate with him or "razorasi" (Fotino, 1940: 333-334), historical representations of archaic common property Romanian villages, necessarily constituted before the century of founding the local powers.

Acknowledgement

This paper is suported by the Sectorial Operational Programme Human Resources Development (SOP HRD), financed from the European Social Fund and by the Romanian Government under the contract number SOP HRD/159/1.5/S/136077.

References:

Arion, D. C. (1938). *Cnejii. Contribuții la studiul lor*, Bucharest: Revista Geniului Publishing House.

Cantemir, D. (1973). *Descrierea Moldovei*, Bucharest: Minerva Publishing House.

Djuvara, N. (2011). *Thocomerius–Negru Vodă, un voievod de origine cumană la începuturile Țării Românești*, Bucharest: Humanitas Publishing House.

Fotino, G. (1940). *Curs de Istoria Dreptului Românesc*, vol. 1, Bucharest: University of Bucharest.

Iorga, N. (1908). *Constatări istorice cu privire la viața agrară a Român*ilor, Bucharest: SOCET.

Marx, K., Engels, F. (1972). *Opere*, 19th volume, Bucharest: Politic Publishing.

Raubaud, P. (1971). Societate rurală și urbanizare. In Drăgan, I., Aluas, I., *Sociologie franceză contemporană. Teorie, Metodologie, Tehnici, Ramuri*, Bucharest: Politic Publishing, pp. 511- 518.

Stahl, H. H. (1944). Definiția și tipologia satelor devălmașe. *Revista Fundațiilor Regale*, (8), 321-337.

Stahl, H. H. (1980). *Teorii si ipoteze privind sociologia orândurii tributale*, Bucharest: Scientifică Publishing House.

Stahl, H. H. (1983). *Eseuri Critice*, Bucharest: Minerva Publishing House.

Stahl, H. H. (1998). *Contribuții la studiul satelor devălmașe românesti*, vol. 1, 2, 3, Bucharest: Cartea Românească Publishing House.

Tschuprow, A. (1902). *Die Feldgemeinschaft, eine morphologische Untersuchun*, Strasburg: K. J. Trübner.

Trandafir, C. (2011). Communities vs. societies and their function in border regions. *Revista de Ştiinţe Politice*. *Revue des Sciences Politiques*, (29), 66-81.

Article Info

Received: March 31 2015
Accepted: May 20 2015

RSP • No. 46 • 2015: 111-124

ORIGINAL PAPER

Comparative Assessment of the Degree of Markets Openness based on Open Markets Index for Bulgaria, Romania and Slovakia

Donka Zhelyazkova*

Abstract
Quantified multi-criteria models have increasingly wider applicability, with them we can assesses the current state of national and regional economies. This is done through the application of strictly stratified methodological apparatus that composes targeted certain empirical basis, objectively necessary for the ranking of countries according to the accumulated final results. The main idea of present paper is to consider the economic model of the International Chamber of Commerce (ICC), which allows evaluate the degree of openness of the markets based on four groups of indicators: Observed openness to trade, trade policy, FDI openness and Infrastructure for trade. The study is based in comparison to trace individual indicators, which form the final evaluation, based on Open Markets Index, which is the complex indicator of the openness of the markets in Bulgaria, Romania and Slovakia. Countries subject to analysis are selected on two main features: they belong to the socialist model of government until 1989, and their current full membership in the EU-28. Achieving the main aim requires solving two major tasks related to: 1. theoretical presentation of the methodology by which the ICC regulates the formation of assessments of the Open Markets Index. 2. analysis of individual indicators that accumulate the final results of individual indicators. Solving the tasks put systematized basis for drawing conclusions that direct the focus at some options and guidelines. They are potentially available to the three countries, which are the subjects of present study.

Keywords: *open market, economic model, indicators, EU, trade*

* Associate Professor, PhD, University of Economics, Varna, Phone: 00359882164684, Email: d_zhelyazkova@ue-varna.bg.

Introduction

Quantitatively defined multi-criteria models for evaluating the current state of national and regional economies are being applied more widely, with their strictly stratified methodological apparatus which purposefully composes a certain empirical basis objectively needed for the ranking of the states in accordance with the accumulated final results. In this context the idea has emerged to examine the economic model of the International Chamber of Commerce (ICC), which allows for the evaluation of the degree of openness of markets on the basis of four groups of indicators. The aim of this paper is to trace in comparative aspect the Open Markets Index ratings for Bulgaria, Romania and Slovakia, and on this basis to arrive at conclusions as to the market "openness" of these countries. The choice of these countries was prompted by their comparability in terms of their historical experience in the development of economic systems subordinated to socialistic principles, "supporting the state, the worker or public property and the management of the production resources and distribution of goods, as well as a society characterized by free and equal access of individuals to resources with egalitarian compensation methods" (Newman, 2005) on the one hand, and on the other hand, by their shared participation in the current political and economic union of the 28 European states.

Methodology

The comprehensive approach to the application of the Open Markets Index (OMI) suggests approbation within a certain time frame of a measurable, predefined set of indicators grouped in the following sequence (ICC, 2013: 9-13): 1. Component 1: Observed openness to trade. Measurements in this field concern on: a. Trade-to-GDP ratio; b. Merchandise and services imports per capita ratio; c. Real merchandise import growth; 2. Component 2: Trade policy. Measurements of this indicator include: a. Average applied tariff levels; b. Complexity of tariff profile; c. Non-tariff barriers. Number of antidumping (AD) actions; d. Efficiency of import procedures; 3. Component 3: FDI openness. Attracting international capital allocation is estimated on the basis of: a. FDI inflows to GDP; b. FDI inflows to Gross fixed capital formation (GFCF); c. FDI inward stock to GDP; d. FDI welcome index; 4. Component 4: Infrastructure for trade. The evaluation of this indicator is on the basis of LPI (Logistics Performance Index) and the successful development of the communication infrastructure. In this ranking, the results are ranged from 1 to 6 and are composed in five groups: Category 1: Most open, excellent (score of 5-6); Category 2: Above average openness (Score 4-4.99); Category 3: Average openness (Score 3-3.99); Category 4: Below average openness (Score 2-2.99); Category 5: Very weak (Score 1-1.99).

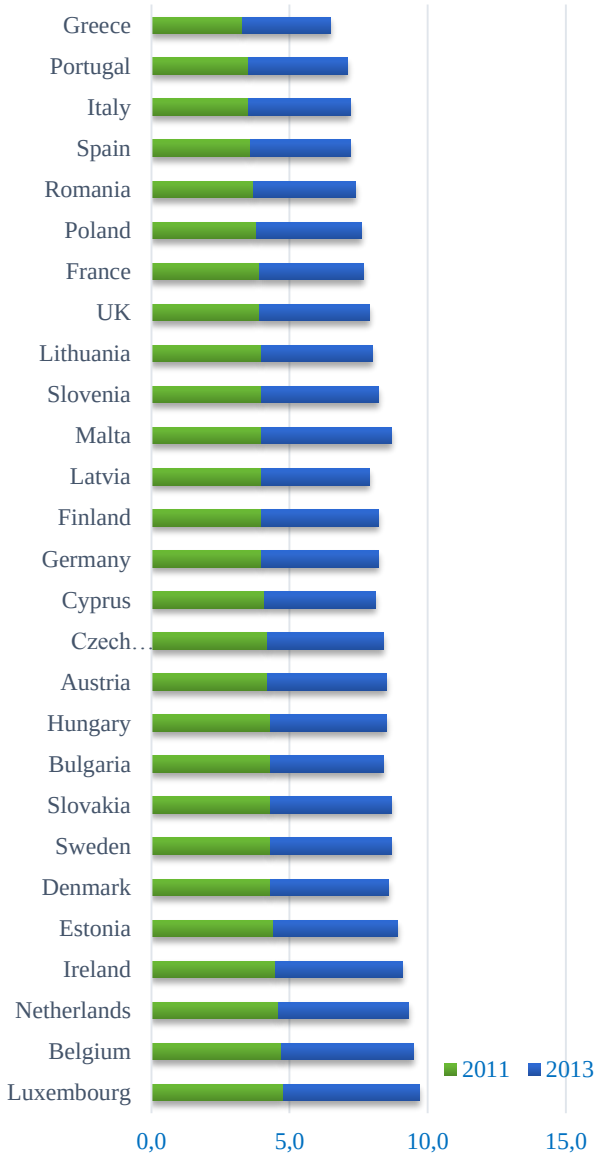
Results

Actual dimensions of OMI within the European Union in 2013 classifies the countries of the union into two categories (Figure 1): Category 1: Above average openness (Score 4-4.99): Luxembourg, Belgium, Malta, Netherlands, Ireland, Estonia, Sweden, Slovakia, Denmark, Austria, Finland, Slovenia, Hungary, Czech Republic, Germany, Bulgaria, Lithuania, Cyprus, UK and Category 2: Average openness (Score 3-3.99): Latvia, Poland, France, Romania, Italy, Portugal, Spain, Greece. The figure clearly shows lack of economies which can be placed in the category of "The most open economies", but also lack of economies which can be assigned to the categories of "Below average market openness" and "Very weak market openness". Within the EU-27 states subject of

this study the ranking for 2013 is as follows – Slovakia is 8th, Bulgaria is 16th and Romania takes the 23rd position.

Figure 1. Overall OMI ranking of Member States in the European Union for 2011 and 2013

Countries	2011	2013
Luxembourg	4,8	4,9
Belgium	4,7	4,8
Netherlands	4,6	4,7
Ireland	4,5	4,6
Estonia	4,4	4,5
Denmark	4,3	4,3
Sweden	4,3	4,4
Slovakia	4,3	4,4
Bulgaria	4,3	4,1
Hungary	4,3	4,2
Austria	4,2	4,3
Czech Republic	4,2	4,2
Cyprus	4,1	4,0
Germany	4,0	4,2
Finland	4,0	4,2
Latvia	4,0	3,9
Malta	4,0	4,7
Slovenia	4,0	4,2
Lithuania	4,0	4,0
UK	3,9	4,0
France	3,9	3,8
Poland	3,8	3,8
Romania	3,7	3,7
Spain	3,6	3,6
Italy	3,5	3,7
Portugal	3,5	3,6
Greece	3,3	3,2



Source: ICC Open Markets Index. International Chamber of Commerce (ICC) Research Foundation (2011, 2013)

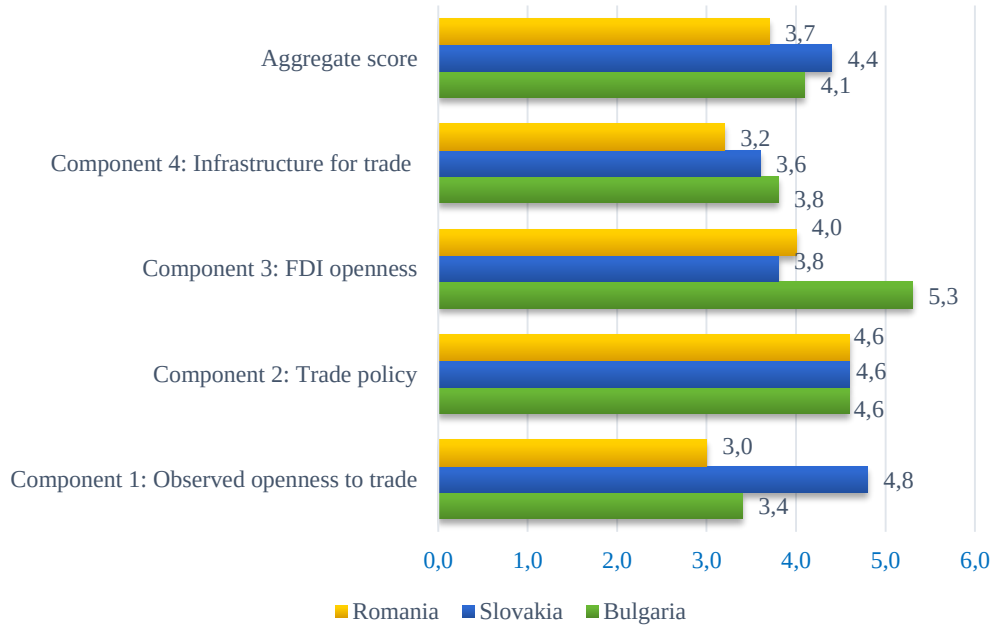
Respectively, the overall OMI ranking thus formed may be decomposed by separate components, which bring greater clarity to the basis on which final results are aggregated (see Table 1 and Figure 2).

Table 1. OMI Components for Bulgaria, Slovakia and Romania for 2013

Countries	Component 1: Observed openness to trade	Component 2: Trade policy	Component 3: FDI openness	Component 4: Infrastructure for trade	Aggregate score
Bulgaria	3,4	4,6	5,3	3,8	4,1
Slovakia	4,8	4,6	3,8	3,6	4,4
Romania	3,0	4,6	4,0	3,2	3,7

Source: ICC Open Markets Index. International Chamber of Commerce (ICC) Research Foundation (April, 2013)

Figure 2. OMI Components for Bulgaria, Slovakia and Romania for 2013

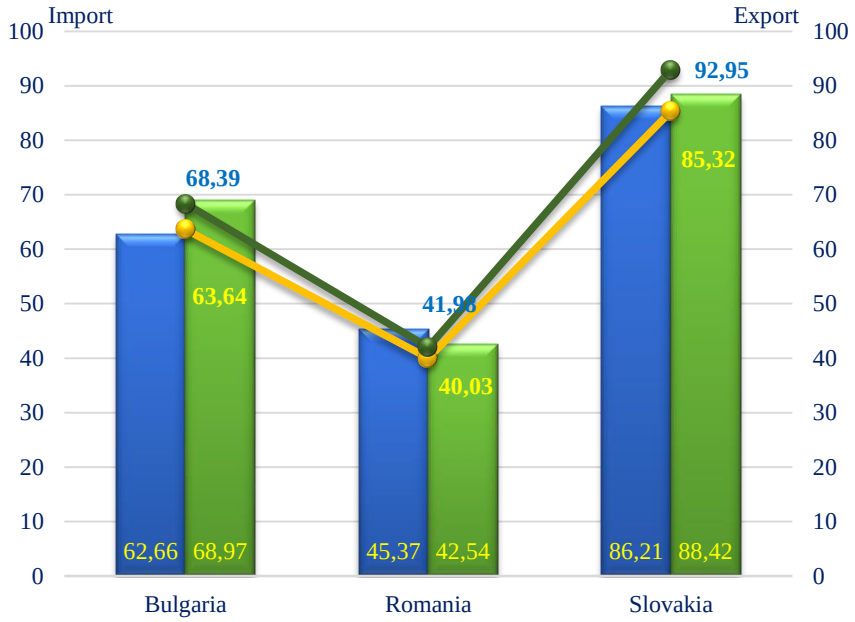


Source: ICC Open Markets Index. International Chamber of Commerce (ICC) Research Foundation (April, 2013)

In the ICC information about the OMI of the three countries, Slovakia stands out with the highest performance score, followed by Bulgaria and Romania, which is the logical projection of the individual measurements on the separate components. The first component concerns the measurement of "Observed openness to trade". The structural elements of this component are the indicators measuring the export and import of

Bulgaria, Slovakia and Romania in % of GDP (Figure 3). Comparatively, we see that exports in Slovakia register levels of over 90% in 2013, while in Bulgaria and especially in Romania these percentile levels are registered as significantly lower within the range from 41.98% to 68.39% of GDP. With slight deviations but almost analogous is the dynamics in the development of the relative shares in GDP of imported goods and services from the rest of the world. These data reflect the export and import activity of the states in 2013 compared to 2011. In 2013 Bulgaria ranked 63rd in the world in the export of goods. Over the last 5 years Bulgarian companies have reached an average annual growth of export of 15%. Over the same period world import has been growing by 10% on average a year, i.e. we are displacing other suppliers from the global markets. As hitherto, Bulgaria is the leader in the export of some niche products. And future specialization must follow the same route – by product, not by sector. The economy has no 2 or 3 major and structure-defining industries and Bulgaria cannot be expected to be the export leader in an entire sector (Iliev, 2013).

Figure 3. Exports and Import of goods and services (% of GDP)



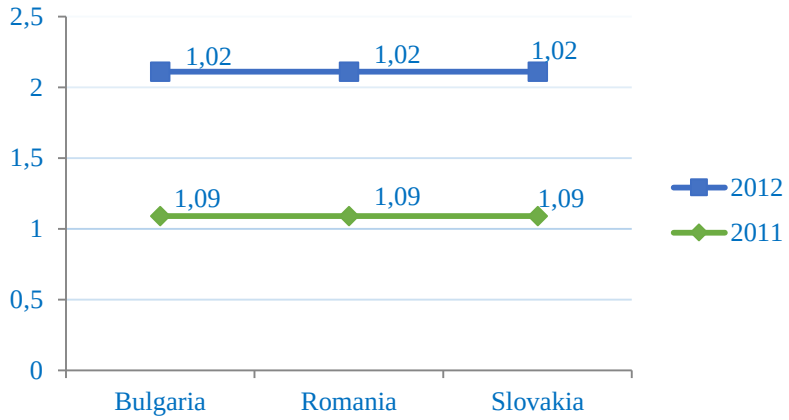
Sources: World Bank, 2015a and World Bank, 2015b.

Due to the highly shrunk domestic demand in Bulgaria export is viewed as a potential opportunity for achieving GDP growth which depends on two fundamental prerequisites categorized as qualitative and quantitative. In terms of the qualitative parameters of our national economy, we must direct our attention to increasing competitiveness by redirecting resources to innovative industries and overcoming the problem related to the "primitive production structure and the low technological level" (Angelov, 25th of March 2014). In terms of quantity "Bulgaria must multiply its production potential" (Angelov, 25th of March 2014) in view of the fact that export per capita is three times as low as the measurement of this indicator in a state such as Slovakia

where the overall positive tendency in respect of export is "driven by the expanding export orientation of the automotive industry" (Commission Staff Working Document, Winter 2013). With the production of almost 1 million cars in 2013, Slovakia takes the 18th place in the list of countries which are car producers in the world. The automotive industry is the largest industry in the country with a share of 12% of GDP in 2013, which amounts to 41% of industrial production and 26% of Slovak export (Rosival, 27th of January 2014).

Of the economies being reviewed Romania registers the lowest relative share of export in GDP, with the absolute value amounting to 351,755.5 million euro for 2013, and divided into commodity groups it includes – machines and equipment, electrical equipment; audio and video capturing or production (25.2%), vehicles and related transport equipment (17.0%), base metals and products made thereof (9.65%), fabrics and textile products (7,5%), vegetable products (6.0%), plastic, rubber and rubber products (5.6%) (Buletinul Statistic de Comerţ Internaţional, International Trade Statistics, 12/2013a: 5). In terms of structure, export is differentiated, but the low percentile levels indicate "closeness" of Romanian economy, which puts it in a position of "deficit", since the levels of import exceed those of export by 5,950.9 million euro (Buletinul Statistic de Comerţ Internaţional, International Trade Statistics, 12/2013b: 6). The brief overview of the export and import indicators of the three countries corroborates the scores on the first component of "Observed openness to trade" of 3.0 for Romania, 3.4 for Bulgaria and 4.8 for Slovakia. The second component, which is part of the overall OMI rating, defined as "Trade policy" measures identical levels in respect of "Tariff rate, applied, weighted mean, all products (%)" not only for the countries subject of this study (Figure 4), but for all members of the European Union, since "The presence of a customs union means that its members apply the same duties to goods imported into their territory from the rest of the world, and also that they do not impose duties on trade among themselves" (EU Policies: Customs, 2015a: 3). The single customs policy is laid down in the provisions of the Treaty Establishing the European Community of 1957 pertaining to the customs union between the Member States, which envisage: 1. aabolishing duties among Member States (art. 25); 2. adopting a common customs tariff (art. 26); 3. eliminating some of the limitations on the quantities between Member States (art. 28 - 31).

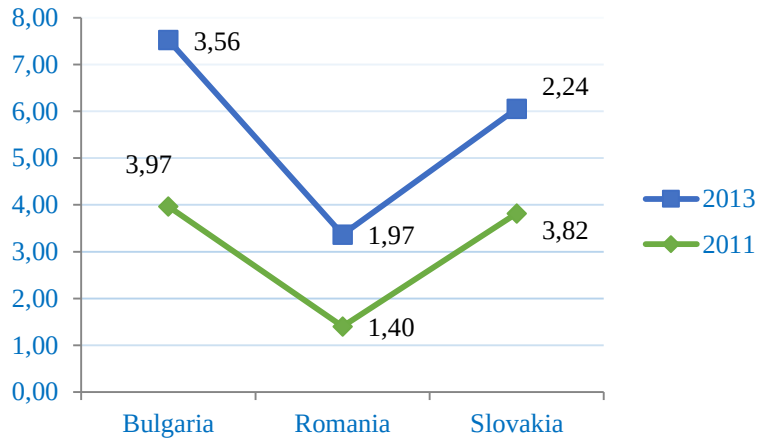
Figure 4. Tariff rate, applied, weighted mean, all products (%)



Source: World Bank

Therefore, within the Community there is no basis for comparison between the states, but at international level "the EU is the largest trade block in the world, so globally the customs union of the EU is an important factor in international trade" (EU Policies: Customs, 2015b: 3). At international level the third component is also significant, since it evaluates "market openness" and is defined as "FDI openness". One of the indicators for its measurement is "Foreign direct investment, net inflows (% of GDP)" which we will trace in dynamics for Bulgaria, Romania and Slovakia (Figure 5).

Figure 5. Foreign direct investment, net inflows (% of GDP)



Source: World Bank, 2015c.

Of the studied economies only Romania registers higher levels in 2013 compared to 2011 and from 1.40 reaches up to 1.97% of FDI of the GDP, which in absolute terms amounts to 59,958 million euro for 2013, of which 48.1% was invested in industry, 11.2% in trade, 14.2% in international finance and insurance. And the largest investors in the country are the Netherlands (24.4%), Austria (19.1%) and Germany (11.2%) (Banca Națională a România: Foreign Direct Investment in Romania, 2013).

For Bulgaria and Slovakia we observe a drop in the "Foreign direct investment, net inflows (% of GDP)" indicator in 2013 relative to 2011, which at its lowest point for our country is 0.41%, while the Slovak economy scores 1.58%. According to data provided by Eurostat FDI in Slovakia dropped in absolute value from 2.20 billion euro in 2012 to 0.45 billion euro in 2013, which is significantly below the country's threshold of 2.10 billion euro for the period from the beginning of the 21st century. At the same time data of the Bulgarian National Bank (BNB) on the balance of payments of Bulgaria show for 2013 shrinking of FDI in the country by 17% compared to 2012, when 1.481 billion euro entered the country compared to the 1.229 billion euro in 2013, and in 2011 FDI in the country was to the amount of 1.065 billion euro. Apparently the attractiveness of Bulgaria as an investment destination is tentative in the short temporal term, but nevertheless it is based on several rigid pillars, which are (Invest Bulgarian Agency, 2015): 10% corporate tax; 0% in regions with high unemployment rate; 10% personal income tax; 2-year VAT exemption in case of import of equipment for investment projects of over 5 million euro, which open at least 50 jobs; 2-year depreciation of computers and

new production facilities; the possibility to deduct costs for research and development; 5% withholding tax on dividends and liquidation shares (0% for EU companies).

The fourth component which pertains to the provided "Infrastructure for trade" is measured on the basis of the Logistics Performance Index (LPI) – an index introduced in 2007 by the World Bank in order to compare the options which countries offer in terms of logistics infrastructure and trade environment.

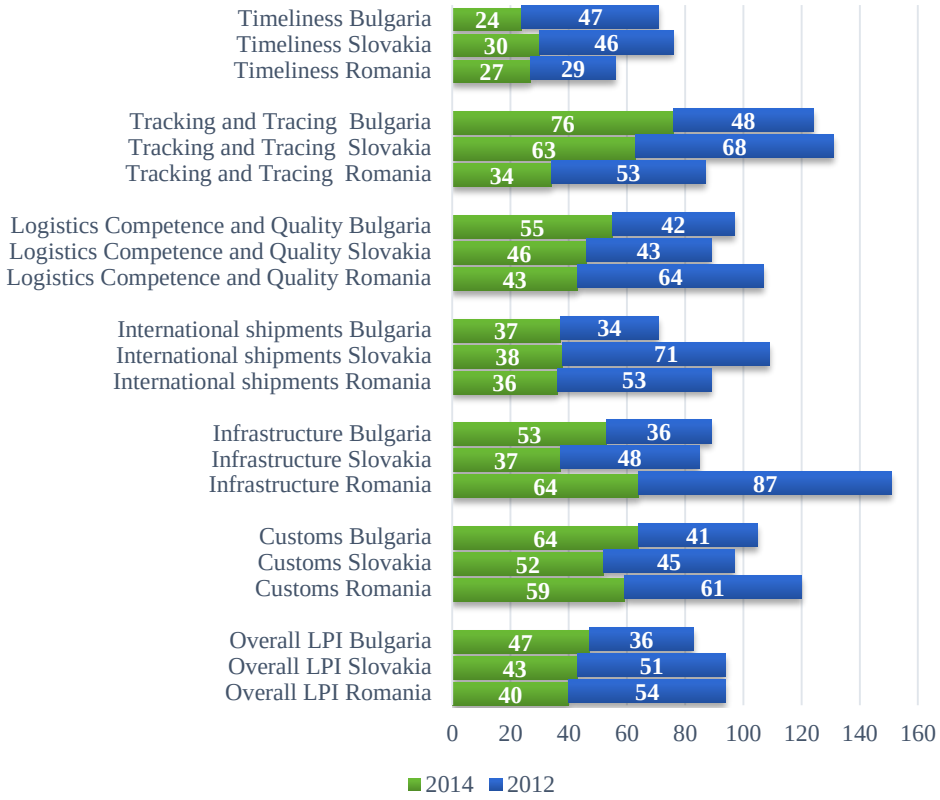
The total measurement is based on the following criteria: customs (efficiency and effectiveness of the process of releasing packages and cargoes at the customs and other border control authorities; infrastructure (the quality of transport and IT infrastructure and logistics); international shipments (accessibility and availability of courier and logistic services); logistics competence and quality (the competence of the employees in local logistics); tracking and tracing (option to track shipments); timeliness (keeping to delivery deadlines for packages to the respective destination).

The general picture based on LPI (Table 2, Figure 6) which forms for 2014 compared to 2012 shows that only Bulgaria is more successful, because the country goes 11 places up in the chart, unlike Slovakia which registers a drop by 8 positions, and Romania which goes 14 places down as compared to 2012. Further specification of analytical processes in the context of the criteria forming LPI by separate countries suggests that research must be extended and processes must be examined differentially (Table 2).

Table 2. Changes in the values of the indicators forming LPI of Romania, Slovakia and Bulgaria for 2014 as compared to 2012

Bulgaria	Slovakia	Romania
	overall LPI	
36 ↑ 47 (11 ↑)	51 ↓ 43 (8 ↓)	54 ↓ 40 (14 ↑)
	Customs	
41 ↑ 64 (23 ↑)	45 ↑ 52 (7 ↑)	61 ↓ 59 (2 ↓)
	Infrastructure	
36 ↑ 53 (17 ↑)	48 ↓ 37 (11 ↓)	87 ↓ 64 (23 ↓)
	International shipments	
34 ↑ 37 (3 ↑)	71 ↓ 38 (33 ↓)	53 ↓ 36 (17 ↓)
	Logistics Competence and Quality	
42 ↑ 55 (13 ↑)	43 ↑ 46 (3 ↑)	64 ↓ 43 (21 ↓)
	Tracking and Tracing	
48 ↑ 76 (28 ↑)	68 ↓ 63 (5 ↓)	53 ↓ 34 (19 ↓)
	Timeliness	
47↓ 24 (23 ↓)	46 ↓ 30 (16 ↓)	27 ↑ 29 (2 ↑)

Figure 6. The positions taken by Bulgaria, Slovakia and Romania in 2012 and 2014 based on the overall LPI and by LPI criteria



Source: World Bank: Full LPI Dataset: 2012, 2014.

The decomposition of LPI in individual measurements of the criteria shows that Bulgaria reached the most significant progress in respect of "Tracking and Tracing", "Logistics Competence and Quality", "Infrastructure" and "Customs", which accumulates also the high total results for 2014. Slovakia in turn has failed to keep its positions mostly in respect of "Timeliness", "International shipments" and "Infrastructure", and Romani lags behind to a great extent in terms of the criteria "Tracking and Tracing", "Logistics Competence and Quality", "International shipments" and "Infrastructure". Logically the weak individual outcomes also form the lower multi-criteria overall rankings. Tracing the changes in the values of the indicators forming LPI of Romania, Slovakia and Bulgaria for 2014 compared to 2012 has provoked the author's interest to find the basis on which results are compiled in respect of the infrastructure in the context of transport provision, which "from a functional viewpoint summarizes the combination of infrastructural sites" (Nikolova, 2010: 52), including roads, rail tracks, ports, airports, etc. In this respect, it is economically reasonable to trace the processes in the development of this basis in the three countries which are subject of the comparative analysis of this paper, in view of the significance of infrastructural availability for the optimal running of transport processes which lend logistical support to all participants in the production process. Special attention can be devoted to Bulgaria and Romania in view of their neighbouring location,

simultaneous accession to the EU and their rivalry when both countries are positioned on the transport map of Europe. The analytical process involves tracing the state of infrastructural availability in 2013 providing for the movement of material and human flows by the major modes of transport – rail, road, water (marine and river) and air. Rail transport data leads to the conclusion that Bulgaria as a country with average values in respect of rail network density as compared to Romania and the Slovak Republic, but we must also consider its territorial scope which is smaller only when compared to Romania, as well as the mainly flat and hilly terrain in the North part of the country (Table 3).

Table 3. Indicators for rail network density and coverage rate in Romania, Slovakia and Bulgaria (2013)

Countries	Railway lines /km/	Area /sq. km/	Population	Railway lines density 1000 sq. km	Satisfaction with railway lines on 1000 citizens
Romania	10 768	238 391	21 729 871	45,169	0,496
Slovakia	3 631	49 035	5 443 583	74,049	0,667
Bulgaria	4 032	111 000	7 245 677	36,324	0,556

Source: FBI, 2015 and National Statistical Institute, 2015a

On the other hand, toward 2013 rail tracks per 1000 people on the territory of Bulgaria amounted to 0.556 km, which can be described as satisfactory, considering that the indicator for the other two countries has the values of 0.496 km for Romania and 0.667 km for Slovakia. Therefore, we can localize the position of Bulgaria in accordance with these two indicators, which are significant to the development of the transport system, as relatively favorable, but with a certain potential for developing the rail network particularly towards solving the issue of insufficient connectivity with neighboring countries. The measurement of the indicators of road network coverage to a certain degree repositions the studied countries (Table 4).

Table 4. Road network density and coverage rate of Romania, Slovakia and Bulgaria in 2013

Countries	Roads /km/	Area /sq. km/	Population	Density of road network 1000 sq. km	Satisfaction with road network on 1000 citizens
Romania	84 887	238 391	21 729 871	356,083	3,906
Slovakia	17 534	49 035	5 443 583	357,581	3,221
Bulgaria	19 678	111 000	7 245 677	177,279	2,716

Source: FBI, 2015 and National Statistical Institute, 2015b

Romania has the highest territorial scope and population size. Its area is 238,391 sq. km., its population is 21 790 479 and in 2013 it had 84,887 km of roads, which in terms of coverage rate measured in km per 1000 people ranks Romania before Bulgaria and Slovakia with its value of 3.906 km per 1000 people. Respectively, the road network density indicator in km per 1000 sq. km. makes Slovakia stand out with the best values, surpassing Romania by only 1.498 km per 1000 sq. km., and Bulgaria by 180.302 km per 1000 sq.km.

This fact places Bulgaria in a rather unfavorable position and significantly reduces its levels of competitiveness in the European transport sector. Alongside the very good results scored by Romania according to the report of the national road and motorway company (CNADNR), the modernizing of Romanian infrastructure in line with European standards is one of the priorities and there are plans for reconstructing about 900 km of the national road network and the construction of 10 thousand km local roads by 2020 (Building and The City, 14th of January 2013). Apparently Romania has a long-term strategy for the development of transport, which will allow it to provide for excellent conditions for the movement of logistic flows.

Considering the potential of the two neighbouring countries Bulgaria and Romania for being the marine "doors" of Europe, it is reasonable to examine them in terms of comparison and in respect of the availability of infrastructure for servicing marine transport, here having in mind the largest Black Sea ports – Varna and Constanța. Port Varna has been defined as a multi-purpose port with modern technology and specialized terminals in a continuous operation mode, where all kinds of cargo are handled, including liquids. The main cargo turnover of the port is realized by the handling of grain, containers, chemical and fuel freights. The port complex comprises two terminals with a maximum depth of 11.5 m (Port of Varna, 2015). The biggest rival of the Bulgarian ports is the Black Sea port of Romania, situated in the town of Constanța, since it also has a strategic geographical location at an important trade crossroads, which connects countries from inland Europe with Central Asia and the Far East. Since 1st of January 2007 the port has been operating as a duty-free zone, which is typical of all big international ports.

On the territory of Constanța Port there are terminals of different specialization (Port of Constanța, 2015): for liquid, bulk cargos (two specialized terminals – one for iron ore, bauxite, coal and coke, another for fertilizers, phosphates, urea, apatite, and other chemical products), container terminals, Ro-Ro terminals and ferry terminals. Constantza Port disposes of four container terminals, which offer the most advanced facilities and working conditions for container vessels. In 2003 on the premises of the port the biggest container terminal at the Black Sea was opened for operation. The minimum draught is 14.5 meters, which allows handling of ships of the Post – Panamax type. In the brief characterization of marine ports presented above we can underline their provisions for handling a wide range of cargoes, but in respect of the access provided for marine vehicles, Constanța Port is in a better competitive position, since its capacity allows for ships of the Panamax type to accost in its water area.

Another important point of intersection of transport interests in Bulgaria, Romania and Slovakia concerns the conditions for exploiting the Danube River which each country provides. In Table 5 information is given about three of the ports on the river stretch running along the territory of the reviewed countries.

Table 5. Ports along the Danube River of Romania, Slovakia and Bulgaria

Port	Km	General cargo	Bulk cargo	Liquid cargo	Containers	Ro-Ro
Bratislava (Slovakia)	1867	√	√	√	√	√
Giurgiu (Romania)	489-497	√	√	X	√	X
Russe-Ost (Bulgaria)	489	√	√	√	√	√

Source: Danube Commission, 2015.

The greatest number of ports has been built by Romania (22) since it occupies the longest stretch of the river (1779 km), but in terms of complexity of services we notice that the ports in Bratislava and Ruse create conditions for handling a richer portfolio of cargoes in a single location. Of all Romanian river ports, the one built on the banks of the town of Gyurgevo attracts attention since on the basis of its location it emerges as the biggest direct rival of the largest Bulgarian river port Russe-Ost (Ruse-Iztok), but we also notice that its infrastructure does not allow for the handling of liquid cargoes and Ro-Ro cargo which is an advantage for Bulgaria.

In the transport systems of Bulgaria, Romania and Slovakia air transport is also actively present. For this purpose the countries have built the necessary airport infrastructure in accordance with the requirements of EU (See Table 6).

Table 6. The largest airports in Romania, Slovakia and Bulgaria in 2013 according to the number of passengers

Countries	Airports
Romania	Henri Coandă International Airport – Bucharest (7 643 467), Cluj Avram Iancu International Airport – Cluj-Napoca (1 035 438), Traian Vuia International Airport – Timişoara (757 096).
Slovakia	M. R. Štefánik Airport – Bratislava (1 373 078), Košice International Airport (237 165).
Bulgaria	Sofia Airport (3 504 158), Burgas Airport (2 462 621), Varna Airport (1 303 865).

Source: Airport Henri Coandă International Airport, Bucharest; Cluj Avram Iancu International Airport, Cluj-Napoca; Traian Vuia International Airport, Timişoara; M. R. Štefánik Airport, Bratislava; Košice International Airport; Sofia Airport; Burgas Airport; Varna Airport (2015).

The three countries' airports have reported intense passenger traffic for 2013. They have been built mainly for servicing passenger flows moving along national and international destinations, and to a much lesser extent for handling cargo shipments, which is influenced by the high tariffs which are paid by consigners who choose this transport

mode. On the basis of the conducted analysis in respect of the state of transport infrastructure as an integral part of the total infrastructure of Romania, Slovakia and Bulgaria, we can claim that it is reasonable to expect lowering of the chances of European cargo flows passing through Bulgarian territory and that it is much more likely that they will follow a movement trajectory which crosses the Romanian transport space.

The tracing of the structure-formative elements in the formation of the Open Markets Index is the basis for systematizing some of the conclusions in support of the observed certain deviation in respect of some economic indices in the three countries subject of this study. More specifically, we can focus on the scores of Romania and Bulgaria, which measure openness of markets and we can point out that both countries have potential for expanding and intensifying the levels of export, which requires reciprocal measures in respect of increasing the investment appeal of their economies.

Another aspect which must be influenced constructively concerns "Infrastructure for trade". Its score gives a relatively low position within the range, and in view of its strategic significance we can direct the focus of attention to government policies, which obviously do not prioritize enough the development of this fundamental aspect of social and economic life in their geographical aerial. This conclusion is unambiguously proven by LPI, which in terms of dynamics for Romania and Slovakia undoubtedly registers a serious drop. It can be overcome with specific measures aimed at the fast improvement of problematic areas indicated by World Bank. More specifically for the three economies, the systematic tracing of LPI is of great importance considering their geographical location and the actual conditions in order to guarantee the economic growth on the basis of the competitive advantages in the field of logistics. This claim is based on the possibility to attract transit material flows moving from Western Europe and going to Asia, Russia, etc., passing the Slovak, Romanian and Bulgarian territories, but provided that they have adequate infrastructure, business areas, competent human resources, etc.

Conclusions

In conclusion, we must summarize that the reviewed countries – Bulgaria, Romania and Slovakia – share not only their common past bearing the scar of socialistic ideals, but also their present influenced by the European unity, which confronts them with the solution of a system of problems whose comprehensive solving is a prerequisite for adequate competitive positioning in the common European space.

References:

Angelov, I. (2014). *Can GDP growth be sustained through export?* Retrieved from: http://duma.bg/node/74470.

Banca Națională a România (2013). Foreign Direct Investment in Romania 2013. Retrieved from: http://www.bnr.ro/Foreign-direct-investment-%28FDI%29-in-Romania-3213.aspx html.

Buletinul Statistic de Comerţ Internațional (2013). International Trade Statistics, 12/2013 ISSN: 2066-0219. Retrieved from: http://www.insse.ro/cms/en/content/statistical-bulletins.

Commission Staff Working Document (2013). European Economic Forecast. Retrieved from: http://ec.europa.eu/economy_finance/eu/forecasts/2013_winter/sk_en.pdf.

Danube Commission (2015). Ports on the Danube. Retrieved from: http://www.danubecommission.org/index.php/en_US/porty-na-dunae.

EU Policies: Customs (2014). The EU Customs Union: protecting people and facilitating trade. Luxembourg: Publications Office of the European Office. Retrieved from: http://europa.eu/pol.

FBI (2015). Factbook. Retrieved from: https://www.cia.gov/.

International Chamber of Commerce (ICC) Research Foundation (2011). Open Markets Index. Retrieved from: http://www.iccwbo.org/.

International Chamber of Commerce (ICC) Research Foundation (2013). Open Markets Index. Retrieved from: http://www.iccwbo.org/.

Iliev, V. (2013). *What is the place of Bulgaria in world export in 2013?* Retrieved from: http://www.bia-bg.com/uploads/files/analysis/BIA_analiz_BG-exim_in_the_World_2013.pdf.

Institutul Naţional de Statistică (2014). *Lungimea căilor de transport, la sfârşitul anului 201*3. Retrieved from: http://www.insse.ro/cms/files/statistici/comunicate/com_anuale/transporturi/lung_cailor_transp13r.pdf).

Invest Bulgarian Agency (2015). Retrieved from: http://www.investbg.government.bg/bg/pages/why-bulgaria-84.html.

National Statistical Institute, Republic of Bulgaria (2015). Length of Railway Network. Retrieved from: http://www.nsi.bg/en/content/7191/length-railway-network.

National Statistical Institute, Republic of Bulgaria (2015). National road network by road category. Retrieved from: http://www.nsi.bg/en/content/7203/national-road-network-road-category.

Newman, M. (2005). *Socialism: A Very Short Introduction*, Oxford: Oxford University Press.

Nikolova, H. (2010). The Transport Market in Bulgaria. Sofia: University of National and World Economy.

Rosival, Š. 2014). *Industry sector which the crises bypassed (Priemysel, ktorý obišla kríza)*. Retrieved from: http://www.automagazin.sk.

Štatistický úrad Slovenskej republiky (2014). Yearbook of Transport, Posts and Telecommunications.

World Bank (2015). Exports and Import of goods and services (% of GDP). Retrieved from: http://data.worldbank.org/indicator/NE.EXP.GNFS.ZS.

World Bank (2015). Imports of goods and services (% of GDP). Retrieved from: http://data.worldbank.org/indicator/NE.IMP.GNFS.ZS/countries.

World Bank (2015). Tariff rate, applied, weighted mean, all products (%). Retrieved from: http://data.worldbank.org/indicator/TM.TAX.MRCH.WM.AR.ZS.

World Bank (2015). Foreign direct investment, net inflows (% of GDP). Retrieved from: http://data.worldbank.org/indicator/BX.KLT.DINV.WD.GD.ZS.

World Bank (2015). Full LPI Dataset: 2012, 2014. Retrieved from: http://lpi.worldbank.org/.

Article Info

Received: March 21 2015
Accepted: May 12 2015

RSP • No. 46 • 2015: 125-135

ORIGINAL PAPER

Prime Time for Justice: Exploiting the Relations among the High Court of Cassation and Justice, the Constitutional Court of Romania and the European Court of Justice

Mariana-Daniela Sperilă (Crăciunescu)*

Abstract
The High Court of Cassation and Justice is the highest court within the hierarchy of courts in Romania and it has jurisdiction mainly to ensure consistent interpretation and application of the law by other courts, both in criminal and civil matters. Chronologically, the Court of Cassation and Justice was founded in 1861 and, after having several names, each with its own meaning for its role, following the revision of the Constitution of Romania in November 2003 the supreme court becomes once again the High Court of Cassation and Justice. It has the primary role in the unification of Romanian jurisprudence in relation to European law, having exclusive national jurisdiction to eliminate contradictory legal decisions by sentencing the decisions regarding the appeal in the interest of the law, and recently, by sentencing the preliminary decisions in a number of legal issues. In its relation with the Constitutional Court, the High Court is the only court within the judicial system that can trigger both *a priori* control of the constitutionality review of the law, and *a posteriori* control in this regard. On the other hand, decisions adopted under the exercise of *a posteriori* verification by raising the exception of unconstitutionality have effect on all courts, including the High Court of Cassation and Justice. As regards the relations with the European Court of Justice, they are under the sign of the influence that the jurisprudence of the European Court has on the domestic court and the Supreme Court also. The means by which the effective cooperation between these institutions of national law and of European law, is the institution of preliminary question that can be addressed to the Luxembourg Court by national courts, thereby ensuring cooperation between the EU judge and the national magistrate.

Keywords*: Supreme court, the High Court of Cassation and Justice, Romanian Constitutional Court, European Court of Justice, cooperation*

* Postdoctoral Researcher, University of Craiova (Romania), Faculty of Law and Social Sciences, Phone 0040723056115, Email: dana_sperila@yahoo.com.

The High Court of Cassation and Justice – a Supreme Court in Internal Law

The institution of a "supreme court" in the judicial system is not new for the Romanian law but, as we have probably already been used to it, it is an "eminently French creation" (Vioreanu, 1871: 156 apud Duţu, 2012: 41-42; Alland, Rials, 2003: 313-317; Cadiet, 2004: 260-266). Unlike Roman law, where the role of the judge was ultimately held by magistrates, assemblies and then by the emperor, the institution of a "supreme court" is a creation of the modern state and has emerged with the establishment of central jurisdiction. Currently, Law no. 304/2004 on judicial organization explicitly determines, by the provisions of article 18 that in Romania there is only one Supreme Court, called the High Court of Cassation and Justice, a legal entity based in the capital.

From High Court of Cassation and Justice to Supreme Court and back to High Court of Cassation and Justice

In Europe, the idea of a "supreme court" has appeared since the Middle Ages, with the complex structure of legal entities and multiplication of legal actions and appeal, "initially taking the form of higher courts or sovereign courts, like Curia Regis in England and France" (Duţu, 2012: 41). In 1749, *De l'Esprit des Lois*, belonging to Montesquieu, launched and imposed the idea of separation of powers and the establishment of a "judicial power". This philosophy has impelled the "creation" of the judicial power, by establishing the US Supreme Court, in 1789, and then, affirming modern constitutionalism (Duţu, 2012: 41).

In France, the institution of a supreme court of justice is found during the monarchy, under the name of "council" and judging appeals against decisions of parliaments and sovereign courts. The end of the 18th century brings triumph for the ideal of liberty-equality-fraternity that contributes to the establishment of the judicial power, different and independent of the administrative power, having, at its top, the Court of Cassation, whose role is to ensure uniformity of jurisprudence of courts and to make sure the law is correctly enforced. The French environment influences the legal life in the Romanian Countries since the 7th century, and the consequences are felt more strongly with the enforcement of the Organic Regulations, which were also absorbed in the revolutionary manifestos of 1848. The Great Powers Conference, held in Paris, in May 1858 and ended with the enactment of the *Paris Convention*, brings the necessary leverage for the union of the Romanian Principalities (Romanian Country and Moldavia) and the creation of modern Romania, particularly in light of the law. Promoted by the French delegate to the Conference (Count Alexander Walewski, Foreign Minister of Emperor Napoleon III) and following the French model, the idea of a High Court of Cassation and Justice takes shape in four articles of the Convention (Great Powers Conference, 1858, articles 38-41), thus providing the status of the first Supreme Court in Romania.

In 1861, Prince Alexandru Ioan Cuza issued, by Royal Decree No.1 of January 12th, 1861, the Law for the establishment of the Court of Cassation and Justice, published in the Official Gazette of the Romanian Principality No. 18 of January 24 and in the Official Gazette of Moldavia no. 88 of January 29. This is "an important step towards independence and affirmation of the judiciary as a genuine power, independent and equal with the other fundamental state authorities" (Duţu, 2012: 53). In time, the status of this court was little changed in 1870, after being fully maintained by the Constitution of July 1, 1866, an act that the people of that time claimed that "it was a monument of the future", as Pascal Aristide, Dean of the County Bar of Ilfov, said about it. However, the Constitution of 1923 substantially alters the status of the Supreme Court, and starting with

the Constitution of 1983, the High Court also receives jurisdiction to validate elections for Parliament (Romanian Constitution, 1938, article 50). But this power was exercised only once, in 1939. However, the idea is welcomed by the people of that time, A. Rădulescu stating that "the system is indisputably superior" (Rădulescu, 1943: 865) and that "long talks are prevented and the research is conducted by trained and independent people" (Rădulescu, 1943: 866). Also the contemporary doctrine claims that "with such a jurisdiction, the High Court was called upon to play a certain political role, but, in any case, it reached the plenitude of powers known in its history: resolution of disputes and ensuring uniform law enforcement and interpretation, disciplinary supervision of the judiciary, court of contentious administrative matters, control of the constitutionality of laws and, finally, by validating the elections, control of the formation of Parliament" (Duţu, 2012: 351).

With the adoption of the first communist Constitution (13 April 1948), the new judicial reality was shaped by Decree No. 132 of April 2, 1949 on judicial organization, which established, for the first time, tasks and responsibilities for the justice, the latter being achieved by the following courts: popular courts, tribunals, courts and the Supreme Court. Becoming Supreme Court, the court at the top of the judicial hierarchy receives many other changes by Decrees, culminating with the adoption of the Constitution of 1952, when its position is now replaced by the Superior Court, which had a double role: that of law court and court of supervision of other courts in the judicial system. According to article 72 of the Constitution of the Romanian People's Republic, "the Supreme Court [...] exercises legal activity supervision of all courts of the Romanian People's Republic". The designation of General Court is preserved also in the Constitution of 1965 and Law no. 58/1968 on judicial organization.

According to article 101 of the Constitution of 1965, the courts were represented by the Supreme Court, county courts, district courts and military courts. In this context, the Superior Court was "the head of the unitary system of the judiciary, the highest court of law among all the criminal, civil and military courts" (Moldovan, 1989: 153). After December 1989, in the context of returning to the imperatives of democracy and the rule of law, "the Supreme Court has gradually regained its appropriate traditional role and place in the judicial hierarchy of the country" (Duţu, 2012: 453). Even the name has changed, being known, according to the Constitution of 1991, as the Supreme Court of Justice. A final name change is suffered by the Supreme Court in 2003 when, following the revision of the fundamental law, it becomes, again, the High Court of Cassation and Justice. Hence, of all the courts of the new democratic state, the Supreme Court alone enjoys constitutional status, being expressly mentioned in the text of the Constitution. For that reason, it is rightly stated that this gives it a "superior stability and hierarchy" (Duţu, 2012: 453).

In conclusion, the institution of the Supreme Court "has deep roots in history" (Chartier, 2001: 2; Weber, 2006: 16) and has been given, in the course of time, several names, each with its own meaning for the associated role. Thus, our highest court was called the High Court of Cassation and Justice from March 15/28, 1862 to April 2, 1949, when it became the Supreme Court.

This denomination lasted only until June 19, 1952, when the Superior Court was established, which operated until December 27, 1989. Since that date, the Supreme Court of Justice was established, and in November 2003 the term of High Court of Cassation and Justice was reintroduced.

The imposing appearance of the High Court of Cassation and Justice through jurisdiction established by law

Following the revision of the Constitution of Romania, in November 2003, the highest court became the High Court of Cassation and Justice. It is organized into four sections (Civil Section I, Civil Section II, Criminal Section, and the Department of Administrative and Fiscal Matters) and joined Sections (for the settlement, as provided by law, of the complaints regarding the change of jurisprudence of the High Court of Cassation and Justice and for the notification of the Constitutional Court of Romania about the control of constitutionality of laws before promulgation), each with its own jurisdiction. Concurrently, within this court, there are three functioning judge panels: the panel responsible for judging the appeal in the interests of the law, the panel for the settlement of law issues and the Panel of 5 judges. The 5 judges panels deal with the appeals against decisions delivered at first instance by the criminal Section of the High Court of Cassation and Justice, they settle the appeals against rulings pronounced during the trial at first instance by the criminal Section of the High Court of Cassation and Justice, resolve disciplinary cases according to the law and other cases within their jurisdiction by law. According to article 18, paragraph (2) of Law 304/2004, as amended, the High Court of Cassation and Justice "ensures consistent interpretation and enforcement of the law by the other courts". Taking into consideration the EU Member State quality of the Romanian State, the unification of Romanian legal practice in relation to European law is an important objective of Romanian law. First of all, it is intended, by this, to avoid future adjudgments of Romania made by the European Court of Human Rights for contradictory judicial practice, as it has already happened (Beian vs. Romania, 2007; Ştefan and Ştef vs. Romania, 2008; Driha vs. Romania, 2009), and, secondly, to create a jurisprudential uniformity which constitutes a solid basis for legislating at European level.

The High Court of Cassation and Justice has a primary role in the context invoked, all the more so as in recent years it has gained new prerogatives to ensure uniform enforcement of national legislation which, as I previously mentioned in other papers, is closely related to European legislation. Both the appeal in the interests of the law and the preliminary judgment filed for settlement of law issues, are legal institutions borrowed from the French law. The purpose of both mechanisms is to ensure interpretation and consistent enforcement of the law by courts, the appeal in the interests of the law being used as "a last resort to put a stop to the perpetuation of damage" (Lupaşcu, 2009: 78-109). On the other hand, the mechanism of the preliminary judgment for settlement of law issues, recently introduced in our legislation, is intended to eliminate the risk of non-unitary practice, by basically solving an essential issue of law, ultimately appeared in a pending case. It is a prevention tool, which is designed to prevent a non-unitary jurisprudence that might arise at some point and becomes the main mechanism for unifying the judicial practice. Thereby, the High Court of Cassation and Justice has exclusive jurisdiction at national level to eliminate contradictory court jurisprudence using decision taken to solve the appeal in the interests of the law and preliminary judgments to settle law issues. To that effect, the existence and development of a continuous and constant jurisprudence at national level contribute to a better understanding and application of European law. Furthermore, by shaping and unifying the jurisprudence, the High Court of Cassation and Justice helps bringing together common law countries and civil law countries. All these aspects lead to uniform European law and, why not, to a possible future legislative codification, and the contribution of our supreme court in this process is irrefutable.

Considering these aspects, we can state, along with Professor Mircea Duţu, that "the High Court of Cassation and Justice is the fundamental ground, the "keystone" of the Romanian jurisdictional system, a living institution, constantly moving and evolving, in a state of continuity by discontinuity, the first to ensure the European and international aspect of national justice, a critical sensor of the Romanian public life" (Duţu, 2012: 453).

Relations between the High Court of Cassation and Justice and the Constitutional Court of Romania

In Romania, the constitutionality review of laws has occurred since 1912, when the High Court of Cassation and Justice confirmed the judgment delivered by the County Court of Ilfov in the famous "Trial of Tramways", giving jurisdiction to courts of law to investigate and determine the constitutionality of laws. Subsequently, starting with the Constitution of 1923, the right of the judiciary to perform this review was entrusted to the High Court of Cassation in the joined sections, although some voices, as Disescu still argued that the trial of "unconstitutionality of laws" should belong to all judicial bodies (Lascarov-Moldoveanu, Fănescu, 1925: 389).

Constitutions of the communist regime created only an appearance relative to the review of constitutionality of regulatory documents (for example, the Constitution of 1965 stipulated that the legislative power shall review the constitutionality of laws), but after December 1989, in the new context of the democratic political regime, the Romanian government has chosen the European model of constitutionality review. In this manner, the Constitution of December 1991 established a political-jurisdictional public authority to exercise this control: the Constitutional Court. Following the review of the fundamental law of 2003, its role as guarantor of the supremacy of the Constitution was established by article 142, paragraph (1). On this occasion, the Constitutional Court has received new responsibilities which increase its importance in the institutional edifice of the rule of law. The first decisions of the Constitutional Court were delivered in 1992 and were related, first to the free areas regime, and the second to the legal situation of buildings owned by the state after August 23, 1944, both of admission. Since then, the activity of the Court has grown exponentially with the development of the regulatory system and the activity of the ordinary courts. Regarding its activity, it must be stressed that it can exercise the constitutionality review only after a prior notice from the authorities expressly entitled by the Fundamental Law, and the solutions it can deliver may accept or reject the notification.

According to its jurisdiction (article 25 c) of the Law no. 304/2004, as amended), the High Court of Cassation and Justice, established in joined Sections, may refer to the Constitutional Court to review the constitutionality of laws before promulgation. Thus, the functional relations between the two courts are governed by the quality of the Supreme Court to be one of those important authorities that can notify the Constitutional Court to exercise the constitutionality review (According to article 146 a) of the Romanian Constitution, the High Court of Cassation and Justice, along with the President of Romania, one of the presidents of the two chambers of parliament, the government, the Ombudsman and a number of at least 50 deputies and 25 senators, can trigger a priori constitutional control, challenging the constitutionality of a law before it is promulgated). Also, the High Court may inform the Constitutional Court in order to exercise the review of regulatory documents a posteriori, when the exception of unconstitutionality is invoked by litigants, in a case submitted for trial and pending, pursuant to the law. Therefore, the Supreme Court is the only court within the judicial system that can trigger both a priori control of the constitutionality review of the law, and a posteriori control in this regard.

On the other hand, the decisions of the Constitutional Court are binding from the date of their publication in the Official Gazette. When the unconstitutionality makes reference to a law before its promulgation, the Parliament has the obligation to reconsider those provisions to coordinate them with the decision of the Court. When the unconstitutionality makes reference to provisions of a law, decree or regulation in force, the Parliament or the Government, as appropriate, shall be obliged, within 45 days of the publication of the decision, to coordinate the unconstitutional stipulations with the provisions of the fundamental law. Otherwise, they shall cease legal effects.

From the above mentioned, it emerges the idea that the High Court of Cassation and Justice is an important entity in relation to the other branches of government. Thus, an unconstitutional law of the Parliament can be prevented from entering into force by notifying the Constitutional Court, which must be done by the High Court. Also, a law, decree or regulation, or provisions thereof, can lack legal effect if the Constitutional Court is notified by the High Court of Cassation and Justice, by exception of unconstitutionality. It results from this context, the role of the Supreme Court to cooperate with the Constitutional Court by notifying the latter on certain unconstitutional regulatory provisions.

But decisions delivered by virtue of exercising the control a posteriori, by raising the exception of unconstitutionality, produce effects to all courts, including to the High Court of Cassation and Justice (Dănișor, 2007: 690), which are required to take them into consideration at the delivery of their own judgments, excepting the rejecting decisions, that cause effects inter partes (Vida, 2004: 199). Otherwise, pronounced rulings are illegitimate, this aspect being pointed out in the doctrine since 2010 (Beligrădeanu, 2010: 55-56), during the examination of Decision No 4615 of October 26, 2009 passed by the High Court of Cassation and Justice, about which it was even claimed that "such institutional behavior is unacceptable" (Beligrădeanu, 2010: 55). In this case, after the Constitutional Court has ruled, by means of jurisprudence, that a certain text of law met both conditions of constitutionality and conventionality, the High Court of Cassation and Justice has assumed legal authority to assess the text in question from the perspective of the Convention for the Defense of Human Rights and Fundamental Freedoms, describing it as being contrary to the right to a fair trial. The High Court, as a court of law, be it supreme, chose to ignore the decision of the Constitutional Court and failed to enforce the text in that case. The phenomenon has intrigued foreign doctrine as well, which stated at some point that a loyal constitutional behavior is the essence of the rule of law and the Constitutional Court is and must be guarantor for the supremacy of the Constitution (Benke, 2011: 285).

Moreover, the Constitutional Court was intransigent when one realised they had been notified with the exception of unconstitutionality of a decision of the High Court of Cassation and Justice for solving an appeal in the interests of the law, but with disregard to the constitutional jurisprudence. In this case, by decision no. 206 of 29 April 2013, the Constitutional Court found that "the settlement of law issues on trial" by Decision no.8 of October 18, 2010 given by the High Court of Cassation and Justice, is unconstitutional. It was held, therefore, that the phrase "settlement of law issues on trial" on the one hand, affects only the interpretation and consistent application of laws, meaning regulatory documents, and not decisions of the Constitutional Court and their effects, and on the other hand, affects only the interpretation and consistent application of the laws by the courts and not by the Constitutional Court, which is a distinct authority of the judiciary. On other occasions, the Constitutional Court found about the existence of a constitutional legal

conflict between the High Court of Cassation and Justice and the President (Decision of the Constitutional Court no. 1222 of November 12, 2008), when the Supreme Court did not consider, on appeal, a decision of the Constitutional Court by which certain legislative provisions had been declared unconstitutional and also between the High Court of Cassation and Justice, on the one hand, and the Parliament and Government, on the other hand (Decision of the Constitutional Court no. 838 of May 27, 2009), when the Supreme Court, through its decisions, replaced the legislative power.

In other words, as determined by the Constitutional Court repeatedly, since Plenum Decision no. 1/1995 on the compulsoriness pronounced in constitutionality review, "res judicata accompanying jurisdictional acts, and therefore decisions of the Constitutional Court attaches not only to the device, but also to the considerations that support it". In this respect are Decision No.1415 of November 4, 2009, Decision No. 414 of April 14, 2010, Decision No. 415 of April 14, 2010, Decision No. 1615 of December 20, 2011, and Decision No. 463 of September 17, 2014.

In conclusion, the Constitutional Court aims at eliminating "unconstitutional venom" (Muraru, Constantinescu, 1995: 31) and its decisions, delivered in virtue of its jurisdiction as constitutional court of law, are binding *erga omnes* from the date of their publication, unlike *a priori* control, which does not create such an effect (Drăganu, 2004: 76). Violation, by one of the powers: legislative, executive or judicial, of constitutional effects of law that accompany the decisions of the Constitutional Court, involves legal consequences such as: declaring the unconstitutionality of the legislative solutions, whose unconstitutionality has been discovered in advance, when the legislative power reiterates a provision declared unconstitutional (Decision no. 1133 of November 27, 2007 in conjunction with Decision no. 472 of April 22, 2008, Decision no. 415 of April 14, 2010 in conjunction with the Decision no. 1018 of July 19, 2010, Decision no. 1394 of October 26, 2010 in conjunction with Decision no. 335 of March 10, 2011, all of them pronounced by the Constitutional Court of Romania), declaring the unconstitutionality of the decree already passed, when the Government acts as delegate legislator (Decision of the Constitutional Court no.1.257 of October 7, 2009, Decision of the Constitutional Court no. 1629 of December 3, 2009), censorship of administrative acts by courts of law in contentious administrative matters (for administrative acts of the executive power), invalidation of rulings in appeals, when courts do not comply with the effects of decisions of the Constitutional Court, or even triggering a constitutional legal conflict (Gîrleşteanu, 2012: 41-51; Carpentier, 2006: 378; Dănişor, Drăghici, 2007: 109-122; Eleftheriadis, Nicolaïdis, Weiler, 2011: 673-677).

Relations between the High Court of Cassation and Justice and the Court of Justice of the European Union

The High Court of Cassation and Justice cannot be presented completely unless one looks at its relation with the Court of Justice of the European Union, both courts having, for that matter, a particular importance both for the national legal system and for the European legal system. The Court of Justice of the European Union is the judicial institution of the European Union, also known as the "Court of Justice". It is "an institution that ensures compliance with the European law" (Rusu, Gornig, 2009: 83) and decides on issues of constitutional or administrative nature (Sack, 2001: 77), being primarily designed to examine the legality of measures adopted at European level and to ensure interpretation and consistent application of the European law in all Member States (Streinz, 2003: 186-192). That court is, in fact, the ultimate tool for the interpretation of

Community law, it is binding for national courts, and its decisions enjoy the *res interpretata* effect.

But the decisions of the Court of Justice in Luxembourg are binding only with regard to the interpretation of European law provisions, without being able to create new regulations. But the European Court jurisprudence, especially the previous one, cannot ignore the influence of the founding treaties, binding on Member States. Moreover, the hybrid nature of the European law requires the Court of Justice to eliminate certain loopholes, at the same time developing the European law. Hence, it follows the law creating character of the jurisprudence of this institution. However, the legal order of the European Union, although integrated into the national legal systems of the Member States, remains independent of the national legal order. Consequently, the Court of Justice of the European Union will not be able to enact national regulations and it does not have jurisdiction to review the legality of an act or domestic measures and has no duty to interpret national law (Munteanu, 1996: 270), its legal authority being limited to the interpretation and application of the European law.

Also, a characteristic of the jurisprudence of the Court of Justice is that it avoids relying on customary law to substantiate judgments. Although in public international law, the customary law is "a fundamental source of law" (Miga-Beşteliu, 2005: 681), in European Union law, it is "quasi-nonexistent" (Fuerea, 2003: 150), although it is not expressly denied (Ostertum, 1996: 115). As regards the legal force of the legal precedent, early jurisprudence did not make references to other judgments, delivered in similar cases, which is explained by the fact that, at the beginning, the organization and functioning of the European Communities were based mainly on the principles of the European continent system, which does not recognize jurisprudence as a source of law. But in time, under the influence of common-law system, and from the need of expediency of the Court activity, its jurisprudence has undertaken some concepts specific to common-law system and thus it began to make references and even cite its previous jurisprudence.

Romania, Member State of the European Union, since January 1, 2007, has enlarged its focus on legal matters, as a result of the influence of the European Court of Human Rights jurisprudence and the Court of Justice of the European Union jurisprudence on the national courts jurisprudence and even on national legislation. In this context, the High Court of Cassation and Justice has a specific role, extremely important, resulted from its status within the legal system at national level, reported to the demands of the European integration.

Regarding the relations between the Romanian legal system, which is led by the High Court of Cassation and Justice and the Court of Justice of the European Union, as the jurisdiction of the European Union, they are governed by the rules established by the Treaty of Lisbon, the statutes of the two courts, as well as their regulations of organization and functioning. In particular, national courts cannot ignore EU law, integrated into their own legal systems, which they are required to apply immediately, directly and with priority over the national law. The direct effect of the European law is not stipulated in the Treaties, however this has been established by the Court of Justice in Van Genden Loos case. Moreover, the Court of Justice has also held that if, during proceedings before the national court, the parties fail to issue a claim based on provisions of Community law, the national court must enforce Community regulations *ex officio*, provided that they have an impact in solving that particular case (Case C-312/93, Peterbroeck vs. Van Campenhout & Co.). The means by which the actual cooperation between these institutions is realised, one of national law and the other of European Law, is the institution

of the preliminary question that can be addressed to the Luxembourg Court by national courts, thereby ensuring cooperation between the union judge and the national magistrate. In this context, the High Court of Cassation and Justice has the right, at any time, to request the Court of Justice a "preliminary ruling", and this right turns into obligation when it is actually the court of last resort and if a matter of interpretation or validity has been invoked before the court, either by the parties or even by the court itself, *ex officio*. The jurisprudence of the European Court is particularly important for the national judicial system, contributing to the development of interpretation and application of national law and European law equally.

The preliminary questions procedure is a mechanism which enables our supreme court to consult the Court of Justice of the European Union concerning the interpretation or validity of Community law in a pending case. Thus, this procedure is a means of ensuring legal certainty, by the uniform application of Community law throughout the European Union. The decisions effects of the Court of Justice of the European Union are reflected directly on the manner of interpretation and application of the national law which, as it is known can be applied only in close contact with the European law. According to the direct effect of EU law over the national legal systems, the internal judge is obliged to take into consideration the judgments of the Court of Luxembourg and the interpretation of the law provided by them. It follows that the decisions of the Court of Justice of the European Union enjoy res interpreted authority which is binding on national courts. This is the only European court authorized to issue interpretative judgments, genuine sources of European Law.

Also interesting is the fact that our legal system recently adopted a procedure which, although borrowed from the French law, is very similar to the preliminary question procedure addressed to the Court of Justice of the European Union: the institution of the preliminary judgment for settlement of law issues.

This mechanism falls under the jurisdiction of the High Court of Cassation and Justice and it is designed to eliminate the risk of non-unitary practice, by rule settlement of an essential question of law, appeared in a pending case before a Court of last resort. It is a prevention tool, which is designed to prevent a non-unitary practice that might arise at some point and it becomes the main unification mechanism of the national court jurisprudence. As the Court of Justice is the only interpreter of the EU law jurisprudentially speaking, providing mandatory interpretative decisions, the High Court of Cassation and Justice is the only one that can provide court decisions at national level in order to prevent (preliminary judgment) or settle (appeal in the interests of the law) inconsistent judicial practice. This shows the concern of our state to rally to the requirements of the European law and to align as much as possible national legislation and jurisprudence in relation to European law.

Acknowledgment

This work was supported by the strategic grant POSDRU/159/1.5/S/141699, Project ID 141699 co-financed by the european Social Fund within the Sectorial Operational Program Human Resources Development 2007-2013.

References:

Alland, D., Rials, S. (2003). *Dictionnaire de la culture juridique*, Paris: PUF.

Beligrădeanu, Ş. (2010). Flagranta nelegalitate, în raport cu Legea fundamentală, a refuzului Înaltei Curţi de Casaţie şi Justiţie de a aplica o dispoziţie înscrisă într-o lege în vigoare, sub cuvânt ca aceasta "înfrânge dreptul la un process echitabil" – deci este neconstituţională –, deşi Curtea Constituţională constatase constituţionalitatea acestei prevedei legale. *Dreptul*, (7), 55-56.

Benke, K. (2011). The dialogue of the Romanian Constitutional Court with the National Judiciary and the European Courts. *Diritto Pubblico Comparato ed Europeo*, (1), 283-289.

Cadiet, L., (2004). *Dictionnaire de la Justice*, Paris: PUF.

Carpentier, E., (2006). *La resolution juridictionnelle des conflits entre organs constitutionnels*, Paris: L.G.D.J.

Case of Beian vs. Romania (2008). In *Official Gazette*, (616).

Chartier, Y., (2001). *La Cour de Casssation*, Paris: Dalloz Publishing House.

Dănişor, D. C., (2007). *Constitutional Law and Political Institutions, General Theory*, vol. I., Bucharest: C. H. Beck Publishing House.

Dănişor, D. C., Drăghici, S. (2007). Comentariul Deciziei Curţii Constituţionale nr. 148 din 21 februarie 2007, *Revista de Drept Public*, (2), 109-122.

Drăganu, T. (2004). The legal effects of decisions of the Constitutional Court in the light of the Revised Constitution, *Revista de Drept Public*, (1), 76-97.

Decision no. 1133/2007 of the Constitutional Court of Romania. In *Official Gazette*, (851).

Decision no. 472/2008 of the Constitutional Court of Romania. In *Official Gazette*, (336).

Decision no. 415/2010 of the Constitutional Court of Romania. In *Official Gazette*, (294).

Decision no. 1018/2010 of the Constitutional Court of Romania. In *Official Gazette*, (511).

Decision no.1394/2010 of the Constitutional Court of Romania. In *Official Gazette*, (863).

Decision no. 335/2011 of the Constitutional Court of Romania. In *Official Gazette*, (899)

Decision no. 838/2009 of the Constitutional Court. In *Official Gazette*, (758).

Decision no. 1222/2008 of the Constitutional Court. In *Official Gazette*, (28/2010).

Duţu, M. (2012). *History of the High Court of Cassation and Justice of Romania*, 2nd edition, revised and enlarged, Bucharest: Universul Juridic Publishing.

Eleftheriadis, P., Nicolaïdis, K., Weiler, J.H.H. (2011). Foreword: The Changing Landscape of European Constitutionalism". *International Journal of Constitutional Law*, vol. 9, (3-4), 673-677.

Fuerea, A. (2003). *European Community Law. General Part*, Bucharest: All Beck Publishing.

Gîrleşteanu, G. (2012). Constitutional legal conflicts between public authorities. *Revista Transilvană de Ştiinţe Administrative*, (1), 41-51.

Lascarov-Moldoveanu, A., Fănescu, S. D. (1925). *Constitution of Romania of 1923, annotated with parliamentary debates and case law*, Bucharest: Legal Courier Publisher.

Lupaşcu, D. (2009). Appeal in the interests of the law in the new draft procedural Codes, *LESIJ* (XVI), vol. I.

Miga-Beşteliu, R., (2005). *Public International Law*, vol. I, Bucharest: All Beck Publishing.

Moldovan, L., (1989). *The organization and functioning of the judiciary in the S.R. of Romania*, Bucharest: Scientific and Encyclopedic Publishing House.

Munteanu, R., (1996). *European Law. Evolution-Institutions-Legal Order*, Bucharest: Oscar Print Publishing.

Muraru, I., Constantinescu, M. (1995). *Constitutional studies*, Bucharest: Actami Publishing House.

Ostertum, D., (1996). Gewohnheitsrecht in der Europäischen Union, Frankfurt: Peter Lang Publishing House.

Rădulescu, A., (1943). From the past 80 years of the Court of Cassation. *Analele Academiei Române. Memoriile Secţiunii Istorice, Series III,* (XXV), 863-872.

Rusu, E. I., Gornig, G. (2009). European Law, 3rd edition, Bucharest: C. H. Beck Publishing House.
Sack, J. (2001). Zur künftigen europäischen Gerichtsbarkeit nach Nizza. *European Journal of Business Law* (2), 72-86.
Streinz, R. (2003). *Europarecht*, 4th edition, Heidelberg C.F.Müller Publishing House.
Vida, I. (2004). The Mandatory Nature of the Constitutional Court Decisions regarding the courts – stability factor of the Constitution and judicial practice. *Revista Pandectele Române* (3), 192-202.
Vioreanu, D. P. (1871). Speech at the opening of the judicial year 1871-1872. In *Bulletin of the Court of Cassation.*
Weber, J.-F. (2006). *La Cour de Casssation*, Paris: La documentation Française Publishing House.

Article Info

Received: February 28 2015
Accepted: May 15 2015

RSP • No. 46 • 2015: 136-151

ORIGINAL PAPER

In Search of Common and Commons in Romanian Housing Tenure before and after EU Integration: Scrutinizing Public and Private Funding and Ownership

Anca Parmena Olimid*

Abstract
The present paper presents one of the most discussable approaches in the former communist countries' transition the common relationship between state-led investment and local development concerning the accomplishment of the aims of housing policy. The issue of housing policies and the concept of state-led/ private investment is therefore twofold: first 1. to identify the local. Furthermore, the new housing development enabled in the transition period encouraged the emergence of housing construction undergoing a major reorientation towards the growth of local state budget allocations. Considering the EU integration process, the articles argues that depending on the institutional and political attitude in a given period, the housing policy may rely on one or more compulsory measures as an important part of the implementation process at local level involving legal arrangement in favor of housing development and the measure in which *state-led investments* variable is connected to the *private investments* variables. The study points out that housing policy is positively affected by the quality of local public interest, the private sector orientation and infrastructure that under a comparative local budget analysis and implementation, public investment must either increase or decrease the demand for new homes built in the community

Keywords: *housing, policies, transition, integration, public/ private investment*

* Associate Professor, PhD, University of Craiova, Faculty of Law and Social Sciences, Political Sciences Specialization, Center of Post-Communist Political Studies (CEPOS), Phone: 0040251418515, E-mail: parmena2002@yahoo.com.

Introduction

One of the most discussable approaches in the former communist countries' transition has been the common relationship between state-led investment and local development concerning the accomplishment of the aims of housing policy. It is typical for the post-EU integration assess that housing policies streamed to accommodate state interests, citizens preferences to the local system and the related social rights (Mitu, 2015). As Hegedüs argues (2013: 3), important factors influenced the housing policy depending on the "radical transition process that has led to the dissolution of the original Eastern European Housing Model" (EEHM) related to the "hegemony of the neo-liberal economic model". While many studies have analyzed the effects of housing policy reforms on housing market creating the idea of the housing sector "lacking of finance" (Tsenkova, 2009), the existing empirical study focuses on the relationship between legal impact of regulations and public housing investment depending on the incidence of public and private funding at urban and rural levels (Dunford, Liu, Liu, Yeung, 2014: 1175-1197).

As these outputs of public interest prompted scholars to concentrate on the transition context from Eastern centrally-planned to Western-style based market, other academics explored the potential of the liberal market and investment policies in the post-EU period. To some extent, the concept of state-led investment/ funding provides legitimacy to these processes, as long as the local authorities acknowledge all local interests (Stockdale, Catney, 2014: 83-98). There have been some studies that have attempted to debate on what counts as prominent settings for the housing policy in Eastern Europe such as: the demand and supply for housing, management of housing stock, private housing built (Sillince, 1990; Molnar, 2010; Svasek, 2006; Roberts, 2003).

As we will argue, one of the key stages in the development of housing policy was provided both by national and local policy making distinguished by particularly well-focused investments. The strategic housing policy is therefore twofold: to identify the local policies priorities and to achieve an actionable implementation adapted to the local situation. Nevertheless, the new housing development enabled in the transition period encouraged the emergence of housing construction undergoing a major reorientation towards the growth of local state budget allocations. Although housing developments yields social-wide benefits, opening up local markets to housing construction and putting pressure on local authorities and investments in both budget creation and execution (Hegedüs, Tosics, Mayo, 1996).

Recognizing that for more than twenty years, exempting from income tax of Romanian legal entities investing in profit for achieving housing was the preferential legal arrangement in favor of housing development, the present article concerns the housing policy scrutinizing as a "tangible" result between regulate responsibilities and obligations of the national and local authorities and the legal procedure of public contribution in connection with the official statistics (Ilie, 2014).

The objective of the article is to scrutinize the public and private funding in both urban and rural areas and to explore the local budget based resources of investment dynamics in housing built. In particular, we consider the official resources, policy scope and investment specialization over three periods: 1990-1996 (first period); 1997-2006 (second period) and 2007-2013 (the third period). We show that state policies lead to a state-led investment convergence depending on the region of development and housing quality (Bradley, Putnick, 2012).

Usually, the overlap between common and commons is so tighten that is difficult to separate them. Depending on the institutional and political attitude in a given period,

the housing policy may rely on one or more compulsory measures as an important part of the implementation process (Georgescu, 2014: 250-261; Gherghe, 2005: 58-62). The specific transformations accompanying housing market and investment are diverse, but everywhere result in the coupling common-commons of interest-investment relationship that have evolved in the Romanian regional development accordingly to the principle of supremacy of the European law (Popescu, 2007: 93-98).

The research question concerns the perspectives of the state-led investment on a regional-level which entails the meaning of interest and development and on a local-level, in which the public investment is associated with good institutional governance of the national laws. The main question is to what degree local authorities have the budget opportunities to pursue housing policy and to what degree they take their own decisions? The regional interest forms a homogenous sample according to the particular local needs, the annual provisions, the financial activities and sources and other complementary indicators (Brown, Kulcsár, Kulcsár, Obádovics, 2005: 336-359).

Building variables and research hypotheses: 1. the level of state-led (public) investments for housing policies is highly associated to private investments (population funds); 2. the measure in which *state-led investments* variable is related to the *private investments* variable is compared using the official data provided by the National Institute of Statistics (Romania). 3. Using the comparative analysis we will evaluate the public and private funding in urban and local areas referring to the level of funding in housing based on the level of other variables. The principal argument of the article is that the housing policy initiative and its influence face social activity and involve patterns of local development and economic growth, particularly in relation to local-support programs where social housing has become highly differentiated in authorities budgets. At the same time, however, the article underlines the role of local politics in the implementation of the housing programs.

The article is divided into three sections: in the first section, we argue that the way in which the Housing Law no 114/ 1996 was drafted was to facilitate state-led investment and local development. We consider as the "homemade policy" of housing, such as "public housing" and social performance of authorities. In the second section, consideration is engaged to the way in which the Romanian Housing Law (hereinafter RHL) enables the cohesion of EU policies and initiatives in post-EU integration period. We argue that the RHL gave effects in a way which is compatible with EU policies taking into account that the law had to squarely confront both left and right governments policies posed in the post-integration period. The focus of the third section shifts to the role played by state-led investments and private funding in housing built towards a new-common local interest providing an opportunity for analysis of the relationship between fixed/ variable public costs and local leadership following a national-based strategy and the critical assessment of the electoral processes (Bărbieru, 2014: 190-200):

Prime time for Romanian Housing Law

This "homemade" housing policy opened the door to a new form of housing regulation led by the Romanian Housing Law (hereinafter RHL) no. 114/ 1996 establishing that local councils are allowed to build up housing areas exercising control over the selling price in order to enable access to the property for some categories of persons in the following order of priority: newlyweds who at the time of contracting housing, each have aged up to 35 years; persons receiving facilities at buying or building a home, according to Law no. 42/1990 republished; persons skilled in agriculture,

education, health, public administration and cults, coming to live in rural areas; other groups of persons defined by local councils (Chapter II, article 7). The regulation was designed to create a "public housing" system under which the local development would improve the performance of authorities including in-house state loan protection systems together with the state budget allocations (Chapter II, article 20). The new Romanian Housing Law was modified nineteen times since then. The response of the new law to the eviction situations and social housing tenants was to employ "the national interest" of public central or local administrations, thus leaving the social conflicts of transition unresolved and shifting them to the implementation with no safeguards such as prior notification or consultation.

This article combines the two aspects by assuming that RHL offers recommendations to assist public authorities in establishing a coherent housing policy and a regulatory framework to ensure that the Romanian housing market is ready to face the European encroachments. Clearly, serious problems of perception and implementation persisted in the aftermath of the Housing Law no. 114/1996. While acknowledging the European standards in the field, the effects of national and local measures have highlighted domestic concerns (Menghinello, De Propris, Driffield, 2010: 539-558).

The study points out that housing policy is posivitely affected by the quality of local public interest and infrastructure that under a comparative local budget analysis, public investment must either increase or decrease the demand for new homes built in the community. Second, and interrelated, the Government Ordinance 19/1994 (hereinafter GO) on public investment enhance and development of public works and housing built published in the Official Gazette (hereinafter OG) 28/1994 and actualized since by the GO 76/2001 published in the OG 540/2001determined and encouraged the public investment in residential buildings enabling them to pass through the customary adaptability of local budgets projections, here including: owned financial resources, bank loans and "account transfers from the state budget for investment in infrastructure, according to the annual budget law" (GO 19/1994, article 1).

The biggest problem faced by the construction sector towards actually achieving sustainable building and development in the last ten years has been the resource problem and the budgetary allocations for public investment. The Council of Foreign Investors in Romania (hereinafter FIC) in its "Proposals to improving public institutions activities" (hereinafter PIPIA) launched in Bucharest (December 2014) has also noticed a drastic decrease of investment actions and investments in the last year. As indicated by its name, PIPIA had a strong focus on public institutions and its objective was to stimulate and actively facilitate a transparent exchange of proposals stimulating the investment landscape in Romania. FIC also resulted in the launch of a strategic regulation relating to the current system of state-led asset management and the investment mixing-up of state/ private balance of ownership. If smaller investment from the state budget can be explained by the local authorities desire to keep the deficit under control, the role of legislator and actioner awarded to the state, must be separated as the role of the state as policy maker must consist of law and regulations governing different sectors of the economy and the role of the state as majority actioner maximizing the values of one company for its employees.

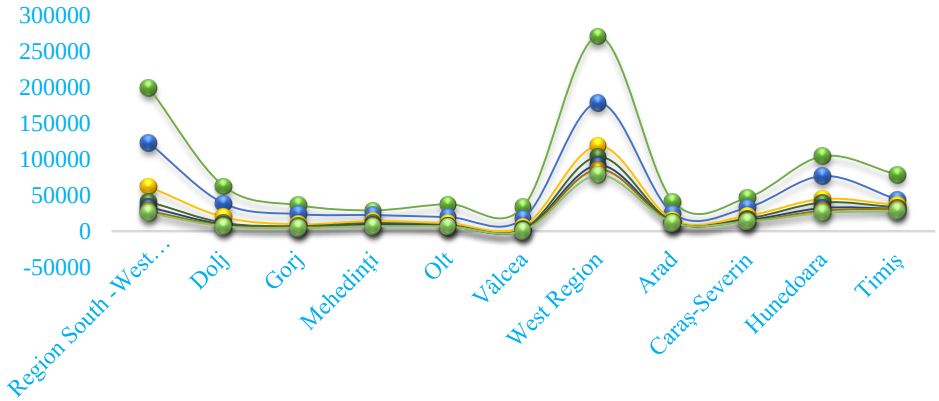
The present study therefore is aimed at assessing the impact of public investment in housing construction at urban, but also rural level in two regions of Romania: South-West Oltenia Region (hereinafter R1) and West Region (hereinafter R2). South-West Oltenia Region is located in the South-West of Romania, with an area of 29212 km^2 (7th

place among Romanian regions, 12.25% of the total area of the country). The West Region has an area of 32 034 km^2 representing 13.4% of the country).

In a first analysis, we consider the state majority ownership of dwellings taking into account the following factors: the general economic context, the housing change and the public investment. The state majority ownership of dwellings average/year was calculated by using the average of the annual values of dwellings in the R1 counties and also R2. Concurrently, for the two regions, the regions averages (hereinafter *Average R1* and *Average R2*) were compared for three periods: the first period 1990-1996, the second period 1997-2006, and the third period 2007-2013 considering the type of ownership and the source of financing (both at urban and rural level).

The results of the analysis are shown in Table 1 (Appendix) and Chart 1. The chart incorporated in the analysis for the first period 1990-1996 provides a simplified illustration of this state majority ownership of dwellings, regional planning and its effect on the county level. Although a response to regional planning has an established balance of state interest and local adjustment, such supply of state ownership of dwellings had an immediate effect on the existing level of the region's development to investors: potential investors and current developers of the region had to tolerate the high values of state majority ownership of dwellings in the region as an "expected" charge of the transition period, although R1 and R2 differ in respect to the state majority of dwellings: in the case of R1, from a total number of 198,944 dwellings in 1990 to a total number of 25,112 in 1996 and, in the case of R2, from 270,265 in 1990 to 77,939 in 1996. Two housing streams appear to exist simultaneously in the period 1990-1996 in both cases: while new housing laws and procedures appear to guarantee private property, the existing majority state ownership of dwellings moves outward, to smaller values. On the other hand, at county level, the public sector reform, based on the distinction between political and administrative devices highlighted that state majority ownership of dwellings is local level-related. However, state majority ownership in the housing sector still has a relative dominant position in both regions: in 1990 and 1996 the total amount for R1 is 397888 and 108106 respectively, for R2. Statistical data seem to support the idea that the average for the same period is still too high comparative to the poor economic development.

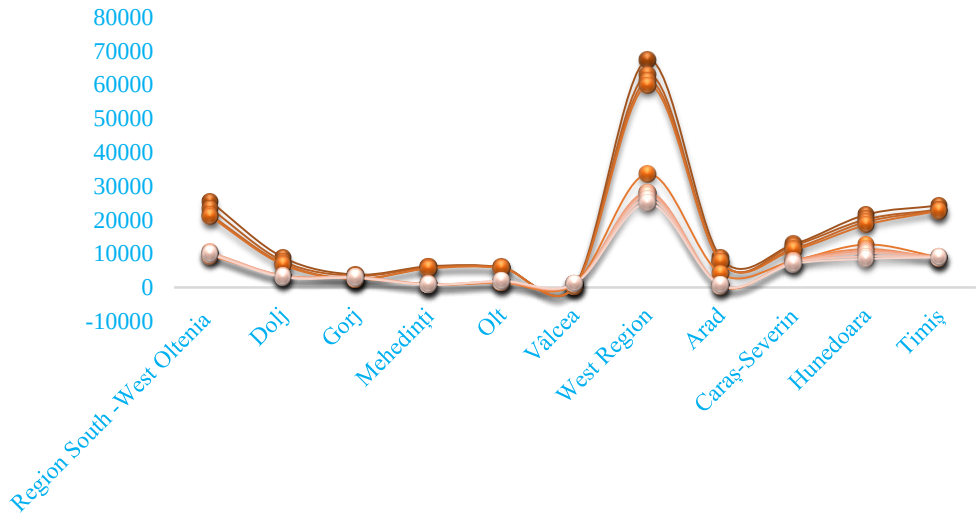
Figure 1. State majority ownership of dwellings at urban level (1990-1996)



Source: Author's own compilation based on the National Institute of Statistics database

The conditions for policy-making in the field of state investment changed considering the second period of the analysis 1997-2006. Furthermore, the public sector had to deal with the input of reforms and challenges both in the central administration, but also in the local management. The 2000's trends in state majority ownership of dwellings is essential in order to develop a more comprehensive analysis at county-level. In Table 2 (Appendix) and Chart 2, the state majority ownership of dwellings covers 1997 through 2006. According to the data, the state majority ownership of dwellings is variable indicating that it influenced county-level economic growth and development in the last 1990's and early 2000's. The minimum level for the first region, R1, is reached by Vâlcea County in 1998 and for region R2 by Arad County in 2002. A comparison of the averages for both regions shows that the values are relatively high in the context of the national housing market: for R1, the average is considered between 5070,2 (1997) and 1961,8 (2006) and for R2 between 26961,6 (1997) and 9899,4 (2006). However, the data identifies significant values of state majority ownership of dwellings which also need to be taken into account at county-level when assessing the state household. In total for R1, over years 1997 to 2006 just 25352 dwellings were estimated in 1997, 23334 (1998), 21433 (1999), 20890 (2000), 9678 (2001), 9412 (2002), 10366 (2003), 10312 (2004), 10054 (2005) and 9809 (2006). For R2, the same analysis is considering the following data: 29961,6 (1997), 25226 (1998), 24384,6 (1999), 23298,2 (2000), 13449,6 (2001), 11209 (2002), 11218,2 (2003), 19874,4 (2004), 10368,8 (2005), 9899, 4 (2006). Despite the reform trend towards open market and economic growth, state-owned dwellers are still important actors of the economy. However, the demand for local adjustment has led to a more efficiently governance in the public sector based on transparency and competiveness.

Figure 2. . State majority ownership of dwellings at urban level (1996-2006)



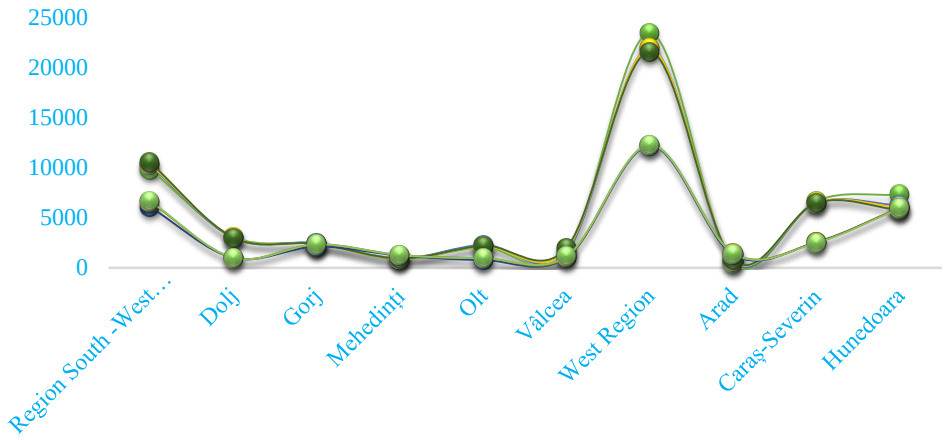
Source: Author's own compilation based on the National Institute of Statistics database

Table 3 (Appendix) and Chart 3 show that, despite privatization measures and economic expansion, state ownership continue to operate high values. Indeed, in the period 2007-2013, many county-level values rank among the highest: for R1, we count

the following data: 1959 (2007), 2042,8 (2008), 2067,4 (2009), 2099,4 (2010), 1210,4 (2011)1314,4 (2012), 1332,4 (2013) and for R2: 584,25 (2007), 5473 (2008), 5460,25 (2009). The rate of state-ownership also varies significantly across the counties (Table 3). It ranges from 9795 for Dolj county in 2007 to 1058 for Vâlcea county in 2012, both in R1 and from 23369 for Arad county to 5934 for Hunedoara county in 2013 in R2. While for R1 there are three counties with a rate of state-ownership between 2042 and 3082 in 2007, for R2 there are only two counties ranging more than 6000 for the same year.

In general, state-ownership counts the same values yearly. In addition, while for R1 there are three counties with a rate of state-ownership between 969 and 1253 in 2011-2013, in R2 there are two counties ranging more around 1275-2532 for the same period. State housing ownership is relatively high for both regions counting more than 9795 units in 2007 for the first region and 5842,25 units for R2 in the same year. Less than a half of the dwellings are counted in the first region for Dolj county in 2007, and more than a half of the dwellings are considered for Caraș-Severin in the second region in the same year. These levels of state-ownership might be the result of a causal link between poor economic performance and the institutional development showing that post-integration costs are associated with funding issues and administrative-centralized system. These transformations provided relative high levels of state ownership.

Figure 3. State majority ownership of dwellings at urban level (2007-2013)



Source: Author's own compilation based on the National Institute of Statistics database information

Although state majority-ownership before and after the integration in the European Union challenged the lack of legislation and an increasing approach of the self-built housing phenomenon, the housing market indicates the vast majority of public sector dwellings built (Clark, 2012: 110-134).

At the same time, decreasing state housing ownership, indicating a strong position of the state in the housing market is expected to have negative influences on private investment. Yet, the situation of finished dwellings, both with public and private funding, at urban level in the period 2007-2013 (Chart 4. Finished dwellings with public funding at urban level (square meters) (2007-2013) and Chart 5. Finished dwellings with public

funding at urban level (square meters) (2007-2013) is beneficial for the housing tenure analysis.

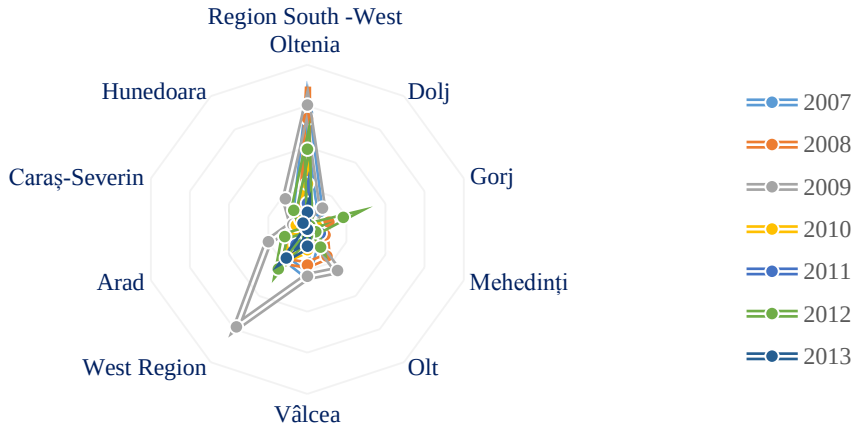
These two sets of data include also a county-level analysis both for public and private funding indicating a close relationship between the type of funding and the level of analysis (urban/ rural). In contrast to the general hypothesis, considering that extra-urbanization and housing policy realignment discourages state-ownership and funding, Chart 4 presents the results considering the funding source/ square meters. Furthermore, this relatively access to public housing is not surprising considering the lack of statistical data for both regions as follows: for R1 almost 25 per cent (meaning 11 data cases from 42 data cases) and for R2, 25 per cent (7 data cases of 28).

Although the policies and reforms reduced the state ownership, the linkages between the county-level analysis and regional level persist in the case of the two regions. Furthermore, the values of the finished dwellings with public funding create a unique housing context having effects at the city level (Meliciani and Savona, 2015: 387-416).

The new legal environment gave local authorities the possibility to access the opportunities of financing, especially social housing. Furthermore, the public sector housing faced significant challenges since 2008-2009.

However, the inequality of housing policies indicates that housing from public funds also depends on how local management performance and community planning developed in the developing regions (Grimes and Aitken, 2010: 325-353). The data also provides that the number of dwellings with public funds varies between the counties of the same region from 56489 in 2007 for R1 to 17363 in 2013 for R2. At the same time, the dwelling stock with public funding at urban level in selected regions varies according to the scale of residence at county level from 60400 for R1 in 2009 to 23945 in 2012 for R2 and from 22006 in 2010 to 38897 in 2012.

Figure 4. Built surfaces of finfished dwellings with public funding in the urban area (square meters) (2007-2013)



Source: Author's own compilation based on the National Institute of Statistics database information

Despite these improvements in the public sector, in the rural dwellings sector structural inadequancies and standards are disproportionely evaluated for the two regions. Regionally, more than 56489 rural housing were built in 2007 in R1 and almost half of this in 2010; 8235 m^2 were constructed for R1 in 2013 and more than 8200 m^2 in the same year for R2. The problem of less rural housing is deteriorated in the years where we have no official data (for R1, 10 cases and for R2, 7 cases).

The cost of rural housing with state-led investment was often overlooked when considering the local economic opportunities and the housing demand at lower prices. Furthermore, the rural spatial patterns for the South-West Region and West Region reflects the changing structure of the population and the migration phenomenon in the countryside.

One other important factor reflects the large-scale changes of rural areas according to the economic and socio-cultural impact of the European integration and the subsequent increase of social differentiation. The great challenge in this period was to construct rural housing in order to meet the real changes that occured in the West in the rural space: new types and new approaches to rural and regional space in both regions, state-led investment, progressive industrialism and the uncertainty of the regional funds arena.

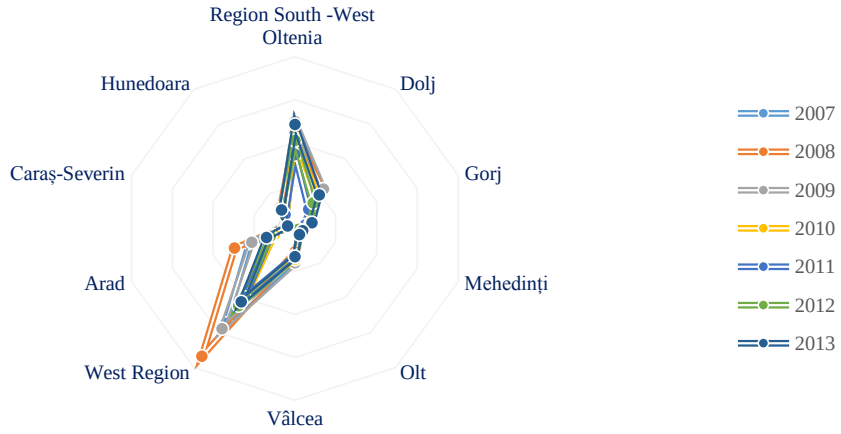
These new demands realigned the understanding of state-led interest and investment between 2008 and 2010 (from a total of 53887 m^2 built in 2008 in R1 to 17760 m^2 built in R2 in 2010). Moreover, these new experiences meant that the rural housing had to adapt to a new rural area meeting state ownership, rural residency and household living conditions. In the latter case, the regional impact is magnified in the case of Gorj County (in 2010 just 4851 m^2 were built with public funding).

For the private funding at urban level, between 2007 and 2013, as a result of ongoing transformations in the structure of the society and the integration to the European Union, the housing market experienced the challenges of the European programs and policies and the development of a post-integration market strategies with more civil building activity.

The new housing estates created the proper environmental aspects for the new living-style and the improvement of the urban stock of buildings in small communities (Ziebarth, Prochaska-Cue and Shrewsbury, 2010). Between 2007 and 2013, for R1 more than 1.530.000 m^2 were built and for R2 more than 1.750.000 m^2 were built in the same period. Although the state majority ownership of dwellings remains a significant player in the housing market, the average of square meters for the six counties in the urban areas of R1 is around 255.900 m^2 built / county and for R2 is 437.500 m^2 built / county. The ratio between R1 and R2 is just 0,58.

This led to an increase in the number of square meters built in the case of the West Region in the urban area from 189.324 m^2 built in 2010 to 211.988 m^2 built in 2013. Chart 5 shows that the urban landscape for both regions is polarized for all counties, with a "decreasing middle period" between 2010 and 2012. In absolute terms, the decrease in built-up square meters between 2010 and 2012 in both regions shows a new spatial arrangements at county level accounted for nearly 40 percent of the total urban area. The West region was the fastest-growing number of square meters built between 2007 and 2013 and the densest county urban areas were Arad and Timiş.

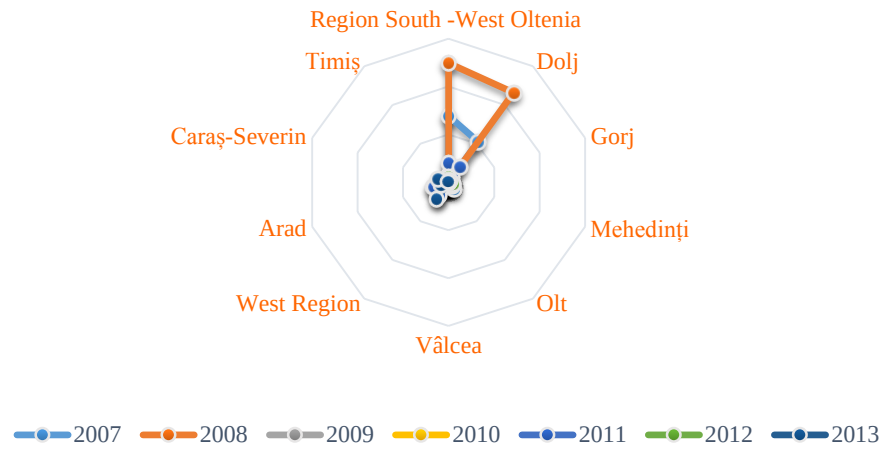
Figure 5. Built surfaces of finished dwellings with private funding in the urban area (square meters) (2007-2013)



Source: Author's own compilation based on the National Institute of Statistics database information

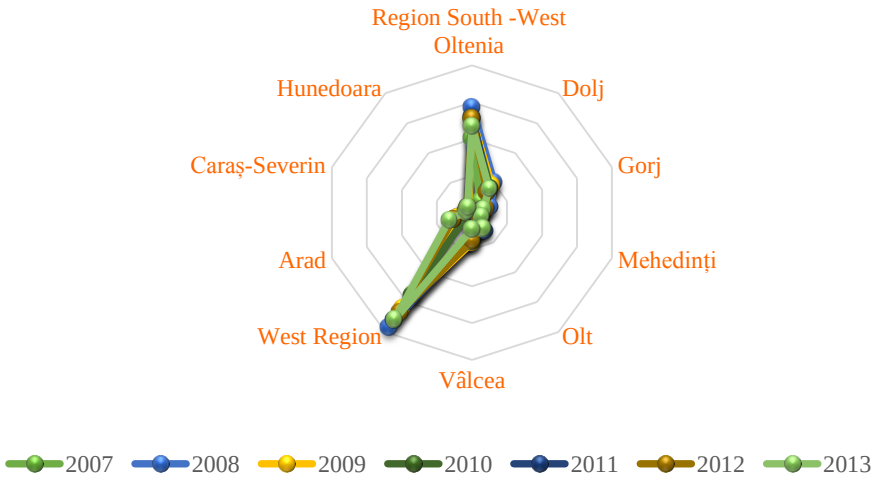
After the EU integration, the government housing policy has considerably encouraged new constructions, although if one takes into account the economic crisis, these developments easily provide the true point in the evolution of the dwelling construction with public/ private funding in the rural area. However, in 2007, in both regions more than 13.800 m^2 were built and in 2013 around 4.800 m^2 were built. The period 2007-2010 is considered to have a great impact for the rural area, in terms of both direct state-led investment from central government and local authorities and from a social and economic perspective of built surfaces (Murdoch, Lowe, 2003). In the same period, the public funding in housing construction (as built surfaces in terms of square meters) was considered as one of the central issues on the national housing policies at rural level derived from four factors: 1. the low level of employment mobility, 2. the local policy challenges, 3. the changing social and economic circumstance and 4. the initiatives aimed at supplying the planning of housing (see Chart 6). The Dolj County is the only county to see a relative constant growth in the built surface of finished dwelling with public funding for the rural area in the period in the region R1, and Arad County in the second region, R2. These three axes of public funding in the rural area – central agenda, local interest and public investment – have operated to provide the rural planning and development in both regions. This generic presentation of public funding in rural areas shows that the planning policies in the countryside have provided a series of snapshots reflecting upon the rural economies and rural housing investment (Chapman, Murie, 1996: 156-170). Despite these differences, all counties in both regions have a comprehensive housing policy expending the private funding – rural housing provisions. The overview of the private funding in the rural area between 2007-2013 contributed to a less entrenched state role in the housing policies and investment and a growing construction constraint for social planning (see Chart 7).

Figure 6. Built surfaces of finished dwellings with public funding in the rural area (square meters) (2007-2013)



Source: Author's own compilation based on the National Institute of Statistics database information

Figure 7. Built surfaces of finished dwellings with private funding in the rural area (square meters) (2007-2013)



Source: Author's own compilation based on the National Institute of Statistics database information

In conclusion, although the level of regional level for which national data statistics are available makes possible to perform a complete comparison before and after the RHL adoption and the data obtained for the two regions appear to be a reasonably good model for the Romanian housing area. Concurrently, decreasing rates of state majority ownership of dwellings in both regions are likely to be caused by the transition dimension of housing change and the volatility generated by policies of private investment. The rates of state majority ownership boosted in the first years of transition, while lower rates were registered after the integration in the European Union. In conclusion, to explain this phenomenon, a *state ownership majority of dwellings paradigm* is observed. According to this theoretical approach, the need for state ownership was continuously updated depending on the central/ local decision-making processes and the urban/ rural development planning. Based on this state majority ownership paradigm, the positive developments in defining the new public policies settings become the useful tools for the regional planning and the regional scrutinizing of housing policies.

References:

Bărbieru, M. (2014). The electoral policy in 2012: the local and parliamentary elections from Dolj County (Romania). *Revista de Ştiinţe Politice. Revue des Sciences Politiques*, (42), 190-200.

Bradley, R. H., Putnick, D. L. (2012). Housing Quality and Access to Material and Learning Resources Within the Home Environment in Developing Countries. *Child Development*, (83), 76–91.

Brown, D. L., Kulcsár, L. J., Kulcsár, L, Obádovics, C. (2005). Post-Socialist Restructuring and Population Redistribution in Hungary. *Rural Sociology*, (70), 336–359.

Chapman, M., Murie, A. (1996). Full of Eastern Europe – understanding housing privatization in post-socialist countries. *Review of Urban & Regional Development Studies*, (8), 156–170.

Clark, S. L. (2012). In Search of Housing: Urban Families in Rural Contexts. *Rural Sociology*, (77), 110–134.

Dunford, M., Liu W., Liu Z, Yeung G. (2014). Geography, trade and regional development: the role of wage costs, exhange rates and currency/ capital movements. *J Econ Geogr*, 14 (6), 1175-1197.

Georgescu, C. M. (2014). Interpreting Continuity and Change in Post-Communist Policy-Making: Applying the New Historical Institutionalist Approach to the Study of Public Organizations. *Revista de Ştiinţe Politice. Revue des Sciences Politiques*, (41), 250-261.

Gherghe, C. L. (2005). The Defense of Human Rights in the European Union. *Revista de Ştiinţe Politice. Revue des Sciences Politiques*, (8), 58-62.

Grimes, A., Aitken, A. (2010). Housing Supply, Land Costs and Price Adjustment. *Real Estate Economics*, (38), 325–353.

Ilie, M. C. (2014). Re-Scaling Territories and Borders: Regional Claims and Local Powers in Romania in the Mid-20th Century Period. *Revista de Ştiinţe Politice. Revue des Sciences Politiques*, (44), 203-212.

Hegedüs, J., Tosics, I., Mayo, S. K. (1996). Transition of the housing sector in the East Central European Countries. *Review of Urban & Regional Development Studies*, (8), 101–136.

Hegedüs, J. (2013). The Transformation of the Social Housing Sector in Eastern Europe. In József Hegedüs, Martin Lux, Nóra Teller, Social Housing in Transition Countries, New York: Taylor & Francis.

Meliciani, V., Savona, M. (2015). The determinants of regional specialisation in business services: agglomeration economies, vertical linkages and innovation. *J Econ Geogr*, 15 (2), 387-416.

Menghinello, S., De Propris, L., Driffield, N. (2010). Industrial districts, inward foreign investment and regional development. *J Econ Geogr*, 10 (4), 539-558.

Mitu, N. E. (2015). Taxation policies: Evidence from Flat Tax vs. Progressive Tax Pathways, *Revista de Ştiinţe Politice. Revue des Sciences Politiques*, (45), 200-210.

Molnar, V. (2010). In Search of the Ideal Socialist Home in Post-Stalinist Hungary: Prefabricated Mass Housing or Do-It-Yourself Family Home? *Journal of Design History*, (23), 61-81.

Murdoch, J., Lowe, P. (2003). The preservationist paradox: modernism, environmentalism and the politics of spatial division. *Transactions of the Institute of British Geographers*, (28), 318–332.

Popescu, I. O. (2007). Contribution of European Court of Justice to the principle of supremacy of EC law. *Revista de Ştiinţe Politice. Revue des Sciences Politiques*, (13), 93-98.

Roberts, K. (2003). Change and continuity in youth transitions in Eastern Europe: Lessons for Western sociology. *The Sociological Review*, (51), 484–505.

Stockdale, A., Catney, G. (2014). A Life Course Perspective on Urban–Rural Migration: the Importance of the Local Context. *Popul. Space Place*, (20), 83–98.

Svašek, M. (2006). Postsocialism and the Politics of Emotions. In *Postsocialism: Politics and Emotions in Central and Eastern Europe*, Oxford: Berghahn.

Tsenkova, S. (2009). Housing Policy Reforms in Post-Socialist Europe: Lost in Transition, Heidelberg: Physica-Verlag Heidelberg.

Ziebarth, A., Prochaska-Cue, K., Shrewsbury, B. (1997). Growth and Locational Impacts for Housing in Small Communities. *Rural Sociology*, (62), 111–125.

Appendix:

Data statistics source: National Institute of Statistics (database) (: No official data). Retrieved from: http://statistici.insse.ro/shop/.

Table 1. State majority ownership of dwellings at urban level (1990-1996)

Year / Region/ County	*1990*	*1991*	*1992*	*1993*	*1994*	*1995*	*1996*
Region South-West Oltenia	198944	122438	61962	40913	33654	28100	25112
Dolj	62474	38642	19710	11498	9471	7768	6701
Gorj	35955	23780	9713	7031	5311	5255	4589
Mehedinți	28952	22496	14358	11218	9594	7210	6718
Olt	37645	19749	11171	8286	7381	6687	6368
Vâlcea	33918	17771	7010	2880	1897	1180	736
Average R1	39788,8	24487,6	12392,4	8182,6	6730,8	5620	5022,4
West Region	270265	178289	118859	103299	91844	85789	77939
Arad	41076	24628	15712	12791	12229	11963	11369
Caraș-	46983	33232	21732	17731	15775	14096	13389
Hunedoara	104068	76714	44982	39764	32430	28511	25237
Timiș	78138	43715	36433	33013	31410	31219	27944
Average R2	108106	52161,8	47543,6	41319,6	36737,6	34315,6	31175,6

Table 2. State majority ownership of dwellings at urban level (1996-2006)

Year / Region/ County	*1997*	*1998*	*1999*	*2000*	*2001*	*2002*	*2003*	*2004*	*2005*	*2006*
Region South-West Oltenia	25351	23334	21433	20890	9678	9412	10366	10312	10054	9809
Dolj	8839	7682	7028	6698	3510	3272	3446	3375	3181	3043
Gorj	3787	3408	2472	2516	2802	2695	3152	3052	2985	2816
Mehedinți	6259	5960	5734	5609	847	907	944	864	796	816
Olt	5977	5867	5817	5710	1392	1447	1675	1811	1895	1944
Vâlcea	489	417	382	357	1127	1091	1149	1210	1197	1190
Average R1	5070,2	4666,8	4286,6	4178	1935,6	1882,4	2073,2	2062,4	2010,8	1961,8
West	67404	63065	61172	59804	33639	28101	28156	27245	26156	24875
Arad	8792	7565	7555	7553	4072	325	649	605	575	607
Caraș-	12779	12326	11036	7919	7889	7732	7511	7393	6925	6672
Hunedoar	21570	20165	19406	18531	12719	11312	10769	10120	9160	8412
Timiș	24263	23009	22754	22684	8929	8575	9006	9009	9028	8931
Average R2	26961,6	25226	24384,6	23298,2	13449,6	11209	11218,2	10874,4	10368,8	9899,4

Table 3. State majority ownership of dwellings at urban level (2007-2013)

Year / Region/ County	*2007*	*2008*	*2009*	*2010*	*2011*	*2012*	*2013*
Region South-West Oltenia	9795	10214	10337	10497	6052	6572	6662
Dolj	3082	2972	3040	3000	969	984	980
Gorj	2409	2451	2383	2386	2107	2328	2327
Mehedinți	842	929	915	912	1201	1253	1251
Olt	2042	2286	2164	2187	761	949	946
Vâlcea	1420	1576	1835	2012	1014	1058	1158
Average R1	1959	2042,8	2067,4	2099,4	1210,4	1314,4	1332,4
West Region	23369	21892	21841	21517	12149	12238	12247
Arad	474	552	728	758	1275	1419	1401
Caraș-Severin	6672	6457	6490	6467	2570	2532	2489
Hunedoara	7291	6216	6015	5737	5966	5987	5934
Timiș	8932	8667	8608	8555	2338	2300	2423
Average R2	5842,25	5473	5460,25	5379,25	3037,25	3059,5	3061,75

Table 4. Built surfaces of finfished dwellings with public funding in the urban area (square meters) (2007-2013)

Year / Region/ County	2007	2008	2009	2010	2011	2012	2013
Region South-West Oltenia	56489	53887	60400	22006	12488	38897	8235
Dolj	10446	:	12583	:	865	2087	:
Gorj	7119	11065	:	4851	:	18340	:
Mehedinți	9134	9069	:	:	6549	4344	:
Olt	7227	16289	24826	7141	:	10855	:
Vâlcea	22563	17464	22991	10014	5074	3271	8235
West Region	17727	19220	58670	17760	9384	23945	17363
Arad	:	7689	19985	5507	:	11632	:
Caraș-Severin	:	4377	7517	5689	:	:	:
Hunedoara	9451	4223	18195	5469	3086	11219	3632
Timiș	8276	2931	12973	1095	6298	1094	13731

Source: National Institute of Statistics (: No official data)

Table 5. Built surfaces of finished dwellings with private funding in the urban area (square meters) (2007-2013)

Year / Region/	2007	2008	2009	2010	2011	2012	2013
Region South-West	238933	221591	248215	208849	171464	204825	241528
Dolj	111563	112328	113085	89981	54633	72850	96344
Gorj	27628	27687	27068	19792	25045	39003	41902
Mehedinți	9990	8055	7638	10774	11542	8476	19106
Olt	15827	18886	20147	16531	17438	17643	17960
Vâlcea	73925	54635	80277	71771	62806	66853	66216
West Region	273450	368185	288614	189324	198612	222619	211988
Arad	111778	147985	105732	50588	58995	60284	69151
Caraș-Severin	10378	18873	25705	18768	19219	21238	17345
Hunedoara	34255	58060	52651	34809	38568	53747	52380
Timiș	117039	143267	104526	85159	81830	87350	73112

Table 6. Built surfaces of finished dwellings with public funding in the rural area (square meters) (2007-2013)

Year / Region/ County	2007	2008	2009	2010	2011	2012	2013
Region South-West Oltenia	13851	24877	1637	967	3970	1136	514
Dolj	10479	23126	1284	640	3970	:	426
Gorj	:	:	:	94	:	170	:
Mehedinți	1032	50	:	:	:	966	88
Olt	1890	1102	:	54	:	:	:
Vâlcea	450	599	353	179	:	:	:
West Region	:	1037	:	3658	3222	280	4293
Arad	:	1037	:	3424	3222	280	1740
Caraș-Severin	:	:	:	:	:	:	2363
Timiș	:	:	:	234	:	:	190

Source: National Institute of Statistics (: No official data)

Table 7. Built surfaces of finished dwellings with private funding in the rural area (square meters) (2007-2013)

Year / Region/	2007	2008	2009	2010	2011	2012	2013
Region South-West	203168	286721	257296	254552	260641	255892	234863
Dolj	38220	102386	92077	84441	78354	69959	80096
Gorj	31031	52772	29702	36573	31176	39734	32294
Mehedinți	19641	19389	10720	12447	20301	23312	26975
Olt	48782	48580	43730	43209	59655	47348	51134
Vâlcea	65494	63594	81067	77882	71155	75539	44364
West Region	272895	384278	320043	277857	359772	332793	356880
Arad	23331	40592	40795	11233	52587	52670	64544
Caraş-Severin	11226	11843	13757	10786	12761	18012	16108
Hunedoara	12956	19014	16988	20243	19817	18585	19251
Timiş	225382	312829	248503	235595	274607	243526	256977

Article Info

Received: March 12 2015
Accepted: May 26 2015

RSP • No. 46 • 2015: 152-164

ORIGINAL PAPER

Catching-Up Axiological Education: Charting the Present Educational System

Florentin-Remus Mogonea*
Florentina Mogonea **

Abstract
The present study proves the importance of education in the human becoming, in shaping and developing his personality. The postmodern human being, seen as the result of the interaction of heredity – environment – education, presents, at a low level, what the history of human culture and civilization describes, at a high level, as the human evolution. The aim of the present research is to highlight the role of education in shaping and developing the personality of the post-modern human being, especially on the moral-axiological dimension. Nowadays, the axiological education is less studied in the context of the rapid changes which take place in the society. The target group, which allowed us to prove certain ideas and theses on the importance of (present) postmodern education, especially in a society marked by diversity and cultural, religious, axiological eclecticism, was made up of students – future teachers, from different specializations of the University from Craiova and "Babeș-Bolyai" University from Cluj-Napoca. We have intended to identify the role of these future teachers inmoral-axiological shaping of youngsters. The reason for choosing this target group has been that these students will be the ones who will form and shape personalities according to the inherited cultural heredity and/or acquired through education. The methodology of the present research was made up of an opinion questionnaire and a (focus-group) interview, which were applied to students. We have looked for the students' opinion on the role and place of the postmodern axiological education seen as a result of the blending between the inherited and acquired cultural heredity.The results highlighted a certain relativism regarding the judgment and interpretation of both modern and classical values. We have also noticed a tendency of expanding the national axiological values towards the universal ones.

Keywords: *cultural heredity, postmodernism, values theory, values/non-values, axiological system*

* Associate Professor, PhD, University of Craiova, Department of Teachers Training, Phone: 0040251422567, Email: fmogonea@yahoo.com.
** Lecturer, PhD, University of Craiova, Department of Teachers Training, Phone: 0040251422567, Email: mogoneaf@yahoo.com.

Postmodernism and values theory. Educational implications

The postmodern human being appears as a product of the cultural inherited heredity (without ignoring the biological side) to which the one acquired throughout his postmodern existence is added. The present culture and civilization are almost equally indebted to the culture and civilization of the Antiquity, Middle Ages, Renaissance, Modern Ages (from the Enlightenment to the Industrial Revolution), Modernity and even Post-modernity. The postmodern human being lives in a spiritual maze based on thousands of years of human culture and civilization.

Postmodernism has emerged as a reaction to modernism, being characterized by dualism, namely turning back to the past, on the one hand, and transcending the present, on the other (Jencks, 1987). As U. Eco (1994) stated, postmodernism acknowledges the past but cannot destroy it because its destruction would be equivalent to silence; for this reason, the past must be revived, but using irony and not in an innocent way. The paternity of the term is attributed to J. Fr. Lyotard, who published in 1979, *La Condition Postmoderne* (The postmodern condition, 1984), but his precursors are considered to be Kant, Hegel, Nietzsche, Kierkegaard and Heidegger. The attempts to define postmodernism and postmodernity are numerous. Some authors, though, (Aylesworth, 2005) are skeptical when it comes to the possibility to define postmodernism as it is considered a truism, a set of critical, strategic and rhetorical practices that use concepts such as difference, repetition, tracks, simulacrum and hyperreality, whose aim is to destabilize other concepts such as presence, identity, historical progress, epistemic certitude and univocalness of meaning.

But what kind of society is the postmodern society? Is it a postindustrial society (a postindustrial economy, respectively) (A. Touraine), a postcapitalist society (P. Drucker), an informational society (M. Castells), a digital society (N. Negroponte, D. Tapscott), a knowledge-based society (L. Thurow), a consumption society (D. Lyons), a service-based society (O. Giarini), a transparent society (G. Vattimo), or an open society (G. Debord), placed in a globalization process (Sandu, 2010). Slattery (Ulrich, 2007: 18) considers that postmodernism/postmodernity can be understood from at least 11 different perspectives: historical period following the industrial and technological modern epoch; esthetic style in art and architecture, being characterized as eclectic, kaleidoscopic, ironic and allegoric; social criticism unifying social and economic organizations such as liberalism and communism; philosophical movement which aims at pointing out the internal contradictions of metanarrations by deconstructing the modern notions of truth, language, knowledge and power; cultural analysis criticizing the negative impact of new technologies on both the human psyche and environment while promoting the building of an ecologically supported global community; a radical eclecticism and a bi-vocal speech that accepts and critiques at the same time, because the past and the future are both constructed and deconstructed; a movement whose purpose is beyond the materialistic philosophy of modernity; acknowledgement and valuation of the other especially in terms of race and gender; historical period marked by a change of paradigm transcending the fundamental proposals, operation models and cosmology of the previous modern epoch; ecological perspective on the world tending to pass beyond the modern obsession of dominance and control; post-structural movement in terms of decentralization and orientation towards extremities, edges and not towards the center like in the case of modernism.

Preoccupied with outlining the main characteristics of postmodernism, many authors (Leicester, 2000; Macavei, 2001: 16-19; Cheek, Gough, 2005; Ishiyama,

Breuning, 2011; Ekanem, Esikot, 2013) have elaborated listings of characteristics, mostly in comparison with the particularities of modernism (apud Mogonea, Mogonea, 2014). Thus, *modernism* has the following specific characteristics: rationality, logical rigor, strict delimitation, determination, certitude, specific style, conformism, linearity, control, fixity, permanence, imitation, continuity, centralization, unity, convenience, certitude, and cultural nature. Metanarrations, meta-speech acts, as well as metacritics are characteristic to the modern paradigm.

On the other hand, *postmodernism* is characterized by: alternatives, variants, giving up limits, borders, indetermination, ambivalence, mixture of styles, dispute, rebellion, mobility, ephemeral and immediate nature, originality, discontinuity, decentralization, fragmentation, tolerance, incertitude, skepticism, intercultural relation, different perspective of each individual on the systems of values, disappearance of the unique moral, eclecticism, valuation of multiple perspectives, indetermanence (a concept formed, according to Ihab Hassan's opinion, from indetermination and immanence). Postmodernism capitalizes on the post-analytical and post-structural thinking which is not confident in the possibility of valorizing metanarrations. As a cultural paradigm, the main characteristic of postmodernism is deconstruction (Sandu, 2010). Also, it promotes reflection and playful practices (Usher, Edwards, 2003). Postmodernism states that significances are socially constructed with the possibility ofmultiple realities coexisting simultaneously (Popkewitz et al; Wallace, Wolf; Giddens, Kieran, 2006). In the educational field, there are authors (Joiţa, 2009) who consider postmodernity as an essential paradigm for the evolution of the field. Joiţa establishes, comparatively, a few characteristics of modernism/modernity and postmodernism/postmodernity, respectively, for the educational field (2009: 191). Hence, modernism has the following specific particularities: priority of rigorous information, objectivity of interpretations, domination of the experiment, predominance of quantitative interpretations, elaboration of theories, especially deductive ones, excessive promotion of conceptions without their complex verification which is specific to the field. On the other hand, postmodernism is characterized by: orientation towards the internal specific of the field approached through intra-, inter- and transdisciplinary correlations, primary critical and constructive study of the educational practice with its typical and untypical facts and determinations, valuing subjectivity and the social, flexible approaches of different aspects, phenomena, elaboration of interpretations, multiple reflections and complex and contextual explanations.

One of the most important objectives of the current postmodern education must be the promotion of the moral education, namely the axiological education (Rajshree, 2012). Also, preparing teenagers for an intercultural society, for acceptance of diversity, opinions and ideas of the others, developing a tolerant attitude towards the others or an attitude towards the appreciation of cultural values as well as towards the understanding of social factors that help individual and social modeling, are also objectives of the present education (Haghighat, Sajjadi, Naeini, 2013). We should also mention several other topics of the postmodern education (Rajshree, 2012): promoting critical thinking, promoting research, valuing cooperation in learning,encouraging the differentiated teaching.

As a result of an analysis carried out on the Romanian learning system, Ulrich establishes several weaknesses such as (Ulrich, 2007): placing the accent on the transmission and reproduction of knowledge and not on the production and use of the knowledge by the students, rigorous disciplinary separations and poor interdisciplinary approach,limited possibilities to achieve individualized training processes, egalitarianism,

centralism,usage of local or national standards in the context of knowledge globalization, emphasis on the general qualifications, encyclopedic projection of development as expansion. Starting from one of postmodernism's characteristics, namely the decentralization one, Stan talks about the teacher's path towards the "edges" and the students' path towards the "center", that is to say the inversion of the relation between the object and the subject of education as a necessity of the present school in which, states the author, "teachers are modern and students are postmodern" (Stan, 2004). The current educational paradigms place the student in the center of the instructive-educational process, namely the learning activity. On the other hand, although it no longer represents the "center" of power and authority, the teacher multiplies his roles in the classroom.

Tomar (2014: 52) mentions some characteristics of the present society, which are closely related to the axiological training and orientation and which can be considered significant for the Romanian society and educational system: changing the axiological system within the family, even to the nuclear/elementary one, due to the fact that parents spend less and less time with their children; the educational system promotes superficiality; the rapid evolution of technique and technology, emphasizing the importance of the material leads to a decrease of the cultural and moral standards; the negative influence of mass-media in the axiological orientation of youngsters, by means of the models and violence that it promotes and which have a negative effect on the children and youngsters; the excessive urbanisation has a negative effect on the cultural and authentic values, including here socialization.

Considering the described characteristics of postmodernism, at present, the problem of the axiological education of students is more and more debated despite the fact that we are witnessing both a mixture of these characteristics as well as the downfall of absolute values and their variation. In this respect, we remind the theory of Gergen regarding the saturated self (Ovadia, 2003), which is based on the idea that the new communication technologies that facilitate the relations between people affect perception of self-consciousness, due to a "saturation" of the individual who has been exposed to an increase in the number of social interactions, as a consequence of the rapid development of communication technologies. Gergen's theory is based on two causal relations. First of all, the progress in the field of technology has given the opportunity for many persons to be exposed to different cultural systems. Secondly, the increase in the exposure to different sets of values and ideas in these cultures has led to the development of a "postmodern self", characterized by the simultaneous increase in the number of values which are considered to be important for the individual and by the abandonment of the modernist idea according to which some universal truths can be found among many ideas and values that the individual "absorbs" from his cultural exposures. The personality of the present man has to have as essential attributes innovative potential, cultural creativity and the ability to accomplish an efficient dialogue with nature (Taranenko, 2014).

The specialists in the field of education insist on the necessity to form the axiological autonomy and competence as the latter are goals of the values education (Cucoş, 2000). Both the education and teaching must relate to principles such as: the principle of the universality of the axiological criterion, the principle of the correlation between education, self-education and permanent education, the principle of the tripartite relation individual-group-community (Macavei, 2001). Certain current educational paradigms make possible the achievement of these desiderates.We mention,within this context, the constructivist paradigm which implies construction and deconstruction, reflection, the promotion of the autonomy of both critical and creative thinking, the

acceptance of different opinions and interculturality, the stimulation of cognitive and metacognitive factors as well as of non-intellectual and personality factors and last but not least the valuation of mistakes as a source for learning (DeVries, Zan, 2005; Joița, 2006; Cook-Sather, 2008; Cubukcu, 2009).

Tomar (2014: 52-53) suggests some ways that can contribute to the axiological education of the youngsters by: involving all the members who belong to the school community (students, parents, teachers, community, other members); respecting the same value system in all that concerns the school activity, namely to harmonise the school mission with the objectives and the value system; the school politics; the behaviour of the "actors" implied in the educational field; the Curriculum and the materials for all the school subjects, the teaching – learning process, the methodologies; the school culture and the school environment; accepting and respecting the idea that a good education can be accomplished only by a good cooperation between the school and parents; taking full advantage of the real potential of each student; exploiting the students' experience and the concrete situations for learning certain values and for training the appropriate behaviour; pedagogical interventions such as: exploiting group activity, giving equal chances to all students, encouraging and motivating them, creating opportunities for building the knowledge by means of collaboration, which facilitate learning, the preoccupation for training skills, for empowering students, for gaining independence and autonomy, encouraging reflection and self-evaluation, developing a superior level of critical thinking, exploiting the methodologies which can best adapt students' possibilities and potential; developing a specific culture for each institution, based on authentic values; creating an open, flexible and creative environment, based on fundamental values; implying students in different programmes which contribute to the understanding and respecting the specific cultural values and traditions; stimulating self-discipline and the sense of responsibility, based on a strong inner motivation; developing the sense of responsibility has to be accomplished within the local, national and global context; promoting certain values such as: compassion, correctness of decisions, honesty at work; offering students the possibility to learn and to evolve by their active involvement, which meets the community needs; encouraging students to help the others to learn and to accept themselves as being different.

The training and development of personality, on the moral-axiological dimension may encounter a series of difficulties or risks confirmed by the educational practice (Dracinshi, 2012): 1. when setting up operational objectives, in terms of observable and measurable behaviors (being well known the fact that the attitudinal dimension is more difficult to be made operational); 2. when adapting the curricular contents specific to the development of the personality; 3. when choosing the strategies, the most suitable methods and techniques and the most efficient action modalities; 4. when allotting enough time in the general context of the curriculum. The axiological dimension represents an important component of the teacher's competence profile. The (post)modern society needs teachers characterized by a holistic vision over the world, by professionalism, a high personal and professional culture and whose activity is based on respect in what it concerns certain significant professional values which are universal (Bondarchuk, Pecherska, 2013).

Research methods

In order to investigate the importance of the axiological component in building the personality of the future teacher, we conducted an empirical research whose aim was

to identify some concrete ways to promote and carry out the axiological education in school.

The pursued *objectives* were the following: investigate the subjects' opinion on the importance and content of values education within the general context of stimulating all education's dimensions in order to build a harmonious personality; find out the ways to achieve the axiological education and to form the axiological competence of the young, in the general social context characterized by relativity when perceiving values; identify efficient ways in the initial training of teachers regarding the axiological education, following the analysis of the Curriculum of the Program of didactical professionalization.

The research hypotheses were the following: 1. from the perspective of the values education,the training of students as future teachers can also be a premise for the practice of didactical competences necessary for the education of teenagers, from an axiological point of view; 2. the constructivist paradigm in education promotes educational ideas and practices specific to postmodernism.

The focus group consisted of 104 students – future teachers, within the University of Craiova (Faculty of Letters and Faculty of Economic Sciences) and Babeş-Bolyai University, from Cluj-Napoca (Faculty of Psychology).

The research methods used were: a survey containing 7 items (annex 1) applied to students and a focus group interview containing 4 questions (annex 2).

The survey included closed questions with multiple-choice answers and aimed at finding out the subjects' opinion on the axiological education of teenagers, namely its importance in building personality in relation with other dimensions of education (either traditional or new ones) (items 1-2); the role of educational factors in developing the axiological competence and autonomy of teenagers (item 3); the role of the teacher in the axiological education of teenagers (item 4); sharing material values and moral values respectively, in teenagers'axiological system (item 5); the extent to which the preference for different categories of values influences the teenagers' school and professional options (item 6). The last item of the survey required students to express their opinion on the outline of postmodernism's particularities in education.

The interview guide included four questions which aimed at the following: conducting an analysis of the Curriculum of the Didactical Professionalization Program, from the perspective of the axiological education's possibilities of being achieved; suggesting several efficient ways for the training of teachers; harmonizing the educational paradigms with the demands of society; elaborating optional disciplines to achieve the axiological education.

Findings and discussions

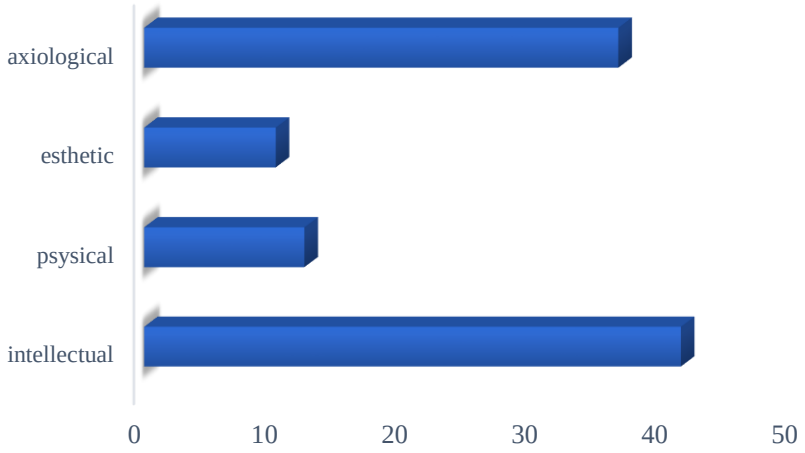
The use of the two research instruments has led to certain results.

Hence, the survey has given access to the subjects' opinion on the issue of education in school, seen from the future teachers' perspective.

The first item of the questionnaire asked the subjects to prioritize, according to their importance (4 the most important, 1he least important) the following dimensions of education: a) intellectual education; b) physical education; c) aesthetic education; d) axiological education.

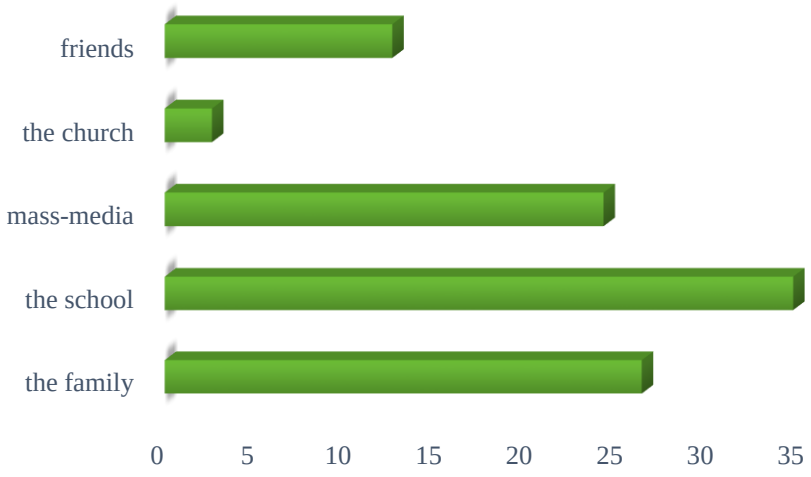
The answers given by the subjects on the first item of the survey have underlined the great significance attributed to the axiological education (being the second, after the intellectual education) as one can also notice from graph no.1.

Graph 1. The opinion of future-teachers students on the importance of the dimensions of education



The second item investigated the subjects' opinion on the importance of the education for values in shaping a harmonious personality, the response options were: a) yes; b) no; c) cannot appreciate. Most of the respondents (71%) appreciate the importance of the axiological education in the training of teachers. Regarding the influential factors, from an axiological point of view, the young, the school and the family are faced with a strong competition from mass media (graph no. 2).

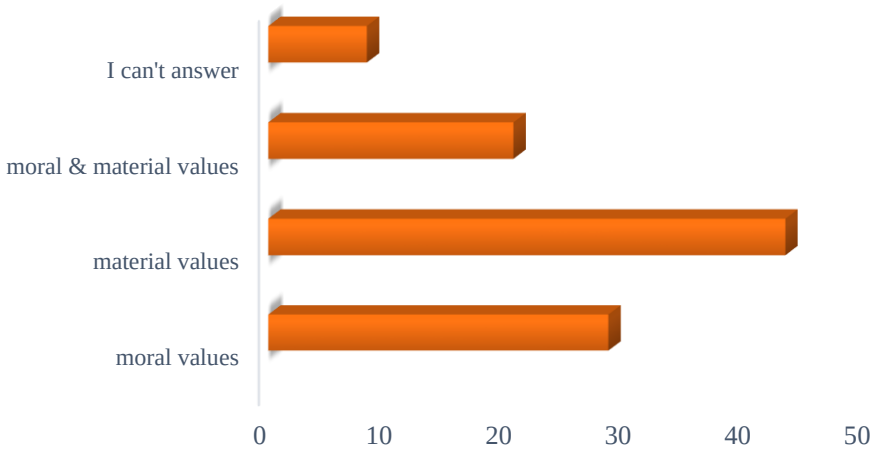
Graph 2. Students' opinion on the factors influencing the axiological education of the young



Item no. 3 asked the students – future teachers to prioritize, according to their importance (5 - the most important, 1 – the least important) the following factors which influence the axiological education of youngsters: a) family; b) school; c) mass-media; d) church; e) friends.

The answers revealed that in what it concerns the factors which influence the youngsters from the axiological point of view, school and family are strongly competed by mass-media (graph 2). Given the age period we are referring to (adolescence), the group of friends plays an important role as well. Nevertheless, the school, namely teachers, continues to account for main reference point in building one's own system of values. Regarding the question about the possibility of the teacher to decisively influence the youngsters' axiological training (with the response options: a) yes; b) no; c) cannot appreciate), most of the subjects (73%) sustained this possibility. Item no. 5 investigated the subjects' opinion on the hierarchy of the values in the axiological system of youngsters, namely: a) moral, spiritual values; b) material values; c) both categories; d) cannot appreciate. According to the opinion of a large number of students (43%), material values are more appreciated by the teenagers of our days in comparison with the moral and spiritual values (28%).

Graph 3. Students' considerations regarding the categories of values preferred by the young



Closely related to this hierarchy of values, the penultimate question asked the students' opinion on the possible relationship between the axiological system of youngsters and their school or professional option, the response options were: a) yes; b) no; c) cannot appreciate.

The answers revealed that the preference for these values influences to a great extent the teenagers' school and professional options, as we can see from the answers to the penultimate question of the survey. The subjects were also questioned on the postmodernist traits of education (item no. 7 of the questionnaire). Students' considerations on the particularities of postmodernism in education are shown in table 1.

Table 1. Students' considerations on the particularities of postmodernism in education

Characteristics	%
Appreciating diversity	86.3
Encouraging multiple interpretations	72.4
Situational, contextual learning	67.3
Promoting reflection	34.5
Capitalizing on the individuality	78.1
Eclecticism	76.6
Encouraging alternatives, variants	45.1
Deconstruction	64.8
Playful practices	21.1
Social learning	35.6

As one can notice, the characteristics considered to be representative for the spirit of postmodernism are the following: appreciation of diversity; eclecticism; encouragement of multiple interpretations, of individuality as well as of situational, contextual learning. In order to establish the significance degree of these particularities in relation to the general ones, specific to postmodernism, we employed Pearson correlation coefficient. In table 2, one can find the characteristics which obtained significant values at the 0.01 significance level.

Table 2. Values of Pearson correlation coefficient

Characteristics	Pearson correlation coefficient
Appreciating diversity	,232**
Encouraging multiple interpretations	,214**
Situational, contextual learning	,203**
Capitalizing on the individuality	,214**
Eclecticism	,212**
Deconstruction	,201**

Most of these particularities also characterize the postmodern constructivist paradigm in education. Following the interview conducted with 26 students selected from the group of 104, several considerations were expressed regarding the training of future teachers from the perspective of the axiological education. The first question of the interview guide pursued an analysis of the educational Plan of the Program for the didactic professionalization and mentioning the disciplines which can help the training of future teachers to accomplish the axiological education. The analysis of the Curriculum of the Didactical Professionalization Program pointed out the existence of limited situations, contexts and issues with respect to the carrying out of the axiological education. Except for Pedagogy I that deals with the dimensions of education (including the axiological education), there are no direct opportunities in this respect. In addition, students

experience the deficiency of the pedagogical practice in general, and in particular, as it concerns the axiological education, they feel the need for situations in which they could practice the skills specific to the didactical profession. The second question gave students the possibility to formulate certain opinions on the modalities which are considered to be the most efficient in training the teachers' ability to accomplish the education for values in school. Another question asked to the respondents was bound to the concordance between the present educational paradigms and the needs and expectations of the society. The students' answers showed a discrepancy between the two dimensions, namely between the social needs, materialized in competence profiles and educative practices, which are sometimes discrepant or uncompetitive. Of the most efficient ways for the development of teacher competence in order to achieve values education within school, students mentioned insistently the teaching models that promote situational, contextual learning. Acquiring competences is best done by putting the learner in real situations similar to those he will come across in the real world. This is one of the reasons for which students appreciated the constructivist paradigm as being one of the educational paradigms in accordance with the demands and exigencies of the society. Constructivism promotes and capitalizes on the critical thinking, reflection, situationism and contextualism as well as interdisciplinarity and transdisciplinarity, multiple interpretations, and last but not least the correlation between personal experience and the experience of the group members, which are characteristics promoted by postmodernism. Another problem taken into discussion with the students was the following: "within the context of the school-based curriculum, which are the appropriate school disciplines for the education for values?"

Students also elaborated suggestions for optional disciplines that can contribute to the education of students, in the spirit of authentic values: *Values education; My axiological system; Values and non-values in art; The kitsch and the authentic values; Classic and modern* etc. They also mentioned other means that can contribute to the development of personality on its axiological dimension: harmonizing the educational finalities with the curricular contents, from the perspective of axiological education; using certain strategies, methods and techniques appropriate for the shaping of the value system, according to the age; extra-curricular activities which promote the authentic values, correlated with the curricular ones; volunteering activities, which can stimulate the development of certain character traits and of certain social adequate attitudes; different educational partnership made between the school and community or between the school and socio-cultural institutions; organizing different contests, scientific, cultural or sports events; implying in projects or programmes related to the theme of values; implying in actions which aim to improve personal development, school and professional orientation, according to the possibilities, aptitudes and interests of the student.

Conclusions

Having initially emerged in art and architecture, postmodernism expanded into all fields of the scientific, cultural and social life. The characteristics and ideas promoted by this trend are also felt in the way education is conceived and carried out. Connected to society, education must adjust to changes that are emerging and must come up with solutions to solve crises. One of its dimensions, determined and dominated by the postmodern conception, is the axiological education. In a world dominated by eclecticism, uncertainty and diversity, the young people feel disoriented, trying to find their way in life

and build their axiological system. The current educational paradigms try to solve this problem by offering methods to prepare the young to cope with these situations.

The present study investigated the opinion of the students – future teachers on the importance of the axiological education and of training the axiological consciousness and behaviour of youngsters, according to the theory of values. The importance of this educational dimension is admitted within the present social, cultural and economical context. But students consider that the present curricula of the Program for teacher training promotes only tangentially the axiological education by a number of themes (which are not many) from the school curriculum. They formulate concrete proposals bound to the curricular options and certain curricular elements (as the educational finalities, contents or strategies), which can be improved.

The constructivist paradigm is considered to be efficient in promoting this dimension of education, by its specific procedural and actionable means, such as: shaping a specific way of seeing reality, according to the individual traits, but then made relative through the influence of the opinion of the belonging group; the implications of the non-cognitive personality factors in interiorizing the values and in creating the necessary motivation for respecting these values; practicing the specific behaviours, as a reflection of the interiorized values, by placing students in various educational situations, similar to those from the real life. These examples and suggestions represent a plea for promoting the axiological education, as an essential dimension of the (post)modern man.

References:

Aylesworth, G. (2005). Postmodernism. In *Standford Encyclopedia of Philosophy.* Retrieved from: http://plato.stanford.edu/entries/postmodernism/.

Bondarchuk, O., Pecherska, H. (2013). Changes of professional value orientations of teachers in the system of postgraduate education. *Social Welfare Interdisciplinary Approach,* 3 (1).

Cheek, J., Gough, N. (2005). Postmodernist perspectives. In Somekh, B., Lewin, C. (eds.), *Research Metods in the Social Sciences*, London: Thousand Oaks, New Delhi: SAGE Publications, pp. 302-309.

Cook-Sather, A. (2008). Returning to the Mirror: Reflections on Promoting Constructivism in Three Educational Contexts. *Cambridge Journal of Education,* 38 (2), 231-245.

Cubukcu, F. (2009). Learner autonomy, self regulation and metacognition. *International Electronic Journal of Elementary Education,* 2 (1), 53-64.

Cucoş, C. (2000). *Educaţia. Dimensiuni culturale şi interculturale*, Iaşi: Polirom.

DeVries, R., Zan, B. (2005). A Constructivist Perspective on the Role of the Sociomoral Atmosphere in Promoting Children`s Development. In Fosnot, C., (ed.), *Constructivism: Theory, Perspectives and Practice,* New York: Teachers College Press, Columbia University.

Dracinschi, M. C. (2012). Values and beliefs in social and emotional education. IJGE: *International Journal of Global Education,* 1 (3).

Eco, U. (1994). *Reflections on the Name of the Rose.* London: Minerva.

Ekanem, F. E., Esikot, I. F. (2013). Morality and Education in a Refutation of Postmodernist Idea**.** *International Journal of Education and Research,* 1 (8).

Haghighat, R., Sajjadi, S. M., Naeini, M. I. (2013). Post-Modernism Social Ethical Education (with an Emphasis on Allameh1Tabatabaei's Views): Explanation and Critic. *Journal of Education and Practice*, 4 (16), 1-12.

Ishiyama, J. T., Breuning, M. (2011). *21st Century Political Science: A Reference Handbook*, Thousand Oaks, CA: SAGE Publications, Inc.
Jencks, C. (1987). *What is post-modernism?* New York: St. Martin's Press.
Joiţa, E. (2006). *Instruirea aconstructivistă – o alternativă. Fundamente. Strategii,* Bucharest: Aramis Publishing House.
Joiţa, E. (2009). *Ştiinţa educaţiei prin paradigme,* Iaşi: Institutul European.
Kieran, J. (2006). *A Critical Theory and Postmodernist Approach to the teaching of Accounting Theory*. Faculty of Commerce, Charles Sturt University Working Paper Series no 13/06, pp. 33-36.
Leicester, M. (2000). Post-postmodernism and continuing education. *International Journal of Lifelong Education*, 19 (1), 73-81.
Lyotard, J. F. (1984). *The postmodern Condition: A Report on Knowledge*, Manchester: Manchester University Press.
Macavei, E. (2001). *Pedagogie. Teoria educaţiei*, vol. I, Bucharest: Aramis Publishing House.
Mogonea, F. R., Mogonea, F. (2014). Postmodernism and the Culture of Values. Brief Radiography Regarding the Axiological Education of Teenagers. *Revista de Ştiinţe Politice. Revue des Sciences Politiques*, (41), 155-168.
Ovadia, S. (2003). Suggestions of the postmodern self: value changes in American high school students, 1976–1996. *Sociological Perspectives*, 46 (2), 239–256.
Rajshree. (2012). Themes of Postmodern Education**.** *International Journal of Scientific and Research Publications*, 2 (12).
Sandu, A. (2010). Constructive - Postmodern Approaches on the Philosophy of Law. *Postmodern Openings*, 1 (3), 23-34.
Taranenko, G. (2014). Axiological dimensions of harmonious relations in the system "nature-man". *Canadian Scientific Journal*, (2). Retrieved from: http://csjournal.ca/wp-content/uploads/2014/12/10_Taranenko_G.pdf.
Tomar, B. (2014). Axiology in Teacher Education: Implementation and Challenges. IOSR *Journal of Research & Method in Education (IOSR-JRME)*, 4 (2), 51-54.
Ulrich, C. (2007). *Postmodernism şi educaţie,* Bucharest: EDP., R. A. Publishing House.
Usher, R., Edwards, R. (2003). *Postmodernism and education*. London and New York: Routledge.

Annex 1. Opinion survey

1. Please grade the following dimensions of education depending on their importance (4 – the most important; 1-the least important):
    a) intellectual education
    b) physical education
    c) esthetic education
    d) axiological education
2. Do you consider important the values education in developing a harmonious personality?
    a) yes
    b) no
    c) couldn't say
3. Please mention, according to their importance (5-the most important, 1-the least important),the following factors that influence the axiological education of the young:
    a) family
    b) school
    c) mass media

d) church
e) group of friends

4. Do you reckon that the teacher can decisively influence the development of the axiological education of the young?
   a) yes
   b) no
   c) couldn't say
5. In your opinion, which category of values within the axiological system is the predominant one:
   a) moral, spiritual values
   b) material values
   c) both categories
   d) couldn't say
6. The young people's school or professional options are influenced by the importance of these values:
   a) yes
   b) no
   c) couldn't say
7. Please choose the specific educational characteristics of postmodernism from the list below:

Characteristics	
Appreciating diversity	
Encouraging multiple interpretations	
Situational, contextual learning	
Promoting reflection	
Capitalizing on the individuality	
Eclecticism	
Encouraging alternatives, variants	
Deconstruction	
Playful practices	
Social learning	

Annex 2. Focus group interview

1. By analyzing the Curriculum of the didactical professionalization Program, please mention the disciplines whereby the training of future teachers can be carried out in order to achieve the axiological education.
2. Which are the most efficient ways to develop the teachers' competence in order to achieve values education within school?
3. Do you consider that the current educational paradigms are in accordance with the needs of society regarding the promotion of values?
4. In the context of the school's curriculum, what are the disciplines that you consider appropriate for the values education?

Article Info

Received: March 30 2015
Accepted: May 16 2015

RSP • No. 46 • 2015: 165-175

ORIGINAL PAPER

Migration Policies in the European Union: Espoused Perspectives and Practices-In-Use

Alexandra Porumbescu*

Abstract
The importance of the migration phenomenon in the social and economic European space rose along with the eastern expansion, freedom of movement of citizens and labor force being part of the internal European Union market, along and correlated to the freedom of movement of financial capital, products and services. The issues generated by this uprising of the international migration phenomenon required policies able to manage the continuously growing amounts of people and resources movement, both on the European scale, as well as on the national one. The aim of this article is to present current and past European approaches on international migration, as well as to estimate the way in which European citizens are affected by this policies.

Keywords: *policy*, *migration*, *mobility*, *nationality*, *citizenship*

* Assistant lecturer, PhD, University of Craiova, Faculty of Law and Social Sciences, Department of Social Sciences, Phone: 0040251418515, E-mail: alexandraporumbescu@yahoo.com.

The growing importance of migration in the socio-economic landscape of the European Union space increased with the expansion eastwards, the free movement of persons and labor force being a component of the internal market of the European Union, alongside and in conjunction with the free movement of capital, goods and services. The issues occured due to the phenomenon of international migration, which imposed at the European level, as well as within the Member States, the need to adopt uniform policies, capable of managing quantitatively significant flows of people and resources (Held et. al., 2007: 65). The human society, on a global analysis, is dynamic, and the history of the continents was marked by significant migratory movements. International migration is an extremely complex issue, which includes several types of movements of people conditioned by a number of reasons and forces with very different causes and consequences. This diversity leads to the conclusion that the determinants and consequences of international migration should be assessed in various contexts, depending on the countries and specific migration patterns involved (Zamfir, Vlăsceanu, 1993: 112).

Migration is often a result of economic and social development, being able to help develop and improve social and economic conditions, or, on the other hand, perpetuate stagnation and inequality (Rotariu, 2009: 52). These things depend on the nature of migration and the actions of governments and other stakeholders involved (Stark, 1991: 132).

Speaking of risks in the area of demography is somewhat inappropriate, because of inertia, stability and rigidity of demographic events and changes that occur and their effects are slow, displayed over time and largely predictable. The changes that have been experienced by population and demographic phenomena in economic and social transition are profound, with a strong economic and social impact, but more important is the size of prospective developments and implications (Porumbescu, 2012: 270).

The problem of national and racial minorities came out strongly in certain societies and historical periods, usually being generated by imperial governments and totalitarian regimes. In essence, the gap between minority and the dominant majority became apparent especially in the context of a struggle for power and that for promoting cultural values or acces to education in the mother tongue (Siddle, 2000: 37). Over the last few years governments and intergovernmental organisations have begun to match the rhetoric of the need to "manage" rather than "control" international migration with firm proposals for action. The first systematic attempt was that of the Council of Europe in 1998, followed by a series of Communications by the European Commission to the European Council and Parliament (Salt, 2005: 38).

The concept of *public policy* designates "interventions invested with public power authority and government legitimacy on a specific area of the society or of a territory; public policies convey content that translate into benefits and generate effects; they mobilize activities and work processes, being carried out through relationships with other social actors, wether they are individuals or communities" (Boussaguet, Jacquot and Ravinet, 2009: 197).

Proffesor and researcher Dumitru Sandu defines *migration* as "life strategy", representing "a perspective on the lasting coordination between claimed aimes and means to achieve them (...). They are rational action structures, relatively independent from the agent that adopts them" (Sandu, 1984: 29). On the other hand, Jan Szczepanski defines social mobility as "the series of phenomena that rezide in the movement of people or groups from one place to another" (Szczepanski, 1972: 215).

The world's population looks set to continue its rapid growth, rising to around 8,919 billion by 2050. Europe's share will be increasingly modest, almost halving between 2000 and 2050, while North America's will also fall. Only a small proportion of the world's population migrates in any one year, mostly within their own countries. There are no reliable statistics on the total numbers of people who move to another country during any given period, but UN estimates of numbers of people living outside their own country are around 170 million, although there is no concrete basis for this figure. What is striking about these numbers is not how many people choose (or are able to choose) to live in another country, but how few. Past Council of Europe reports have indicated that in recent years the importance of migration as an arbiter of population change has fluctuated (Salt, 2005: 6).

The countries can be classified according to the relative importance of migration and natural change in their overall growth rate for the period (Salt, 2005: 7): 1. *population loss owing to both natural decrease and net emigration*: Estonia, Georgia, Latvia, Lithuania, Moldova, Poland, Romania, Ukraine; 2. *population loss owing to natural decrease more than offsetting migration gain*: Belarus, Bulgaria, Croatia, Hungary, Serbia and Montenegro; 3. *population loss owing to net emigration offsetting natural increase*: Armenia, Armenia, FYROM; 4. *population gain owing to both natural increase and net immigration*: Andorra, Austria, Belgium, Cyprus, Denmark, Finland, France, Greece, Ireland, Liechtenstein, Luxembourg, Malta, Netherlands, Norway, Portugal, San Marino, Spain, Sweden, Switzerland, Turkey and the UK; 5. *population gain owing to natural increase more than offsetting migration loss*: Albania, Azerbaijan, Iceland; 6. *population gain owing to net immigration more than offsetting natural decrease*: Czech Republic, Germany, Italy, Russia, Slovakia, Slovenia.

Migration policies have always been a national prerogative, while flows of capital, information and goods have taken on an unprecedented dimension (globalisation). There is a major contradiction between free movement of capital, goods and services and nationals of the developed countries and the obstacles placed in the way of the movement of nationals of the less developed countries which can be seen at European, Mexican-US and Australian borders. There is also a major contradiction with the ideals of European integration, whether we are talking about the "fifteen + ten" or the "forty-four". The question of a European migration policy thus arises in the same terms as that of a "European foreign policy" or "European defence" (European Committee on Migration, 2002: 53). Since the process has been set in motion with respect to narrower but related themes (Schengen Information System, Europol, Eurodac, Eurojust, etc.), is it not time to think about establishing a European international migration agency with sufficient resources to set standards, priorities and procedures common to its members and define a genuine migration policy for an economic and demographic grouping with similar weight to the American NAFTA?

In the effort of ensuring coherence to the European Union's migration policy, the European Comission edited, in november 2011, a document called *Global aproach on migration and mobility* (European Comission, 2011: 22). This concept integrates migration, foreign affairs and development policy, aproacing the migration agenda in a coherent manner, thus creating a direct partnership relation between the European Union and third countries. The Global aproach on migration is the most consistent and solid manifestation of the tight relationship between the Justice and Internal Affairs and the Foreign Affairs fields of the European Union, defining specific means and tools by which

the Union is capable to respond to current challenges in the international environment, from the migratory perspective.

Throughout recent history, on the European level there was a constant preocupation towards identifying posible solutions to the integration problems generated by the continuously growing number of immigrants. Therefore, the Treaty on the European Union introduces for the first time in the Roma Treaty the term "citizen" along with the firm comitment, that "the Union is a Union along nations" (Duculescu, 2003: 73). The first paragraph of the 8th article of the Treaty provides for a citizenship of the Union, furthermore stating that any person who has the nationality of a member state is a citizen of the Union. According to the second paragraph of the same article, all the citizens of the Union enjoy the rights and are bound to the obligations stated in the Treaty.

One cannot know now how the external migration will affect the size of the population of working age. If the economy requires a workforce that offers superior digital declining demographic imbalances will reflect upon the entire economic and social system. The worst facet of imbalances will be the ratio of economically active population and the elderly, the funds required by the rapid growth of the latter population and financial resources that society can provide drastic reduction of the population under age work from which these resources (Toanchină, 2006: 78). The employment increase in economic activity will only be able to cover part of the potential labor shortage. The problem of attracting foreign labor should not be neglected only strategies will require decisions well weighed all aspects, to avoid negative effects. Sectors such as construction, textiles and medicine, already clear labor shortage due to migration. The citizenship represents the political and judicial relationship between a person and a state, relationship that creates mutual rights and obligations. The state exercises its sovereignity upon its own citizens even if they are on the teritory of different states (Coman et. al., 2005: 201). The concept of *European citizenship* originates in the documents of the European Council in Fontainbleau in 1984. In the first stage, only the freedom of movement was considered, but, later on, they considered that the European citizenship should also regard the granting of rights that can be exercised regardless of the frontieres or other national limitations.

After prolonged discussions and expressing various points of view regarding this matter, the European Council in Maastricht in 9-10 december 1991 stated two essential conclusions: the recongnition of double citizenship and granting equal rights to all european citizens, regardless of their national origins. Regarding the recognition of double citizenship, the Council decided that, despite the fact that every person normally has the citizenship of his state of origin, that gives him certain rights and obligations, this does not exclude the existance of a european citizenship as a complement and not a substitution of the national one. The european citizen is still a citizen of his country, citizenship settled according to the internal laws. This conclusion was also reinforced by the manner in which the first paragraph of the 8th article of the Maastricht Treaty was formulated, stating that: "the Union respects the national identity of the member stated whose governmental systems are based on democratic principles". By analysing The European Constitution (Duculescu, 2003: 43-59), we realize that it follows the principles of the Amsterdam Treaty regarding the European policy regarding legal migration in the context of the current attempts to manage migrant flows and to create a clear legal basis to integrate third country citizens. The role of the European Union is to ensure the necesary support to create this policy, the primary competence in this matter being given to the member states, while the Union only solves issues regarding admission and residence, matter in which the Union settles mandatory rules for all the member states. This way, the European

Constitution introduces a change in the way of using the codecision procedure in the case of the frame documents regarding migration. to be more specific, the Constitution brings together the provisions of the Amsterdam Treaty ragrding: cooperation in the aim of harmonisisng national legislation regarding entry and residence conditions for third country citizens; ensuring equal treatment for third country citizens residing on the teritory of one of the member states and initiationg stronger integration policies (Piore, 1972: 97).

The issue discussed at an european level is that there is no clearly expressed policy in the field of migration and asylum, despite the fact that most European states are currently facing the growth of migratory flows. In may 2011 there were initiated a couple of actions meant to achieve a coherent construction in this matter, brought to the public attention by the Comission's Communication on the 4th of May 2011. The initiatives were further discussed during the following Justice and Internal Affairs Council, and contributed to setting a common ground for a discussion regarding an European policy for asylum and migration, discussion that took place within the European Council in Brussells, between the chiefs of states and governs of the member countries.

The European Union decided to take the following steps in order to transform migration policies in a model for action (Rea, 1998: 124): a. creating platforms to facilitate de exchange of information, such as web-sites (e.g. the "Migration Policy" site, European Migration Information Network-EMIN, the European Network for information regarding migration, COMPAS-The Center regarding migration, policy and society, a British center organized by the Oxford Academia); b. creating and adopting, by the European Council, a set of principles to highlight the fact that the integration consists in respecting and mantaining the fundamental European values; c. considering this frame of action, the Union adopted a set of measures, among which we recall (European Commission, 2010: 32): 1. launching by the European Comision, in 2003, of a program for financing the projects that aim to help migrants integrate, having as a main purpose their education; 2. adopting legal acts that facilitate the integration of migrants' family members. This is the case of the directives that rule the reunification of families, independently granting the right of stay to a family member after five years of legal stay, which gives the subject the right to stay on the teritory of the member state, even if the solicitor's right to stay ends; 3. creating an institution able to observe the migration phenomenon from all points of view and to understand all its dimensions, such as the European Migration Network.

The end of the transition period that limit the freedom of movement from Bulgaria and Romania in January 2014 have turned Europe in a zone in which the citizens from 32 countries – the 28 member states, along with Island, Liechtenstein, Norway and Switzerland – can live, study and work wherever they wish. Due to the evolutions achieved in fields such as the political, technological or tourism, crossing borders in the European space was very much facilitated. This situation brings along a delicate issue for those who study european mobility: many forms of cross-border circulation in the zone remain unknown in the official statistics (Salt, 2005: 123). The european citizens cross the border without being registered, and, many times, they remain unnoticed in the destination countries; they are being taken into account differently, depending on the departure or destination country. In Great Britain, for instance, the total amount of imigrants is being discovered by calculating the number of inhabitants born abroad, while in other countries, such as Germany, it is being determined by the number of inhabitants that are not national citizens (Piore, 1972: 114).

Migration is a phenomenon with implications for the community and has a strong effect upon family and community networks. One of the most important effects of

migration is felt in the community. Changes occur in the mentalities caused by contact with foreign countries, increased active social criticism and entrepreneurship (Anghel and Horvath, 2004: 88). These are positive effects to be included in local policies and promoted in the community. However, there are strong demographic changes, depopulated and aging communities living mainly from remittances. On the other hand, there appears the strict question about the impact of remittances on the need and production of public goods. According to the Eurobarometres, the freedom of movement is being regarded by the European citizens as the most important accomplishment of the European Union, ranking better than the Euro, reaching economic prosperity or even peace (European Commission, 2010: 32). Despite this, the European citizens have not benefited from this right as much as expected. When the freedom of movement regime was initiated 60 years ago, it was meant to encourage the workers to cross the borders in order to ensure the necessary temporary workforce so much needed in the industrial sector severely affected by the war (Preti, 1993: 29). Now, a considerable amount of europeans use this right. In 2009, 27,000 persons from the European Union were questioned regarding their experiences and intentions regarding mobility. The report, launched in 2010, indicates the fact that the european citizens coming from the states that became members more recently are more likely to be motivated to work abroad, and in the choice of the future destination country they are more likely to regard economical reasons, while the persons coming from older member states are more likely to regard aspects of the life style or culture in their decizions to migrate (European Commission, 2010: 32).

It seems that, at least for now, two different mobility patterns coexist in the current european space, and that these two groups are often being analyzed in somewhat different terms, depending on the resons on which the decision is based: when talking about the migrants with bigger incomes from the first 15 member states the expression "European mobility" is being used, while when reffering to those coming from the new member states, they are still being called "immigrants" (Porumbescu, 2010: 92). The social consequences of such difference in treatment are significant, because the letter ones are often being confronted with discrimination by the inhabitants of their host country, regardless of the fact that, at least from the legal point of view, they should benefit of the same status as european citizens. These names are only being used in the informal language, but despite this, creating and aplying different treatments among citizens continue in time and become even stronger, leading to the confirmation of the hypotesis of certain specialists, claiming that significant differences of treatment continue to exist inside the European space. If European democratic values are considered higher, inviolable values, they have to be maintained without creating sub-categories in the way Athenian democracy did with slaves and foreigners. While it may be accepted that foreigners have fewer civic rights – something that is a subject of debate in some EU member states and is in the process of disappearing with respect to nationals of member states – than the citizens of European countries, it is none the less essential that the core human rights considered inalienable be respected without reservation. It is also at this price that the model can be exported and transferred to the partners of the EU and the Council of Europe, or even firmly rooted in every European state.

The accession of Bulgaria and Romania increased the European Union's membership to 27 states and completed the fifth and largest enlargement of the European Union since France, West Germany, Italy, Luxembourg, the Netherlands and Belgium came together to form the European Coal and Steel Community in 1952. Following the declaration of the European Council in Copenhagen (1993), which allowed central and

eastern European states to apply for EU membership, Bulgaria and Romania applied in 1995. They formed part of a group of 12 European states with whom the Council started its negotiations and assessments in 1999. Unlike the other states – which formed the A10 – however, it was decided that Bulgaria and Romania would fail to meet the political and socio-economic joining criteria, the so-called "Copenhagen Criteria" in time for 2004 accession (Galgóczi, et al., 2009: 58). The Copenhagen Criteria included: democracy, the rule of law, human rights and respect for minorities; a functioning market economy and the capacity to cope with competitive pressures of the internal European market; the ability to take on the obligations of membership (in other words, to apply effectively the European Union's rules and policies).

The Commission has monitored these economic improvements along with the social and political situation of the two countries through regular reports. In April 2005 the Treaty of Accession with Bulgaria and Romania was signed in Luxembourg, membership being granted on January 1, 2007.

During the accession negotiations, a transitional period of seven years was established so that each old Member State could determine when it was ready to open its borders to workers from the new Member States. The transitional measures were based on a "2+3+2 model", where the restrictions on labor market entry of new citizens had to be reviewed after two years, and again three years later. A final two-year phase of restrictions was permitted only in cases of serious disturbances within the individual labor markets of the EU-15. Free movement between all Member States was thus to be guaranteed by May 2011 at the latest for the citizens of the countries that joined in 2004, and by January 2014 for citizens of Bulgaria and Romania.

However, the policy of the Member States regarding free access on the labour market for citizens coming from Romania and Bulgaria has been different from the one they had regarding the other central and eastern European states. The United Kingdom and Ireland reversed their initial open-door policies that made them attractive destinations for the citizens of the eight states in Central and Eastern Europe which joined the European Union in 2004, and declared that they would limit immigration from the two countries when they joined the bloc in 2007. Germany, Austria, the Netherlands, Spain, Denmark and Belgium have approved similar measures on restricting labor immigration from Bulgaria and Romania. France has agreed to the gradual opening of its labor market to workers from the two new member states. Italy considered different conditions for access to its labor market for Romanians and Bulgarians: The former were able to work there freely in exchange for Bucharest`s willingness to cooperate on combating organized crime. Hungary also announced it would only partially open its labor market to Romanians.

The globalization process involved the transformation of modern societies in ones characterized by immigration, with a growing ethnic and cultural diversity, and also highlighted the need to integrate migrants in the social core. Nowadays, there are three defining patterns for the demographic evolution of Europe's strong economies: The decrease of the number of births, the increase of life expectancy and population ageing (Oezcan, 2004: 25).

During the past century both countries have been characterised more by *e*migration than immigration. However, even outward flows were tightly restricted during the Communist period. Immediately post 1989, both countries experienced a mass departure of ethnic migrants able to return home to Turkey from Bulgaria and to Hungary, Germany and Israel from Romania. Despite this initial exodus, emigration during the

nineties was slow due to restrictions imposed by EU member states and it was only after visa requirements for short term travel in the Schengen space were lifted in 2002 that a strong "culture of migration" began to take shape. In the latter half of the nineties, ethnic migration gave way to economic migration towards the more developed western European and North American countries. However, as the economic prospects of Bulgaria and Romania improve, the removal of this "push factor" will encourage more people to remain at home.

In an effort to ensure the coherence of European migration policy, the European Council adopted in December 2005, Global Approach to Migration. This concept integrates migration, external relations and development policy, addressing migration agenda a comprehensive and balanced manner in partnership relationship with the European Union member countries. The Global approach to migration is the most consistent and concrete manifestation of the close relationship between Justice and Home Affairs and the european external relations, defining the instruments through appropriate specific challenges which the Union may present the international environment in terms of migration.

In December 2006 the European Council endorsed the proposal to create, as instruments of the Global Approach to Migration, cooperation platforms on migration and development, bringing together third countries covered by this policy, the European Commission and Member States and organizations relevant to international migration. The communitarian instruments are designed to facilitate the exchange of information on migration and coordinate existing and future projects on migration and development (European Comission, 2011: 37). However, certain issues regarding the migration phenomenon still occur. For example, Member State governments continuously struggle with finding ways to manage public frustration related to the Roma population in a way that is compatible with European Union`s legislation and universal human rights. Thousands of Roma, pushed from Romania, Bulgaria, and other countries of Eastern Europe by poverty and discrimination, live in illegal camps at the outskirts of large Western and Northern European cities (Sandu, 2010: 19). In the summer of 2010, France caused an international outcry by dismantling numerous Roma settlements and expelling those who occupied them, despite the fact these individuals were EU citizens with the protected right of free mobility.

Free mobility and the Schengen system are not static concepts, and the relationships upon which they are predicated will continue to evolve. While not likely to infringe on the overarching principle and practice of freedom of movement within Europe, it is possible that contemporary developments will continue to test solidarity and trust between Member States. But Europeans are not the only population that utilizes the right to free movement within Europe. Once within the borders of the European Union and the Schengen area, third-country nationals also benefit from free mobility *in practice* – regardless of whether they have permission to legally reside or work in other countries – because of the lack of internal border checks. The implications of this reality, together with the contemporary challenges facing Europe's external borders, have placed significant stress on free movement. The zone operates like a single state for international travel purposes with border controls for travellers travelling in and out of the area, but with no internal border controls. It represents the globalized vision for community, security and freedom of movement, which makes its influence crucial to the European market economy and enlargement goals. Key rules adopted within the Schengen framework include the removal of checks on persons at the internal frontiers; a common

set of rules applying to people crossing the external borders of the EU Member States; harmonisation of the conditions of entry and of the rules on visas for short stays; enhanced police cooperation (including rights of cross-border surveillance and hot pursuit); stronger judicial cooperation through a faster extradition system and transfer of enforcement of criminal judgments; establishment and development of the Schengen Information System (SIS) (Coman, 2011: 97). These rules ensure the provision on common policy on the temporary entry of persons, the harmonisation of external border controls, and cross-border police and judicial co-operation. The Schengen zone is one of the most important achievements of the European Union, but in the current European context questions have been raised about the main gain of this concept, namely freedom of movement. Regarding the evolution of illegal migration in the past years, Romanian authorities have drawn two main conclusions. The first is that migration to the borders of Romania is insignificant compared to that of the European Union. Also, authorities have identified four major events with an impact at European level, which have raised concerns regarding Romania`s and Bulgaria`s accession to Schengen: the evolution of conflicts in North Africa, problems at the border between Greece and Turkey, the agreement on small border traffic between Romania and Moldavia and visa liberalization in the Western Balkans. However, none of these events had a major impact on migration to the Romanian borders, illegal migration to our country's borders in 2010 being estimated at about 3,800 people (Galgóczi et. al., 2009: 75).

The objective of a common European migration policy logically following on from economic integration – the Europe of the fifteen in the process of enlargement – and political integration – the Europe of the forty-four – might eventually be realistic. There are still numerous obstacles, all states considering immigration to be among their inherent prerogatives, but the realities on the ground are pushing them towards co-ordinated action in every field. SIS (Schengen Information System), Eurodac, Eurojust and Europol with respect to the subject under discussion, the Council of Europe, the Western European Union (WEU), the OSCE (Organisation for Security and Co-operation in Europe), the Euro-Atlantic Partnership Council (EAPC) with respect to political and security issues, the European Union, EEA (European Economic Area), OECD, EBRD (European Bank for Reconstruction and Development), and so forth, with respect to economic questions, are all bodies that address the issue of European integration in a broader framework, since the OSCE includes all the countries born of the break-up of the Soviet Union and the OECD all the western partners, plus Australia, New Zealand, South Korea and Japan. Directly or indirectly, each of these bodies has a division/directorate/ bureau for migration and mobility, whether economic or political (refugees with respect to the OSCE). The same is true of a large number of international organisations under the United Nations umbrella (such as UNHCR, ILO, Unesco, Unicef) (European Committee on Migration, 2002: 57). The question here is not mass movements – the Chinese diaspora, North African, Turkish or Mexican emigration, for example – or major incidents resulting from political crises – exodus of refugees, displacements of population – but the management of diffuse, continuous migration on the ground, the migration of individuals, some of them with their families, rather than emergencies.

Furthermore, from the legal point of view, one cannot mention an express migration policy on an European level as a common document, but a wide number of rules continue to apply in this field. At least for now, the regulations of every member state continue to apply in this field, being given the fact that the safety of the frontiers and the control of the population on the teritory of a state are being considered, from the

geopolitical point of view, some of the essential characteristics of national sovereignity, that the member states are not willing to give up (Sowell, 1996: 85; Marcu; Diaconu, 2002: 57). Anyway, notable evolutions have been recorded even in this field, more in the European case than in any other form of international organization. When considering the balance between the advantages of increased freedom in the matter of freedom of movement and the constrains of more demanding forms of control, one cannot neglect the fundamental aspect, which is the need to ensure national and individual safety. Therefore, the only way that the European citizens can really enjoy the freedom of movement and unrestricted acces to a free working labour, is imposing very strict controls regarding the way in which these policies are being applied in practice.

References:

Anghel, R. G., Horvath, I., (coord.), (2009). *Sociologia migraţiei. Teorii şi studii de caz româneşti*, Iaşi: Polirom.

Boussaguet, L., Jacquot, S., Ravinet, P. (coord.), (2009). *Dicţionar de Politici Publice*, Iaşi: Polirom.

Coman, F. et. al., (2005). *Drept internaţional public*, 2nd edition, Bucharest: Universul Juridic Publishing.

Duculescu, V., (2003). *Dreptul integrării europene, Tratat elementar*, Bucharest: Lumina Lex Publishing.

European Commission (2010). Geographical and Labour Market Mobility. Report. Special Eurobarometer 337 / Wave 72.5 — TNS Opinion & Social.

European Commission (2011). The Global Approach to Migration and Mobility, Brussels. Retrieved from: http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/pdf/1_en_act_part1_v9_com2011-743_en.pdf.

European Committee on Migration (2002), *New patterns of irregular migration in Europe*, Council of Europe Publishing. Retrieved from: http://www.coe.int/t/dg3/migration/archives/documentation/Migration%20management/5300-0_New_patterns_of_irregular_migration_in_Europe_en.pdf.

Galgóczi, B., Leschke, J., Watt, A. (2009). *Intra-EU Labour Migration: Flows, Effects and Policy Responses*. ETUI Working paper 2009/03. Brussels: European Trade Union Institute (ETUI).

Held, D., Mc Grew, A., Goldblatt, D., Perraton, J. (2007). *Transformări globale. Politică, economie şi cultură,* Iaşi: Polirom.

Marcu, V., Diaconu, N. (2002). *Tratat de drept instituţional comunitar*, Bucharest: Lumina Lex Publishing.

Oezcan, V. (2004). *Germany: Immigration in Transition*, Berlin: Social Science Centre Berlin. Retrieved from: www.migrationinformation.org

Piore, M. J. (1972). *Notes for Theory of Labor Market Stratification*, Working Paper no. 95, Dept. of Econ., Mass. Instit. of Tech.

Porumbescu, A. (2010). Studiu asupra incluziunii sociale în Uniunea Europeană. *Revista Universitară de Sociologie*, (1), 88-99.

Porumbescu, A. (2012). East European Migration Patterns-Romanian emigration. *Revista de Ştiinte Politice. Revue des Sciences Politiques*, (35), 268-275.

Preti, L. (1993). *Imigraţia în Europa*, Bucharest: Tehnică Publishing.

Rea, A., (1998). *Immigration et racisme en Europe*, Bruxelles: Editions Complexes.

Rotariu, T. (2009). *Demografie şi sociologia populaţiei,* Iaşi: Polirom.

Salt, J., (2005). *Current trends in international Migration in Europe*, CDMG. Retrieved from: http://www2.geog.ucl.ac.uk/mru/docs/current_trends_ 2004.pdf.
Sandu, D. (1984). *Fluxurile de migraţie în România,* Bucharest: Academia Publishing.
Sandu, D. (2010). *Lumile sociale ale migraţiei româneşti în străinătate*, Iaşi: Polirom.
Siddle, D. J. (2000). *Migration, Mobility and Modernization*, Liverpool: Liverpool University Press.
Sowell, T. (1996). *Migrations, Mobility and Modernization: a World View*, New York: Harper Collins.
Stark, O. (1991). *The migration of labour*, Cambridge: Basic Blackwell.
Szczepanski, J. (1972). *Noţiuni elementare de sociologie* (translated by Mareş, N.), Bucharest: Ştiinţifică Publishing.
Zamfir, C., Vlăsceanu, L., (coord.), (1993). *Dicţionar de Sociologie urmat de Indicatori demografici, economici, sociali şi sociologici,* Bucharest: Babel Publishing.
Toanchină, C., (2006). *Migraţia internaţională şi politicile sociale*, Iaşi: Lumen Publishing.

Article Info

Received: February 14 2015
Accepted: May 12 2015

RSP • No. 46 • 2015: 176-185

ORIGINAL PAPER

What Can and Cannot Be Treated as Regards Nationality and Identity: The Treaty of Zurich and the Dynamics of Unification Geopolitics

Ionuţ Virgil Şerban*

Abstract
The Unification of Italy is a process that began on 23 March 1848 when King Vittorio Emanuele II, helped the Prime Minister Camillo Benso di Cavour and Giuseppe Garibaldi, initiated its involvement in European politics. The proclamation of Victor Emmanuel II as King of Italy and the establishment of the capital of the Kingdom in Rome were subject to the general enthusiasm in Italy and Romania. Officially, Rome became capital on 1st of July 1871. The Romanians attitude did not remain without effect in Italy, because on April 21, 1879, at a banquet "with a little more pomp than in the past" offered by the mayor of the capital, Prince Ruspoli, during the celebration of the city (2632 years from the foundation of Rome, April 21, 753 BC.), among the heads of the diplomatic missions and ambassadors was a single Charge d'Affaires, that of Romania. The mayor motivated this "exception" by the following words: "in the eyes of the municipality, the representative of the Romania is the one less foreign than other representatives".

Keywords: *Italy, France, Romania, European geopolitics, diplomacy*

* Associate Professor, PhD, University of Craiova, Faculty of Law and Social Sciences, International Relations and History Specialization, Phone: 0040720285595, E-mail: johnutzserban@yahoo.com.

In modern times, Italy was a conglomeration of small states struggling among themselves, while the Roman-German Empire (later Austria or Habsburg), the Byzantine Empire and Russian Empire will fight for the glory of ancient Rome. Even if Niccolo Machiavelli, Renaissance diplomat, in "The Prince" exposed the need of the unification of Italy by any means, but rivalries between states, foreign intrusions, the Papal States and European states made impossible any attempts to do so (Droz, 1956). In 1743, the Kingdom of Sardinia was united with Piedmont (North-West Italy), forming a modern Italian foundations of the future state, and after the peace of Campo-Formio (1797) (Procacci, 1975: 254), Napoleon Bonaparte will draw the Cisalpine Republic and the Republic of Liguria, Austria recognizing the new geopolitical reality within the Peace Treaty of Lunéville (1801) (Salvatorelli, 1939: 514). After January 23, 1799 the French army commanded by General Jean Antoine Championnet occupied Naples forming the Parthenopean Republic.

The conclusion of the peace treaty of Tolentino (1797) between Napoleon and Pope Pius VI, when the last will waive claims to Avignon and will be exiled, followed by Napoleon granting his son since birth, in 1811, the title of King of Rome. He also offered noble titles and crowns to the Italian states to many of his relatives and marshals, but his work will disappear after the Congress of Vienna (1815) (Cliveti, 2006: 121).

Austrian Chancellor Klemens von Metternich, a pillar of the reactionism that became European policy after the Congress of Vienna, used to say that Italy "was a geographical concept" cynical formula, which actually showed that a divided Italy was liked by the great powers, especially Austria (SANIC, Dimitrie Ghica Fund, file 90/1860, folio 1). The Unification of Italy is a process that began on 23 March 1848 when King Vittorio Emanuele II. Helped the Prime Minister Camillo Benso di Cavour and Giuseppe Garibaldi, he initiated its involvement in European politics.

In 1860, Parma, Tuscany, Romagna and Modena joined the Kingdom of Sardinia, while Nice and Savoy decided by referendum to become part of France. After Giuseppe Garibaldi succeeded in conquering Sicily and South Italy, on March the 17th 1861 was proclaimed the Kingdom of Italy, which was received with great joy by the government in Bucharest that saw in Italy a role model for achieving their political goals (Șerban, 2006a: 173-186). After attending the Crimean War, the emperor of France, Napoleon III will support Italy in battle with Austria, which yielded Lombardy and Venice in 1866. Rome remained the center of the Papal States until 1870, when the French garrison which protected the Pope withdrew to attend the Franco-Prussian War of 1870-1871, enabling Italians to move the capital to the Eternal City from July 1, 1870, perfecting so, the political unity of the Italian State (Șerban, 2006b: 121-127).

At the beginning of the second half of the nineteenth century (Duca, 1994: 19), the struggle for Italian unity and the liberation from Austrian rule were still in full swing. After the Crimean War, in which Piedmont participated with an army against Russia to win the sympathy of Great Britain and France, fact that brought them a place in the Peace Congress in Paris in 1856, followed the secret meeting in Plombiéres from 20 to 21 of July 1858 between the French emperor Napoleon III and the Prime Minister Camillo Benso di Cavour of Piedmont.

The main theme of this meeting was the support that France was to provide for Piedmont in a revolutionary war against Austria. At this secret meeting was established the foundation of the future Franco-Piedmontese alliance and the organization of the Peninsula in case of victory.

Piedmont had to give Nice and Savoy to France and in exchange for northern Italy on the side of the Apennines, the territories of central Italy, with the exception of Rome and the surrounding area must form the kingdom of Central Italy ruled by a king who would be designated later on; Southern Italy was to preserve its unity and boundaries, but to change the ruling dynasty (Napoleon thought perhaps the son of Joachim Murat was fit). These three Italian states were finally supposed to form a confederation under the presidency of the pope (Procacci, 1975: 342).

The secret Treaty of January 29th, 1859 between France and Piedmont provided only the establishment of the kingdom of Upper Italy under the Savoy monarchy and gave Nice and Savoy to France. These agreements were sanctioned by the marriage of the Princess Clotilde, daughter of Victor Emmanuel, and the Prince Jerome Bonaparte, in January the 30th, 1859 (Șerban, 2006b: 121-127).

Napoleon insisted that Austria must seem the one to begin the assault in order not to alarm other major powers and so isolate it and have it as the only enemy of France and Piedmont in this war. The desire of Napoleon and Cavour materialize in April, on 19th 1859 when Austria issued an ultimatum demanding the unilateral demobilization in Piedmont. Austria, having mobilized a large army in northern Italy, but could not afford the long-term costs, but could not afford its discharge also, while Piedmont still had an army ready for war, decided to send the ultimatum.

This ultimatum had not, however, the expected result as Cavour answered that Piedmont will not submit to this ultimatum, while Victor Emanuel issued a proclamation urging the people of Italy to fight alongside Piedmont for independence of the nation (Stiles, 1998: 44). On April the 29th 1859 the hostilities began and military operations have taken a favorable turn for the Franco-Piedmonts army. Although the war in the beginning was marked by chaos and confusion, Napoleon III needed several days to declare war on Austria, until May the 3th.

In a telegram from Garibaldi in Como, on 5 June 1859, to the Regional Commissioner, Visconti Venosta, the General asked his opinion about the maneuver that he wanted to undertake Bergamo and Lecco after learning that Milan was already occupied: "Commissioner, in complexity of the news, I think our army has already occupied the forefront of Milan at this time; therefore, it is no longer necessary for this brigade to leave for Milan, I think we should move towards Lecco in Bergamo. I ask your opinion on this maneuver" (ACS, Carte Visconti Venosta Found, pacco no. 1, busta 3). Meanwhile, Garibaldi acting on the far left allies rejected Marshal Urban at Varese and San Fermo on 26th and 27th of May 1859, occupying Como, and after Magenta, Bergamo and Brescia. Allies victories had immediately resulted in the fall of governments in Tuscany and Emilia.

In Tuscany, a patriotic hostile demonstration makes the Grand Duke to leave without resistance the Grand Duchy of Florence on 27 April 1859, which led to the establishment of a provisional government under the protectorate of Victor Emanuel II (Salvatorelli, 1939: 594). After the victory of Magenta, Francis V refuged in Mantova while a provisional government proclaims the annexation of Modena to Piedmont, annexation acceptable to Victor Emanuel II, involving ward off a sovereign who sent his troops to help Austria. Soon, Luigi Carlo Farini was appointed governor of Modena (Salvatorelli, 1939: 592-594).

A new document discovered in the Central Archives of Rome reveals interesting correlation between Garibaldi and Italian revolutionary Governor Farini which recognized his outstanding merits, using the exceptionally title of *dictator*, under the old Latin

heritage. By means of a telegram sent on August 29th 1859 Garibaldi shows his concerns related to the unification of Italy.

He wrote to Luigi Farini, in the Tuscan Gazette dated 27: "Mr. Dictator, The Governor General, on 21st, chose as Lieutenant General Major General Luigi Mezzocapo; well, his credit - here I am ranked third in the troops that you, the Baron Ricasoli and Pepoli called me to command - I'll settle for the third rank in the future, because Garibaldi is satisfied to serve his motherland under any circumstances - but I may, Mr. Dictator to ask if your are aware of these anomalies and whether you have to tolerate them -? Does Central Italy formed a unified political body, or is divided as it was in the past? - If you form a unitary body when circumstances are favorable and permissive, you will have to unite with Sardinian monarchy and you and the President of the Council of Tuscany will have to suppress an act showing symptoms of a sunset, which can become a coup d'état, anyway you can call it, even an act that offends the dignity of the noble army whose soldiers should all be - or Central Italy is a divided political body and then I'm entitled to say that the people have the right to ask why not unite - it will not take long and Italy will hold us accountable for our actions and let it be, so praise the Lord, as long as we can still fix anything. That being said, I have the honor, Garibaldi" (ACS, Carte Visconti Venosta Fund, pacco no. 1, busta 1, Modena 1859, Garibaldi a Farini).

The successes led by the allies were also followed by removing the Duchess of Parma and the proclamation of its annexing to Piedmont. The same fate had Bologna, where on 12 June a demonstration organized by the National Society delegation led the Cardinal Milesi to abandon the city. All these events led the Austrians to leave Piacenza and Romagna (Salvatorelli, 1939: 5945).

After the Franco-Sardinian victories in Montebello and Palestro, followed by Allied victory in Magenta 4 June 1859, one of the most bloodiest encounter, the success of the French army at Magenta opened the gates for Milan, where the two sovereigns entered on June 8th and they were greeted by cheers of joy of the population. One by one, the Italian states, Como, Bergamo, Brescia and Florence were issued from under the Austrians, after the bloody clashes of Solferino, 24 June 1859, won by the French (Salvatorelli, 1939: 595).

The failure of this war within the French public opinion and the Prussian military mobilization that could help the Austrians, and many revolutionary movements, which had the momentum in the center of Italy, led Napoleon to conclude an armistice with Austria.

Thus, Venice was not occupied as the Treaty Plombiéres planned, on July 11th 1859 Napoleon met the young Austrian Emperor Francis Joseph at Villafranca to decide the terms of a truce, without consulting the representative of Piedmont.

Under the armistice of Villafranca, Lombardy except for the fortress of Mantua, was ceded to France, which in turn gave it to the king of Sardinia; Venice, which remained under Austria, had to be part of a confederation of Italian States, under the chairmanship of the Pope, while the rulers of Tuscany, Modena and Parma had to be restored to their duchies, but does not specify how to apply this last provision, which in fact was not ever been applied. Although Victor Emmanuel II was persuaded to accept the terms of the armistice, Cavour presented angry and full of bitterness, his resignation and the task of forming a new government has been entrusted by the king La Marmora (Procacci, 1975: 343).

On November 10th 1859 was signed in Zurich a peace treaty between France, Austria and Sardinia, confirming the peace armistice of Villafranca, while the central

problem of Italy remained to be resolved by a later European Congress, which subsequently wasn't been held anymore. The full text of the Treaty of Zurich was published in the Gazzetta Piemontese in its issue of November 23rd 1859 (ACS, Carte Visconti Venosta Fund, pacco no. 1, busta 5, Modena 1859).

Thus, the document include: "a treaty was concluded between us and His Majesty The Emperor of the French and signed by Our Plenipotentiary in Zürich the tenth day of November of the fifty-nine thousand eight hundred years in order to strengthen our alliance and set a definitive agreement resulting from our participation in the last war... His Majesty the King of Sardinia and Her Majesty the Emperor of the French wanting to consolidate their alliance and set a definitive agreement resulting from our participation in the last war, have resolved to spend by the provisions of a treaty of Villafranca Preliminaries for the cession of Lombardy. They appointed for this purpose, as their Plenipotentiary: His Majesty the King of Sardinia, M. François - Louis Chevalier Des Ambrois Nevache, Knight Grand Cordon of The Order of Ss Maurice and Lazarus, Vice Chairman of Its Board State, Senator and Vice President of the Senate of the United etc., and Mr. Alexandre Chevalier Jocteau, Commander of The Order of Ss Maurice and Lazarus and the Imperial Order of the Legion of Honour, His Minister Resident to the Swiss Confederation.

His Majesty the King of Sardinia M. François Adolphe Baron Bourqueney, Senator of the Empire, Grand Cross of the Order Imperial Legion of Honor and Mr. Gaston Robert Morin, Marquise de Banneville, Officer's Imperial Order of the Legion of Honor who, after exchange at full powers found in good and due form, have agreed upon the following articles: 1) article 1: his Majesty the Emperor of Austria has given to him and all his descendants and successors, in favor of Her Majesty the Emperor of the French, to his right and title to Lombardy, to except fortresses Peschiera and Mantua and determined by redefining territories which remain in the possession of Her Majesty I. and R. Austrian. Her Majesty the Emperor of the French transferred to His Majesty the King of Sardinia rights and title which are acquired by article 4 of the aforementioned Treaty. T

he following are the means of implementation of this article, the establishment of the exact boundary and who exactly will put into practice these provisions; 2) article 2, his Majesty the King of Sardinia taking possession of the territories ceded to him by His Majesty the Emperor of the France, accept the charges and conditions attached to the sale, such that they are stipulated in articles 7, 8, 9, 10, 11, 12, 13, 14, 15 and 16 of the Treaty concluded this day between His Majesty the Emperor of the French and His Majesty the Emperor of Austria. 3) in article 3, there were talks about the financial compensation that the French Government is committed to pay the Government of Austria for territorial cessions by the additional article of the Treaty concluded this day between His Majesty Emperor of the French and His Majesty the Emperor of Austria, the French Government's commitment vis-à-vis the Austrian Government to conduct on behalf of the new Government of Lombardy payment of 40 million guilders (currency agreement) stipulated by article 7 of the aforementioned Treaty, His Majesty the King of Sardinia, in consequence of the obligations that he was accepted by the preceding article, is committed to repay this sum to France as follows: ... as of Sardinian annuity for a value of 100 million francs ... the French Government at the average of the Paris Stock Exchange October 29, 1859.

The interests of these rents accrue to the benefit of France from the date of delivery of the securities to be held one month after the exchange of ratification of this Treaty.

To get a clearer picture of this war has cost about Sardinia, have to present the article number 4 of this Treaty clarifies that we all financial aspects to mitigate the charges which the French Government's imposed on the during the last war, the Government of His Majesty the King of Sardinia is committed to reimburse the Government of His Majesty the Emperor of the French a sum of 60 million francs, for the payment of an annuity which 5 100 three million will be recorded on the Great Book of the Public Debt of Sardinia.

The securities will be delivered to the French Government, which accepts pair. The interests of these rents accrue to the benefit of France from the date of delivery of the securities to be held one month after the exchange of ratifications (ACS, Carte Visconti Venosta Fund, pacco no. 1, busta 5, Modena 1859).

The article number 5 has just concluded the most important provisions of this Treaty, watching the modality exchange ratifications and where it takes place: "the present Treaty shall be ratified, and the ratifications shall be exchanged at Zurich within 15 days or sooner if possible. In faith whereof the respective Plenipotentiaries have signed and affixed the seal at arms" (ACS, Carte Visconti Venosta Fund, pacco no. 1, busta 5, Modena 1859). In the end, "made in Zurich on the tenth day of November in the year of our Lord one thousand-eight to one hundred fifty-nine. A week later, the Treaty has been ratified by the Italians in Turin: "... in witness whereof, we signed our hand these letters of ratification and have affixed the Great Seal of Our Weapons. Done at Turin on the seventeenth day of November in the year of our Lord one thousand - eight to one hundred fifty-nine" (ACS, Carte Visconti Venosta Fund, pacco no. 1, busta 5, Modena 1859).

The Treaty of Zurich, although initially was rejected by the Prime Minister Cavour who was angry about the armistice of Villafranca because Venice's had not been released by the Austrians how was set in Plombières, this was the first step towards Italy's unification. To paraphrase a French journalist Vincent d'Equville "Prince Metternich could say, in 1815, the Congress of Vienna ... Italy is nothing more than a geographical expression ... now, after the peace of Villafranca, Italy is a confederation of 25 million people who come to show the world what you have shown on the battlefield, that they may be worthy of the regeneration of their country" (SANIC, Dimitrie Ghica Fund, file 90/1860, folio 1).

Piedmont, became through the battles of Giuseppe Garibaldi (Berindei, 1984: 82), Giuseppe Mazzini (Berindei, 1985: 313-323; Delureanu, 2006: 43) and the politics of King Victor Emmanuel II and the prime minister Camillo Benso di Cavour in 1861, the Kingdom of Italy, which had Lombardy, Venice, Trieste, Trento, all occupied by Austria, while the center was controlled by the Papal States, a religious-political entity whose integrity has been defended by the troops of Napoleon III.

Revolutionary actions of Garibaldi (Delureanu, 2007: 81), who tried in vain to occupy Rome in 1864 and 1867, were successful, in 1870, when Napoleon was forced to withdraw its troops from Rome to defend himself against Prussia's attacks. Although King Victor Emmanuel wanted to help Napoléon against Prussia, he was not authorized by Parliament to do so, but in stead the Italian troops entered Rome in 1870, proclaiming it capital of Italian Kingdom.

The proclamation of Victor Emmanuel II, King of Italy and the establishment of the capital of the Kingdom in Rome were subject to the general enthusiasm. The untimely death of Camillo Cavour meant a great loss to the entire nation, the craftsman of the Italian Unification was not able to see his work complete.

The year 1866 was very important for the unification of Italy. Italy had entered into a secret agreement with Prussia, which offered, in case of victory Venice, in exchange for the military support of the Italians. Napoleon III wanted the same thing in case of an Austrian victory. He signed a secret treaty with Austria, which allowed him to take Venice and give it to the Italians. In 1854 Napoleon III to acquired Venice, left to glimpse the possibility of ensuring free way to Austria in the Principalities Romanians, Wallachia and Moldavia. On the battlefield, Italy was defeated in Custoza (Land battle) and Lissa (Battleship), but the defeat of Austria in Königgrätz and the politics of Napoleon III offered Venice to the Italians (Stiles, 1998: 80-81).

The unification of Italy was now almost complete with the exception of Rome that was since 747 AD the center of the Papacy. Since 1849 the territorial integrity of the Papal State was assured by French troops. Camille Cavour had made an attempt to negotiate with Pope Pius IX in March 1861, but the initiative was interrupted by his death. On November 3rd 1867 in Mentana, Giuseppe Garibaldi failed in his attempt to conquer a Rome guarded by the soldiers of Napoleon III (Proccaci, 1975: 358).

It was after 1870 that King Victor Emmanuel resumed negotiations with the Pope about the position of Rome compared with the new Italian state. Victor Emmanuel with his daughter married to the cousin of Napoleon III did not have the agreement of its Government to help Napoleon III in the Franco-Prussian War of 1870, Italy maintaining a position of neutrality (Salvatoreli, 1939: 608).

This determined Napoleon III to retreat his troops from the Papal state (Dumitriu-Snagov, 1989: 15). The defeat of Napoleon III at Sedan and his arrest on 1st of September 1870 left the problem of establishing the capital in Rome at the whim of the Italians.

In September Victor Emmanuel asked the Pope to sign an agreement with the Government of Italy, which offered religious freedom in the exchange of transfer of the patrimonial right. The Pope refusal brought the action of an army of 60,000 Italians. After using guns to make a breach in the city wall, the wall of Aurelian, on September 20th 1870 the army of King Emanuel II defeated the troops of the Pope. The unity of Italy was now fully completed. In October 1870 a plebiscite decided the Rome should be capital of Italy (Salvatoreli, 1939: 608). The stages of the formation of modern Italy were greeted with sympathy by Romanians, trained themselves in the creation of a national and unitary Romanian State.

Also, the establishment of the capital of the Kingdom of Italy in Rome had its effect on the actors of the political scene Romania. On 5/17 February 1871, the Romanian National Representation passed a Congratulatory addresses to the Italian Parliament on the occasion of the decision of the transfer of the capital of Italy in Rome (ASDMAE, fond Moscati VI, III, Rapporti in arrive Fund, busta 1394, Serie politica no. 482). Presented at the Ministry of Foreign Affairs of Romania on 26 February 18714, it contained large assessments of the undeniable importance of Romanian- Italian relations: "our government is pleased to take an intermediate collaboration of a noble layer and is thus to vote in the Assembly Romanian, striking evidence of the feeling of deep sympathy between the two nations with the same name (AMAE, Arhiva Istorică Fund, vol. 261, file no. 51 Roma/1871, folio 71).

The response of Italians arrived 18/30 May 1871, thanking the Romanians for their approach denoting a strong sympathy. The Presidency of the Council of Ministers informed Romania on sending the congratulatory address on May 20, 1871.

Also, the President is requested to convey to the Romanian Assembly, the response of Italians. The Presidency of the Council of Ministers confirms the Romanian

hospitality and sending part of the reply address of the Senate and the Assembly of Deputies of Italy and requests the Ministry of Foreign Affairs to respond to representative of the Government of His Majesty, the King of Italy.

Officially, Rome became capital on 1st of July 1871 (Berindei, 1967: 57). The Romanians attitude did not remain without effect in Italy, because on April 21, 1879, at a banquet "with a little more pomp than in the past" offered by the mayor of the capital, Prince Ruspoli, during the celebration of the city (2632 years from the foundation of Rome, April 21, 753 BC), among the heads of the diplomatic missions and ambassadors was a single Charge d'Affaires, that of Romania (Bossy, 1928: 76). The mayor motivated this "exception" by the following words: "in the eyes of the municipality, the representative of the Romania is the one less foreign than other representatives".

In conclusion, the European geopolitics was influenced in the 19th century by the foreign policy of Napoleon III who supported the nationalities in achieving their goals, whether those were about unity or independence. That's why this century remained in history as the *la belle époque* or the *Century of the Nationalities*.

The Italians represented the hart of Europe and at the beginning of the century they were divided in many little states that were busy fighting among them for supremacy. Beside that, many territories from northern Italy were under the rule of Austria, while Rome was the center of Papacy defended by French troops.

Although Napoleon was glad to help the Italians to unite under the rule of Victor Emmanuel II, he didn't agree to leave Rome as capital to the newly formed kingdom. He put some conditions in helping the Italians in order to protect his country in the views of the other powers. He counseled Cavour to provoke the Austrians to declare war on Italy as the only way for the French to intervene in this conflict and help them free their territories. In exchange, he asked for Nice and Savoy to belong to France.

Napoleon was disposed to exchange with Austria the Italian territories with the Romanian Principalities (Bossy, 1938: 23), as Austria was interested in extending its influence in the Balkans also (Bossy, 1934: 53). In the mean time, Napoleon didn't hesitate to help Wallachia and Moldavia to unite under Prince Cuza and to maintain this unity until he was dethroned (Bossy, 1931:34).

With the help from the French army, the Italians succeeded in regaining their ancient territories in 1859, without Venice and Rome. Although King Victor Emmanuel II was crowned king of Italy in March 1861, the Prime Minister Cavour (Iorga, 1930: 193-194) resigned because he didn't agree with the armistice in Villafranca and the Peace Treaty in Zurich.

It was later on, in 1866 that Venice became part of Italy and in 1870 that Rome became the Capital of the Kingdom of Italy, unfortunately the builder of this new state, Cavour didn't survive to see his masterpiece accomplished.

This is how the European geopolitics was shaped in the 19th century, when many states like Italy, Romania, Greece and so on succeeded in achieving their ancient objectives, those of unity and independence.

Romanians supported their brothers from the peninsula as their dreams were alike and they hoped that the path opened by Italy would allow them to fulfill their dreams also. In this period both Italy and Romania supported each other in reshaping the international system in witch they hoped that one day will have something to say and why not, to help reshape it based on principles like national identity, sovereignty, people's right to determinations etc.

Both nations had been fortunate to have statesman with a real capacity of understanding the European geopolitics, real nationalists, men of honor and courage that putted the interests of their countries above their owns and succeeded in accomplishing their nations objectives.

Acknowledgment

This work was supported by the strategic grant POSDRU/159/1.5/S/133255, Project ID 133255 (2014), co-financed by the European Social Fund within the Sectorial Operational Program Human Resources Development 2007-2013.

References:

Archivi Diplomatici del Ministerio degli Affari Esteri, Roma (ASDMAE), Moscati VI, III, Rapporti in arrive Fund, Serie politica.

Archivio Centrale dello Stato, Roma (ACS), Carte Visconti Venosta Found, pacco no. 1, busta 1, 3, 5 Local Commissariat of General Garibaldi in Lombardia, June 1859; Modena 1859, Garibaldi a Farini.

Arhivele Diplomatice ale Ministerului Afacerilor Externe al României, Bucharest (Diplomatic Archives of the Foreign Affaires Ministry (AMAE), Arhiva Istorică Found, vol. 261, file no. 51 Roma/1871.

Cliveti, G. (2006). *Concertul European. Un experiment în relațiile internaționale din secolul XX*, Bucharest: Enciclopedică Publishing.

Droz, J. (1956). *Histoire diplomatique de 1648 à 1919*, Paris: Dalloz.

Duca, I. G. (1994). *Lumea la început de veac*, Bucharest: Eminescu Publishing.

Berindei, D. (1967), *Roma*. In *Reprezentanţele diplomatice ale României,* vol. I, 1859-1917, Bucharest: Politic Publishing.

Berindei, D. (1984). Garibaldi e i Romeni. In *Garibaldi, generale della libertà. Atti del Convegno internazionale (Roma, 29–31 maggio 1982)*, Roma, pp. 313–330.

Berindei, D. (1985). Les Roumains et Giuseppe Mazzini. *Revue Roumaine d'Histoire*, 24 (4), 313–322.

Bossy, R. V. (1928). *Politica externă a României între anii 1873-1880 privită de la agenţia diplomatică din Roma*, Bucharest: Cultura Naţională.

Bossy, R. V. (1931). *Agenţia diplomatică a României în Paris şi legăturile politice franco-române sub Cuza-Vodă*, Bucharest: Cartea Românească.

Bossy, R. V. (1934). *Agenţia diplomatică a României în Belgrad şi legăturile politice româno-sârbe sub Cuza-Vodă*, Bucharest

Bossy, R. V. (1938). *L´Autriche et les Principautés-Unies*, Bucharest: Impr. Nationale.

Bossy, R. V. (1932). *Politica externă*. In *Alexandru Ioan Cuza, 1859-1866*, Bucharest: Universitatea Liberă.

Delureanu, Ș. (2006). *Mazzini şi românii în Risorgimento*, Bucharest: Paideia Publishing.

Delureanu, Șt. (2007). *Garibaldi între mit şi istorie*, Bucharest: Paideia Publishing.

Dumitriu-Snagov, I. (1989). *Le Saint Siege et la Roumanie Moderne 1866-1914*, Roma: Editrice Pontificia Universita Gregoriana.

Iorga N. (1930). Cavour et les roumains. *Revue Historique du Sud-Est Européene*, 7/ (10-12), 193-194.

Procacci, G. (1975), *Istoria italienilor*, Bucharest: Politic Publishing.

Salvatorelli, L. (1939). *Sommario della Storia d'Italia dai tempi preistorici ai nostri giorni*, seconda edizione migliorata e accresciuta, Torino: Giulio Einaudi Editore.

Stiles, A. (1998). *Unificarea Italiei 1815-1870*, Bucharest: All Publishing, 1998.
Șerban, I. (2006a). *Constituirea Regatului Italiei și recunoașterea regelui Sardiniei Victor Emanuel al II-lea ca rege al Italiei.* In Buzatu, G. Cîrstea, M., Rotaru G., *Istorie și Societate*, vol. IV, Rm. Vâlcea: Rottarymond Publishing, pp. 173-186.
Șerban, I. (2006b). Le movement de la capital de Rauyome d'Italie a Rome, *Analele Universității din Craiova, Seria Istorie*, (10), 121-127.

Article Info

Received: March 10 2015
Accepted: May 24 2015

RSP • No. 46 • 2015: 186-195

ORIGINAL PAPER

Various Aspects regarding the Political Migration Towards the National Renaissance Front: An Implication of Political Elites Resources Theory

Mihaela Camelia Ilie*

Abstract
The article is structured in five different parts. The first part is dedicated to the political context of the appearance of Carol II's single political party – the National Renaissance Front; the second part is a short presentation of the legal framework for the party enrolment. The next section depicts various juridical aspects regarding the enrolment in National Renaissance Front of the former leaders of the traditional parties that were outlawed by the decree from March 30th, 1938. The fourth part represents a detailed presentation of the process of joining NRF by the ex-political members, a special notice being made for those coming from the National Liberal Party, the National Peasants' Party and the Iron Guard. In the last section it is described the way in which the political enrolment of the former politicians influenced the evolution of the National Renaissance Front.

Keywords: *political migration, National Renaissance Front, Carol II, elections, traditional political parties*

* Assistant Professor, PhD, University of Craiova, Faculty of Law and Social Sciences, Political Science Specialization, Phone: 0040766355005, Email: mihabuzatu@gmail.com.

The establishment of the National Renaissance Front

Beginning with the year 1930, the moment that Carol II came to the Romanian throne, the King was attracted by the idea of increasing his political power. He tried to create some coalition governments that could facilitate the access and the control to the executive power; his plan was not successful until the end of the interwar period. Having as a background the increasing of the extremist regimes in Europe (Berstein, Milza, 1998:112), King Carol II decided to apply his own plan.

The opportunity of imposing the regime of monarchic authority was given by the result of the parliamentary elections from December 1937. After these elections, there was no party that obtained a minimum of 40% of the votes, a minimum that could offer them the possibility to impose a government. It was the first time during the interwar period when the party that was authorized to organize the elections could not gain 40% of the votes (Boia, 2002: 90). The results of the elections from December 1937 were: 35,92% – the National Liberal Party; 20,4% – the National Peasants' Party; 15,58% – the Party "Everything for the Country"; 9,15% – the National Christian Party (Scurtu, 2005: 40). These elective results gave king Carol II the opportunity to impose a minority party, led by Octavian Goga (Scurtu, Buzatu, 1999: 334), the representative of the political group from the fourth place in the elections. On the other hand, the percentage that the Iron Guard obtained in these elections was a strong worry for Carol II – this was the highest score that the extremist party obtained in the Romanian social and elective history (Olimid, 2014; Georgescu, 2014; Bărbieru, 2014).

One of the most important political decisions taken by the government led by Octavian Goga was to dissolve the Parliament, on January 18th, 1938, right before its first reunion (Mamina, Scurtu, 1995: 123). After accomplishing this mission, although the king had proposed the prime-minister, it was the monarch himself that replaced Goga, on the basis of a low legitimacy of the new government. An essential moment within the process of establishing the regime of monarchic authority was represented by the coup d'état from 10th/11th of February, 1938. This was the moment when a new government was formed, a government led by the Patriarch Miron Cristea (Nedelea, 1991: 145). The patriarch was named prime minister in order to legitimize the regime of monarchic authority. Among the political measures that were adopted beginning with this period, one can mention: the proclamation of the state of emergency, the censorship, the assignment of new prefects for the counties elected from the military structures (Stoenescu, 2006: 232) and the revocation of the electoral body (Quinlan, 2008: 259).

The next step was the adoption of a new constitution in order to create a general legislative background for the changes imposed by the coup d'état. This new constitution was promulgated on February 27th, 1938 (Vaida Voevod, 1997: 199-210). Three days later, the regime was consolidated by other political measures, among them the decree of dissolving the political parties, on March 30th, 1938 (Scurtu, Otu, 2003: 395).

The legal background of the enrolments in the single political party

The political events of the year 1938 reached a peak on December 16th, when it was created the National Renaissance Front (Rusu, 2001-2002: 404), by the law decree no. 4321. For the authorisation of the royal party it was necessary "a written request from 25 persons, at least 20 of them being former or present ministers" (SANIC, Fund FRN, file no. 1/1939: 8). Those that signed this request became founding members of the party (SANIC, Fund FRN, file no. 20/1939-1940: 23). It is very important to underline that the founding members were representatives of the most important traditional political parties.

The request of establishing the single political party was signed as follows: Constantin Angelescu, Mircea Cancicov, Mitiță Constantinescu, Victor Iamandi, Victor Slăvescu, Dumitru Alimănișteanu, Constantin C. Giurescu (as representatives of the former National Liberal Party); Armand Călinescu, Grigore Gafencu, Petre Andrei, Mihail Ralea; G. Ionescu-Sișești, Anibal Teodorescu, N. Vasilescu-Karpen, V. D. Țoni (as representatives of the former National Peasants' Party), G. Ionescu-Sișești, Anibal Teodorescu, N. Vasilescu-Karpen, V. D. Țoni (as representatives of the former National Democratic Party led by Nicolae Iorga); Stan Ghițescu, Nicolae Miclescu, Alexandru Hodoș (as representatives of the former National Christian Party); Gheorghe Grigorovici, Eftimie Gherman, Ion Flueraș (as representaives of the former Social Democratic Party); Sebastian Bornemisa, Viorel Tilea (as representatives of the former Vaida-Voevod' political group) (Dandara, 1985: 90-91).

The party enrolments were done according to the article no. 5 of the law decree that established the National Renaissance Front. This decree mentioned that the members of NRF were obliged to be Romanian citizens and to be at least 21 years old; the military employees and the members of the juridical order were not allowed to be members of the National Renaissance Front. The decree 4321 also mentioned that the royal counsellors legitimately became members of the Front.

On January 5th, 1939, it was published a regulation for establishing the royal political party; the article no. 3 underlined that the enrolment in the National Renaissance Front could be requested by "every Romanian man or woman, that sincerely shares the superior ideals which this organization proposes, that effectively practises one of the employments stipulated in the constitution, that has no juridical record and respect the internal discipline of the Front (SANIC, Fund FRN, file no. 1/1939: 10). The article no. 4 mentioned that the registration requests had to be hand in at the communal secretary and the approval was given in three months time. The next day after establishing the single political party – December 17th, 1938, 5000 registration requests were handed in.

The registration of the former significant leaders of the traditional political parties in the National Renaissance Front

An important aspect of the registration, closely followed by the authorities, was that of the requests received from the members of the formers political parties, and especially those coming from the National Peasants' Party, the National Liberal Party and the Iron Guard. Immediately after the establishment of the first single political party, different representatives of the political spectrum – from left to right – hurried to show their adherence to the National Renaissance Front. Some of those that joined NRF, such as Armand Călinescu and Gheorghe Tătărescu, were the ones that actually helped the sovereign in organizing the new regime. On the other hand, there were politicians that by this adherence to the Front agreed the regime for the first time.

Between the significant leaders of the National Peasants' Party that asked the registration in the NRF, there can be mentioned – Demostene Botez, C. Vișoianu (Hudiță, 2003: 148), Ernest Ene, Victor Cădere, Virgil Potârcă, Casius Maniu (Dandara, 1985: 94). Some other members came from the National Peasants' Party of Bessarabia – Al. Boldur, Pantelimon Erhan, I. Negrescu, Titus Hotnog, Ștefan Ciobanu (Hudiță, 2003: 160) – or from Iași – I. Plăcințeanu (Hudiță, 2003: 159). "Scoundrels", "traitors" or "opportunist rotters" are the names that Ioan Hudiță gave them in his diary. For the group from Basarabia a possible explanation comes from Ioan Hudiță's diary – "I am sure that they did not took this step from a total lack of political orientation. In fact, Crihan (one of Ioan

Huduiță's colleagues) explains that all of them are tired of the opposition and can not resist the temptation to play a political role" (Hudiță, 2003: 160). There were also other representatives of the National Peasants' Party that joined the Front, such as Grigorie Cazacliu (from Basarabia) (SANIC, Fund Direcția Generală a Poliției, file no. 209/1938: 8), I. Răducanu, I. Lugoșianu, V. Beldide and I. Sauciuc-Săveanu (Dandara, 1985: 105).

The same situation was recorded for the representatives of the National Liberal Party, who asked the enrolment in new political party; among them, there were former leaders of the liberals that offered to join Carol II's ideas, by signing the registration requests. One can count Aurel Bentoiu, H. Aznavorian, Ion Inculeț, Alexandru Lapedatu, Ion Nistor (Dandara, 1985: 93-94), C. Teodorescu – vice-governor of the National Bank – (Hudiță, 2003: 160), V. Ciurea (Hudiță, 2003: 168), Victor Antonescu – ex-minister and Richard Franasovici – former ambassador of Romania at Warsaw ("România" from January 4th, 1939: 7); as a sign of solidarity with Victor Iamandi, all the national liberal group from Iași joined the National Renaissance Front (Dandara, 1985: 105). The newspaper "Romania" presented the information on January 4th, 1939, in an article titled "`The Former Liberals from Iași Joined Together the National Renaissance Front" ("România" from January 4th, 1939: 7).

The registration of the former party members

After the significant leaders of the traditional political parties had joined the National Renaissance Front, the members from all over the country followed their examples, the Romanian authorities being obliged to draw up the lists with the members and to send all the data to the centre. Many documents from the archives underline the interest that the leaders of NRF had for attracting the former representatives of the traditional political parties of Romania. The authorities were interested not only in increasing the number of those that joined the single party, but also had a strong point of view regarding the weakening the local organizations of the National Liberal Party and the National Peasants' Party. This second concern came as a natural consequence of the information according to which some representatives of these two political parties, although theoretically dissolved, still had a big influence on the population, an influence that in some areas was used against the Front.

Although they were not as interesting as the members of NLP an NPP, the other representatives of the Romanian traditional political parties were put under observation. In connection with the political group led by Vaida-Voevod, in a report made by the Inspectorate of Regional Police from Chișinău, dating from December 21st, 1939 it was stated that "Mr. Luca Brândza, lawyer and supporter of Mr. Vaida, after coming back in Bucharest, declared that members of the former party of Mr. Vaida Voevod gave dispositions to support the enrolment in the new Front" (SANIC, Fund Direcția Generală a Poliției, file no. 209/1938: 7). Contrary to the information contained in the police report, it appears that the position of Alexandru Vaida Voevod, was one of rejection of Carol's political party. In this sense Victor Slăvescu noted in his diary on January 23rd, 1939: "Vaida spoke violently against the NRF regime and showed that the enrolments are actually under censorship – not voluntary adherences. The young men that are leading the government today (Călinescu, Ghelmegeanu, Andrei, Ralea, etc.) – wrote Alexandru Vaida Voevod – are those who have dismissed me from the National Peasant's Party for some ideas that they are defending in NRF today. To have a «renaissance front», something must have died? What died when all the old politicians are NRF leaders from

today?" (Slăvescu, 1996: 345). It is interesting that, exactly one year later, on January 23rd, 1940, Alexandru Vaida Voevod became the president of the National Renaissance Front.

The archive documents proof that the NRF leaders were interested in the political background of the new members of the single political party. The prefectures of the Land Olt sent to the central leadership of the Front, a document that included former leaders of various political groups, who had demanded the adherence to the royal political party, until February 12th, 1939. From the Dolj county there were reported 464 people who had been active in the National Liberal Party, the National Peasants' Party, "Georgist" National Liberal Party, the Party "Everything for the Country", the National Christian Party, People's Party, the National Agrarian Party, as well as in the political groups led by Alexandru Vaida Voevod, A. C. Cuza, Alexandru Averescu or Constantin Argetoianu (SJAN County, Fund Rezidența Regală a Ținutului Olt, file no. 92/1939: 299-310). The table sent by the Gorj Prefecture contained only 31 persons, but specified that "these are the party leaders who had an intensive activity. The document also includes a significant number of Front members, former members of various political parties, who did not have a leadin position" (SJAN Dolj, Fund Rezidența Regală a Ținutului Olt, file no. 92/1939: 313). In Mehedinti county, until February 12th, there were registered 57 applications from former members of the traditional political parties (SJAN Dolj, Fund Rezidența Regală a Ținutului Olt, file no. 92/1939: 327-328), in Vâlcea County – 88 applications (SJAN Dolj, Fund Rezidența Regală a Ținutului Olt, file no. 92/1939: 345) and in Romanați the requestes were signed by 29 persons, "no former party leader from this county being registered in the National Renaissance Front" (SJAN County, Fund Rezidența Regală a Ținutului Olt, file no. 92/1939: 336).

A great importance was given by the authorities to the enrolment of the former Iron Guards members within the new political party; the legionnaires represented one of the major poles of opposition to the policy pursued by King Carol II, from the beginning of his reign. Influenced by events that took place less than three weeks before the royal party establishment – the assassination of the leader of the legionary movement, Corneliu Zelea Codreanu and 13 other prominent members of this group – many representatives of the Iron Guard filed statements of adherence to the National Renaissance Front.

One of the first collective pledge of allegiance came on December 22nd, 1938 and it was signed by the legionnaires who had their mandatory residence in Vaslui ("Neamul Românesc" from January 4th, 1939: 3). Among those who signed the statement were Radu Demetrescu-Gyr – teacher and publicist; Ion Antoniu – lawyer; Constantin Zopp – teacher; Ion Diaconescu – journalist; Bucur Coriolan – doctor; prof. phd. Petre Antonescu. Although they had signed this statement, Mihail Georgescu from Pitești, Demetrius Gazdaru and Elijah Garneata (from Iasi), sent individual declarations of allegiance to the Ministry of Internal Affairs: Mihail Georgescu ("Neamul Românesc" from January 4th, 1939: 3; Dandara, 1985: 93); Dimitrie Găzdaru ("Neamul Românesc" from January 4th, 1939: 3); Elijah Garneata – ("Neamul Românesc" from January 4th, 1939: 3).

As a result of those letters of obedience sent from Vaslui, other legionaries declared: "The undersigned, having a mandatory residence, currently in the hospital «Gh. Mîrzescu» Brașov, we declare that we join the appeal and the declaration signed by our comrades from the camp Vaslui" (among the signatories there were Nae Ionescu, Stephen Palaghita, Ioan Dobre, V. Petraşcu, Alex. Vergata) (Dandara, 1985: 93; Hudiţă, 2003: 160). On December 23rd, 1938, the members of the Iron Gurad, from the prison Chișinîu declared their allegiance – "we will listen forever to the cry of our infinite faith in God, Homeland and the King" ("Neamul Românesc" from January 6th, 1939: 3). The newspaper

"Universul" from January 1st, presented a statement of faith signed by some of the Guard leaders: Virgil Ionescu, Traian Cotigă, Mihail Polihroniade, N. Totu, Bănica Dobre and dr. Paul Craja (Hudiţă, 2003: 180). They claimed that "every thought, every desire to make a political act, apart from the will and intentions of Your Majesty, is unknown to us. A King can alleviate suffering and he can cease the despair; therefore we appeal to King's clemency" (Hudiţă, 2003: 180).

Another individual letter of loyalty came from the legionnaire Sima Simulescu, political prisoner from Râmnicu-Sârat , who declared: "By God's will, the recent events concluded by Corneliu Codreanu's death put an end to the former legionary movement" ("Neamul Românesc" from January 6th, 1939: 3). The attitude of the Guard leaders was very bad received by the King's opponents; C. Mihăiescu, disappointed by the confessions made by them in the press, and by the way they asked for King's forgiveness, wrote: "I haven't seen such a shame until today, especially from a group of men claiming that they will moralize the life of the country, making it as beautiful as the sun in the sky" (Hudiţă, 2003: 171). Referring to the same actions made by the Legionaries, which he considered as a consequence of the threats coming from the leadership of the new party, Constantin Argetoianu made the following characterization: "a regrettable trick made by my friend Călinescu"(Argetoianu, 2003: 31).

On January 1st, 1939 a declaration of 19 students from the Iron Guard, sentenced at Cernăuți, was published in "Romania": they emphasized that they "give up any political action harmful to the state". Other 16 students were presented by the newspaper "Neamul românesc", as the signers of statements of allegiance to the King; four of them wrote: "I promise from this moment on to become a devoted citizen of the laws of the country and to His Majesty, King Carol II" ("Neamul Românesc" from January 6th, 1939: 3). Coming from all over the country and from different leaders of the Iron Guard, the letters from the former legionnaires represented, for the sovereign an important step.

The period December 1938 – February 1939, when it was recorded a significant number of applications (over 3.5 million), was followed by a period of stagnation or, better said, a period of nearly no requests from the citizens. The National Guard commander, the general Petre Georgescu, stated in a report sent to the President of the Council of Ministers, on June 16th, 1939 that "the operation [the NRF enrollment] is almost stopped both in cities and in villages. A new registration is a very rare fact" (SANIC, Fund FRN, file no. 234/1939: 15-16, 62).

Even getting this "warning" from the General Georgescu, those who were leading the single political party did not take any measure in this regard. The things changed when, on September 21st, 1939, Armand Călinescu was assassinated by legionnaires. On September 23rd, 1939, the King Carol II noted in his diary: "«Je me suis effondré» [I fall] and cried in a terrible nervous breakdown all afternoon. I'm starting to really realize what an enormous loss for me and for this country is the disappearance of this man, a man that I could trust [...] I have rarely felt in the soul and in my mind a sense of so complete vacuum. They say that nobody is indispensable; of course, in most cases this is true, but here's the exception that proves the rule" (Carol al II-lea, 1997: 229).

After the loss of the most devoted supporter of the royal political party, the Sovereign, who until then used to consult the Prime Minister in the decisions regarding FRN, was forced to effectively lead the single political party. In his diary, on September 24th, King Carol II sketched a difficult situation "beginning with today an era of our history has ended, an era that gave great hopes and on which I could rely that I can do great things, that I have a fruitful era of governance, with a man that, day by day, gained more respect

even from the worst of his enemies. What about tomorrow? What dawns will be opened for me and for the country? For the moment I only see nothingness […] Today it's a danger both for the regime and for the monarchical idea". In a discussion he had with Gafencu, King Carol II, referring to Armand Călinescu, said – "Noone can replace him" – an expression that reveals in a categorical manner the importance that the politician Armand Călinescu had, for the new regime and also for the royal political party (Gafencu, 1991: 337).

Acting under the impulse of these facts, the Sovereign proposed on September 28th, after the brief and bloody governance of the general George Argeşeanu (Scurtu and Buzatu, 1999: 355-356), a government led by Constantin Argetoianu (SANIC, Fund Preşedinţia Consiliului de Miniştrii, file no. 167/1939: 85-86), in which he created two new ministries, the Organization of the National Renaissance Front, led by Constantin C. Giurescu and the Ministry of Propaganda, which was led by Alexandru Radian (SANIC, Fund Preşedinţia Consiliului de Miniştrii, file no. 167/1939: 87).

On November 24th, 1939, the King Carol II formed a new government led by Gheorghe Tătărescu (SANIC, Fund Preşedinţia Consiliului de Miniştrii, file no. 167/1939: 102-105), one of the politicians who had proved his obedience to the Sovereign. The next day, the new prime minister sent an order to the secretaries of NRF, order that gave a new push to the enrolment campaign: "In order to give the opportunity to enrol in the National Renaissance Front to those who until now did not succeeded, please ask your local town halls and local institutions to give you the NRF enrolment registers, because this action of bringing all the citizens in the National Renaissance Front is henceforth one of your prerogatives" (SANIC, Fund Preşedinţia Consiliului de Miniştrii, file no. 167/1939: 100).

Although it was far from the spectacular results of the first campaign of NRF enrolment, the one launched in the autumn of 1939 increased the number of members of the royal political party through collective adherence, such as those coming from the civilian personnel of the Ministry of Air and Marine (SANIC, Fund Preşedinţia Consiliului de Miniştrii, file no. 167/1939: 100); the National Society of Romanian Orthodox Women from Diciosâmartin, the County Târnava Mică (SANIC, Fund Preşedinţia Consiliului de Miniştrii, file no. 167/1939: 65); Sanitary Direction from Bucharest (SANIC, Fund Preşedinţia Consiliului de Miniştrii, file no. 167/1939: 88, 132-229, 243-244), or individual, as that submitted by the Christian missionary bishop for the Romanians from the unorthodox Western countries – Policarp Moruşca (SANIC, Fund Preşedinţia Consiliului de Miniştrii, file no. 167/1939: 40) or the adherence submitted by I. Manolescu Strunga – former minister (SANIC, Fund Preşedinţia Consiliului de Miniştrii, file no. 167/1939: 50, 52). Individual applications also came from many lawyers, teachers, civil servants, but also from former judges or those who had held positions in the army and, at the time, were retired (SANIC, Fund Preşedinţia Consiliului de Miniştrii, file no. 167/1939: 41-49, 53-64, 66-87, 89-131, 230-242, 245-253, 259-311).

Another feature of the policy adopted by the government led by George Tătărescu was that of reconciliation, by which the executive wanted to be more opened to the former political parties, especially the Iron Guard (Sima, 2004). The leader of National Peasants' Party, Iuliu Maniu kept an intransigent position against the royal political body, explaining this new situation, in a letter sent to Constantine Argetoianu, in early November, 1939 (Bruja, 2006: 189).

Inaugurated at the end of 1939, the policy of reconciliation went hand in hand with the new single political party's reorganization strategy and the legal support to these new guidelines within the Front was given by Decree Law for National Renaissance Front

organization, published on January 20th, 1939 (SANIC, Fund FRN, file no. 2/1939-1940: 8-26). At the same time with the legislative changes, some changes also occurred in the management of the Front – on January 23rd, Alexandru Vaida Voevod was appointed president of the single political party (Carol al II-lea, 1998: 53), Constantin Giurescu received the function of general secretary, and the first secretaries of the three main professional categories were Victor Moldovan – agriculture and manual labour category, Nicolae Cornățeanu – commerce and industry and Petre Georgescu – intellectual department (the general Georgescu remained the commander of the National Guard) (Bruja, 2006: 194 ; Alexandrescu, 1998: 123).

Along with the royal political party attempts to reorganise itself, the next step was to attract the representatives of former political groups; the most receptive proved to be Legionnaires (Carol al II-lea, 1998: 72-73, 115, 135, 154, 188, 202-203). In this respect, an interesting document was entitled "The Confession of faith from the ex-members of the former Legionary Movement", signed by 295 people (SANIC, Fund FRN, file no. 262/1939-1940: 1-2). On April 25th, 1940 it was proposed an amnesty for legionnaires; the legionnaires who emigrated towards the NRF in order to avoid being sent to prison, were thus able to return home (Prost, 2006: 206-207).

Conclusions

As it did not have its own militants, NRF had to recruit members and supporters from among the former politicians, representatives of the traditional political parties. Some of the politicians who migrated to the royal political party made this choice when the National Renaissance Front was established, some of them even signing the written request necessary for the establisment of the first Romanian single political party, became founding members of this political construction. Others politicians asked to join the NRF later, as it was the case of the Legionary Movement representatives, who were massively enrolled in the royal political party after the launching of the reconciliation policy.

This strategy, of attracting politicians that already had been members of the traditional political parties had a downside: most of those enrolled in NRF maintained their own political beliefs and the single political party, although listed as having more than four million members in just a few months of existence, was not fully supported by its own members.

References:

Alexandrescu, S. (1998). *Paradoxul român*, Bucharest: Univers Publishing House.

Argetoianu, C. (2003). *Însemnări zilnice*. In Neagoe S. (ed.), *1 ianuarie – 30 iunie 1939*, Vol. 6, Bucharest: Machiavelli Publishing House.

Bărbieru, M. (2014). The electoral policy in 2012: the local and parliamentary elections from Dolj County (Romania). *Revista de Științe Politice. Revue des Sciences Politiques*, (42), 190-200.

Berstein, S., Milza, P. (1998). *Istoria Europei*, 5th volume: *Secolul XX (din 1919 până în zilele noastre)*, Iași: Institutul European.

Boia, L. (2002). *România, țară de frontieră a Europei*, Bucharest: Humanitas Publishing House.

Bruja, R. F. (2006). *Carol al II-lea și partidul unic: Frontul Renașterii Naționale*, Iași: Junimea Publishing House.

Carol al II-lea (1997). *Însemnări zilnice. 1937-1951*. In Rauș N. (ed.), *3 martie – 15 decembrie 1939 (Caietele 8-10)*, vol. 2, Bucharest: Scripta Publishing House.

Carol al II-lea (1998). *Însemnări zilnice. 1937-1951*. In Rauș N. (ed.), *15 decembrie 1939 – 7 septembrie 1940 (Caietele 11-11A)*, edited by Nicolae Rauș, Bucharest: Scripta Publishing House.

Dandara, L. (1985). *România în vâltoarea anului 1939*, Bucharest: Scientific and Encyclopedic Publishing House.

Gafencu, G. (1991). *Însemnări politice 1929 – 1939*, edited by Stelian Neagoe, Bucharest: Humanitas Publishing House.

Georgescu, C. M. (2014). Governance and Intra-Governmental Relations during Transition: A Historical Institutionalist Approach of Romanian Public Administration Reform Dynamics. *Revista de Științe Politice. Revue des Sciences Politiques*, (44), 39-50.

Hudiță, I. (2003). *Jurnal politic, 16 septembrie 1938 – 30 aprilie 1939*, Bucharest: Fundația Pro Publishing House.

Mamina, I., Scurtu, I. (1995). *Guverne și Guvernanți (1916 – 1938)*, Bucharest: Silex Publishing House.

"Neamul Românesc" from January 4th, 1939: 3.

"Neamul Românesc" from January 6th, 1939: 3.

Nedelea, M. (1991). *Prim-miniștrii României Mari. Ideile politice*, Bucharest: Viața Românească Publishing House.

Olimid, A. P. (2014). Civic Engagement and Citizen Participation in Local Governance: Innovations in Civil Society Research. *Revista de Științe Politice. Revue des Sciences Politiques*, (44), 73-84.

Quinlan, P. D. (2008). *Regele playboy. Carol al II-lea al României*, Bucharest: Humanitas Publishing House.

Prost, H. (2006). *Destinul României (1918-1954)*, edited by Valer Moga, Bucharest: Compania Publishing House.

"România" from January 4th, 1939: 7.

"România" from January 1st, 1939: 33.

Rusu, D. D. (2000-2001). Frontul Renașterii Naționale – partid unic într-un regim autoritar. *Analele Științifice ale Universității "A. I. Cuza" Iași*, *Seria Istorie*, Tomul XLVI-XLVII, 404-414.

Scurtu, I., Buzatu, G. (1999). *Istoria românilor în secolul XX*, Bucharest: Paideia Publishing House.

Scurtu, I. (2005). *Istoria contemporană a României (1918-2005)*, Bucharest: Fundația "România de Mâine" Publishing House.

Scurtu, I., Otu, P. (coord) (2003). *Istoria românilor*, *România Întregită (1918 -1940)*, vol. 8, Bucharest: Encyclopedic Publishing House.

The Service of Central Historical National Archives of Romania – SANIC, Funds: Direcția Generală a Poliției, file no. 209/1938; Frontul Renașterii Naționale (FRN), file no. 1/1939; 2/1939-1940; 6/1939-1940; 234/1939; 262/1939-1940; Președinția Consiliului de Miniștrii, dosar nr. 167/1939

Serviciul Județean al Arhivelor Naționale Dolj (The County Service of National Archives Dolj – SJAN Dolj), Fund Rezidența Regală a Ținutului Olt, file no. 92/1939.

Sima, H. (2004). *Sfârșitul unei domnii sângeroase (10 decembrie 1939 – 6 septembrie 1940). Lupta Mișcării Legionare contra regimului Carol II*, Constanța: Metafora Publishing House.

Slăvescu, V. (1996). *Note și însemnări zilnice*, 2 ianuarie 1938 – 31 decembrie 1939, Bucharest: Encyclopedic Publishing House.

Stoenescu, A. M. (2006). *Istoria loviturilor de stat în România 1821-1999*, *Cele trei dictaturi*, vol. 3, Bucharest: Rao Publishing House.

Vaida Voevod, A. (1997). *Memorii*, vol. 3, Cluj-Napoca: Dacia Publishing House.

Article Info

Received: March 29 2015
Accepted: May 26 2015

RSP • No. 46 • 2015: 196-207

ORIGINAL PAPER

Effects of Parental Migration on Families and Children in Post-Communist Romania

Bertha Sănduleasa*
Aniela Matei**

Abstract
Migration is considered a form of socio-economic behaviour. Previous research in the field shows that migration became a strategy of life after the fall of the communist regime for many Romanians, due to the difficult transition to democracy. Aside from the economic benefits of migration, this strategy of life has sometimes negative social effects on family, as migration becomes a destabilizing factor for the family especially when children are left in Romania. Children often find themselves responsible for tasks usually completed by the adult members of the family (such as housework and even agricultural work in the case of children from rural areas), leaving aside their obligations to attend school. According to official statistics, over 80 thousands children living in Romania have at least one parent working abroad. However, numerous NGO's activating in Romania argue that the actual size of this phenomenon is still unknown, despite the fact that efforts are made by the public authorities to determine the real number of children living in this country and having at least one parent who works abroad. The biggest concern is that of children who remain in their home country completely deprived of parental care. The absence of the mother is one of the important factors that contribute to changing family model, taking into account the traditional family model where mothers have the most important role in household labour (i.e., housework and childcare). Or, changing the roles of family members in terms of childcare represents a challenge for family protection policies in Romania. This article presents the new model of transnational family and uses a sociological approach regarding the impact of parental deprivation and analysis the migration intentions of Romanian parents with special focus on the effects on children left behind. In order to reach this objective, authors used data from the Special Eurobarometer 337 exploring Europeans' mobility experiences and intentions.

Keywords: *parental care, parental deprivation, migration for work, transnational family, family policies, transnational parenthood*

* Scientific Researcher III, National Scientific Research Institute for Labour and Social Protection (INCSMPS), PhD, Email: sanduleasa@incsmps.ro.
** Scientific Researcher III, National Scientific Research Institute for Labour and Social Protection (INCSMPS), PhD, Email: aalexandrescu@incsmps.ro.

Effects of Parental Migration on Families and Children in Post-Communist Romania

Introduction

Migration is considered a form of socio-economic behaviour. Scholars came to acknowledge that in recent decades women equalled men regarding the rate of migration for work, although in the past women were seen as the passive followers of males migrating for work. Children are the main reason behind their parents' decision to migrate for work, as a consequence of the lack of employment opportunities in their home countries. After all, migration was defined by Gailbraith as the "oldest action against poverty" (Gailbraith, 1979). But parents are not always aware that their migration decision will have strong negative impact on their children who are left at home, such as school drop-out. There is a causal effect of parental migration on children's educational attainment, especially when the mother is the one migrating for work, leaving her children back home with their father (Antman, 2012). Mothers are the ones that mainly deal with the care and education of the children, thus having the central position in terms of emotional capital (Thoma, 2010). So, children's educational outcomes may differ depending on who is the migrant parent and who is the one who stays at home with children.

In 1947, Romania became a communist country. During the communist regime, there were very restrictive exit policies applied by the government, so migration diminished. After the fall of the communist regime (i.e. 1989), Romania's transition to a market economy has given rise to a series of changes both in structural and behavioural plan regarding family. Phenomena such as unemployment and poverty have emerged and expanded in the post-communist period, families being forced to adapt to these new situations. Migration to foreign countries has become one of the solutions to adapt to this new situation after the fall of communism, especially in the case of those less educated and those from rural areas who have fewer opportunities to access the labour market from their home country. Romania became a country of emigration, and the temptations to leave the country were even greater given Ceausescu's restrictive migration policy during his dictatorial regime. For many Romanians, migration became *a strategy of life* after the falling of the communist regime. Migration for work accounts for the largest part of out-migration flows in Romania. Still, permanent migration from Romania is relatively low, temporary migration for labour being the dominant, especially since 2002 when Romanians were able to travel without restrictions in Schengen area. In 2007 Romania joined the European Union and the circular character of Romanians' migration accentuated. Basically, the estimation of number of Romanian migrants abroad became a difficult task because of the circular character of the phenomenon of migration (Sandu, 2010). Due to the circular character of Romanian's migration, children are usually left at home by the parents who leave their home country looking for work.

Aside from the economic benefits of migration, this strategy of life has sometimes *negative social effects on family*, as migration becomes a destabilizing factor for the family especially when children are left in Romania and at least one parent is working in a foreign country. Thus, for families and especially for those with children, migration has brought changes with regards to the *functions of the family*, including the functions related to statuses and roles of family members judged within. In the case of families with children, the most affected function of the family is caring for children. The absence of the mother in the family indicates increased risk for children, taking into account the traditional family model where mothers have the most important role in raising children and therefore children are more attached to their mothers, especially at younger age. At the same time, the absence of the mother in the family is one of the important factors that contribute to

changing the Romanian family model in terms of roles played inside and outside the family, given the fact that after year 2001, Romanian female migrants for work became as numerous as male migrants (Sandu, 2010). Or, changing the roles of family members in terms of homecare and children's care and education represents a challenge for the family protection policies in Romania from the perspective of migration phenomenon.

According to official statistics, in 2014 over 80 thousands children living in Romania had at least one parent working abroad. However, numerous NGO's argue that *the actual size of this phenomenon is still unknown in Romania*, despite the fact that efforts are made by the public authorities to determine the real number of children living in this country and having at least one parent who works abroad (Save the Children Romania, 2007; Soros Foundation Romania, 2007; UNICEF Romania, 2008). The biggest concern is that of children who remain in their home country completely deprived of parental care and supervision. This article employs the concepts of transnational families and transnational parenting and argues that children left behind by their migrant parents represent a social problem that needs special attention from the Romanian government, especially in the case of children deprived of maternal care. Finding the best ways to respond to the needs of transnational families in order to protect the rights of children left at home is a difficult task for the Romanian Government that needs to develop appropriate tools enabling remote parenting and supporting transnational parent–school communication. The article uses analysis of official statistics with regards to the children remaining in their home country while parents migrate for work. Also, authors used data from the Special Eurobarometer 337 - Geographical and labour market mobility. This special Eurobarometer is part of Wave 72.5 survey and was conducted in 2009 on behalf of the European Commission, under the responsibility of the Directorate-General Communication. The survey was designed to take a closer look at Europeans' mobility experiences and intentions. For this paper, the Romanian national sample was used, composed of 1,008 subjects, in order to present Romanians' opinions with regards to the effects of migration on family and their willingness to move if unemployed. Data were analysed using SPSS 19. Descriptive statistics were used while running the database, based on the post-stratification weights. This weighting procedure ensures that each country is represented in proportion to its population size aged 15 and over, by gender, age, region (NUTS II according with EUROSTAT nomenclature of territorial units for statistics) and size of locality.

Families in migration and the concept of transnational parenting

A great deal of research on migration and its effects concentrated on remittances and their impact on poverty reduction (Adams, Page, 2005; De Haas, 2005; Ratha, 2003). On the other hand, there are many researches concentrating on migrants' process of adaptation in the country where they migrate for work (Berry, 1997; Bhatia, Ram, 2001; Feliciano, 2006; Portes, Fernández-Kelly, Haller, 2008). But apart from the study of impact of remittances on poverty reduction and the migrants' integration in their host countries, there are other important aspects that should call the attention of researchers regarding the study of migration. The impact of migration on family members left at home is one of the important aspects that need more attention from scholars, as families are, after all, providers not only of material, but also emotional support. For example, when parents migrate for work in a foreign country and their children or dependent elderly are left at home, they lose care and may create social costs for society in terms of social policies supporting family members left at home.

The need to promote comprehensive research regarding the effects of migration on family members in their countries of origin generated at the beginning of the '90 the *transnational approach* with the aim at studying the linkages that migrants maintain with their country of origin. But *transnational families* and the concept of *transnational parenting* became a topic of interest only later, after the year 2000 (Bryceson, Vuorela, 2002; Schiller, Basch, Szanton-Blanc, 1992; Parrenas, 2005; Pribilsky, 2004; Levitt, 2001). So, the transnational approach into the conceptualization of the family and into the methodologies used to study migrant families represents a recent development in the field of sociology. The sociology of the family typically emphasizes proximity as a prerequisite, but recently scholars incorporated transnational approach into the studies on families, by analysing the consequences of a transnational lifestyle for children who are left behind by migrant parents. *Transnational families* were defined as "families whose members live some or most of the time separated from each other, yet hold together and create something that can be seen as a feeling of collective welfare and unity, namely 'familyhood', even across national borders" (COFACE, 2012). *Transnational parenting* refers to adults' parenting from a different country than the one in which their children reside.

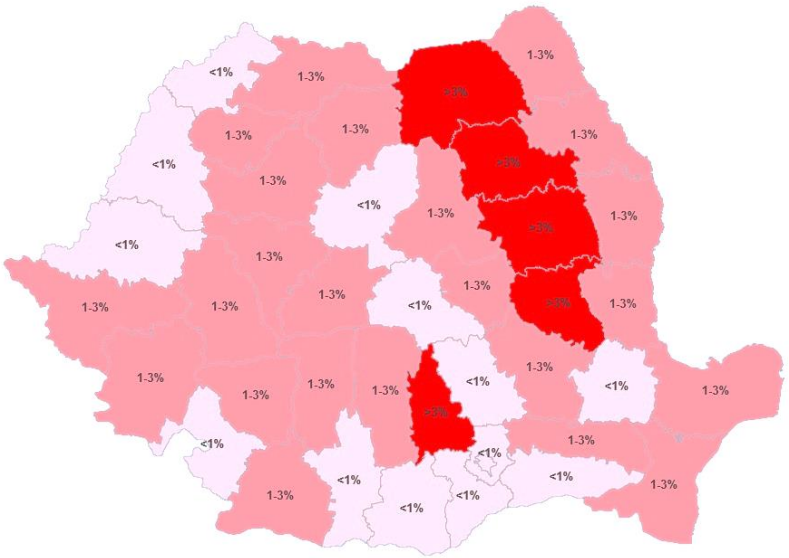
Studies on the new family model (i.e. *transnational families*) have drawn attention to the fact that children left behind by their parents, and especially by their mothers, face emotional problems that are even greater when they find out that their parents started a new life with a new family in the host country (Levitt, 2001). Apart from the emotional costs, there are also social costs incurred by the separation between parents and children due to migration, costs that are not compensated by remittances or by the care provided by other persons (Castaneda, Buck, 2011). Moreover, evidence shows that migrant families experience reconfigurations and shifts with regards to the roles played by the family members (UN Women, 2013). Children come to take place of the missing parent, assuming tasks that normally were performed by adult parents. The following step is losing their interest in school (poor results at school and even drop-out). In order to prevent such situations, scholars emphasised on the importance to develop tools to support transnational parent–school communication in migration-separated families. Current technologies offer great opportunities in developing information and communication platforms enabling communication among parents, guardians, and educators about the left-behind children (Brown, Grinter, 2014).

However, the model of transnational family and the study of transnational parenting are still in early stage of development. The main significant gaps regarding transnational family studies are, on one hand, that these studies are small-scale studies and, on the other hand, they do not collect data systematically. Furthermore, these studies omit to take into consideration a comparison group, so it is hard to determine if research results indeed characterise transnational families or there are other families with the same characteristics or behaviours and transnationality is not the determinant factor. There are important questions that scholars need to answer when using the transnational approach in their family studies: how does migration change the roles and responsibilities that different family members have towards each other and how are these changes negotiated between members? What are the non-economic effects of transnational families on children, parents, the elderly and caretakers? What makes transnational families to be different than other families living together? What effects do they have on all the social actors, not only children? What is the effect of the different types of transnational child rearing arrangements (children raised by a caretaker in the extended family, children raised by either their biological mother or father, children raised by a non-kin caretaker)?

Romanian children left in their home country while parents migrate for work

According to official statistics published by the National Authority for the Protection of the Rights of the Child and Adoption, over 80 thousands children belonging to almost 60 thousands families are left in Romania by their parents who migrate for work to other countries. Most of these children are left in the care of their relatives and around 4% of these children are placed in the care of public authorities. According to official statistics, most children whose parents migrate for work in foreign countries remain in Romania in the care of *one parent*, while the other parent leaves to work in another country (around 60%). More than a quarter are left in their home country with their relatives, as *both parents* decide to migrate for work in foreign countries leaving their children completely deprived of parental care. The third category of children is the one raised by *single parents* who also leave their children with their relatives when migrate for work. There are certain counties from Romania where the percentage of children whose parents migrated for work is particularly high. Thus, in 2013, the counties with the highest percentages of children having at least one parent working abroad were mainly from the Nord-East development region (i.e. Neamt, Suceava, Bacau), as shown in Figure 1. This is also the region with the highest poverty rate and the highest risk of social exclusion in Romania. According to the National Institute for Statistics, the poverty rate in the NE development region was 33.5%, while at risk of poverty or social exclusion rate (AROPE) was 48.9% in year 2013.

Figure 1. Percentage of Romanian children having at least one parent working abroad in the total population of children at county level, 2013

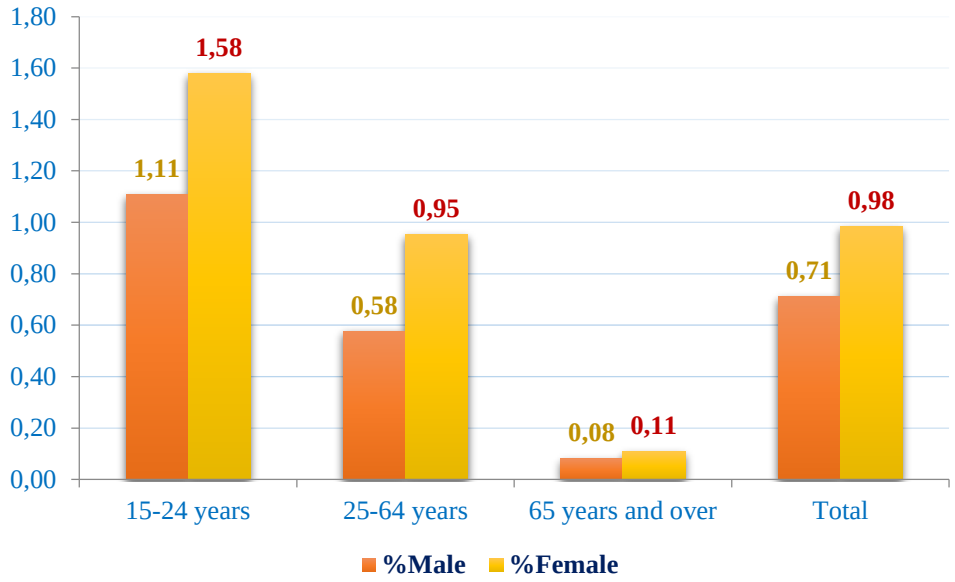


Source: data computed by authors based on national official statistics provided by the National Authority for the Protection of the Rights of the Child and Adoption and the National Institute of Statistics

As showed above, during recent years the number of Romanian female migrants exceeded the number of male migrants. Moreover, the percentage of female temporary

migrants in the female population with Romanian citizenship domiciling in Romania is higher than in the case of male population, as showed in Figure 2. Given these figures, we can only assume that the number of children deprived of maternal care also increased in the last years.

Figure 2. Percentage of Romanian temporary migrants in the total population of Romanian citizens domiciling in Romania, 2013



Source: data computed by authors based on national official statistics provided by the National Institute of Statistics

A series of studies developed at national level revealed that the number of children whose parents are working abroad is excessive undersized by the public authorities. Several NGOs (i.e. UNICEF Romania, Social Alternatives Association, Soros Foundation Romania) developed important national field research revealing that the total number of children deprived of parental care is much higher than suggested by administrative data.

The national study developed by UNICEF Romania and Social Alternatives Association in 2007 estimates that the real number of children having at least one parent working abroad was of 350,000 children, representing about 7% of the population under 18 years old (UNICEF Romania, 2008). More than one third from these children was completely deprived of parental care, as both their parents were working abroad. Moldova was the region with the highest number of children left at home by their migrant parents. More than a half of children affected by migration were living in rural areas. Rural areas are also the ones where the number of children completely deprived of parental care is higher (both parents were working abroad). When motivating their decision to migrate for work, parents working abroad invoked economic reasons. They also mentioned that children were not consulted when decided to leave the country for work. Worrying is the

fact that only one fifth of the parents who worked abroad considered that separation from children and family represents an argument against the idea of migrating for work. What is even worse is the fact that around one third of the migrant parents said that their families' economic situation and their standard of living did not improve after they migrated. Even if parents decided to migrate and leave their children at home as a survival strategy oriented to avoid the risk of poverty of the family, a significant number of parents fail to achieve their goals. The result is that family members left at home get to suffer not only of emotional poverty, but also of economic poverty.

Soros Foundation also developed a national study regarding children aged between 10 and 14 years old and concluded that the real number of children whose parents migrated for work was two times higher than the number presented by the officials (Toth, Toth, Voicu, Ștefănescu, 2007). The national study conducted by Soros Foundation revealed the changes in family roles and functions generated by the relocation of family members for extended periods of time. Children often find themselves responsible for tasks usually completed by the adult members of the family such as housework and even agricultural work in the case of children from rural areas. The time consumed with domestic activities affects their free time but also the time children need to study and prepare their homework for school. Housework is generally a task which is performed by girls especially when the mother or even both parents leave the country for work. So, children's right to education and also their right to leisure and play are violated.

Romanian authorities included children affected by migration in the category of vulnerable children within the National Strategy for the Protection and Promotion of Child Rights 2014-2020, motivating that these children have low school performance and are at high risk of dropping out of school. Parental involvement is very important for the proper social and cognitive growth of a child. In this context, it is important to support children left at home and their migrant parents by developing, among others, appropriated tools to unable transnational parent–school communication, especially in the case of children deprived of maternal care. Yet, finding the best ways to respond to the needs of transnational families in order to protect the rights of children left at home is a difficult task. On one hand, even obliged by the law, parents rarely inform authorities about their intensions to migrate for work. On the other hand, local authorities are confronting with the lack of human and material resources necessary to manage this phenomenon. Moreover, there is a lack of training of the personnel with attributions in managing the case of children left behind by their migrant parents.

Romanian's opinions expressed within the Special Eurobarometer on labour market mobility

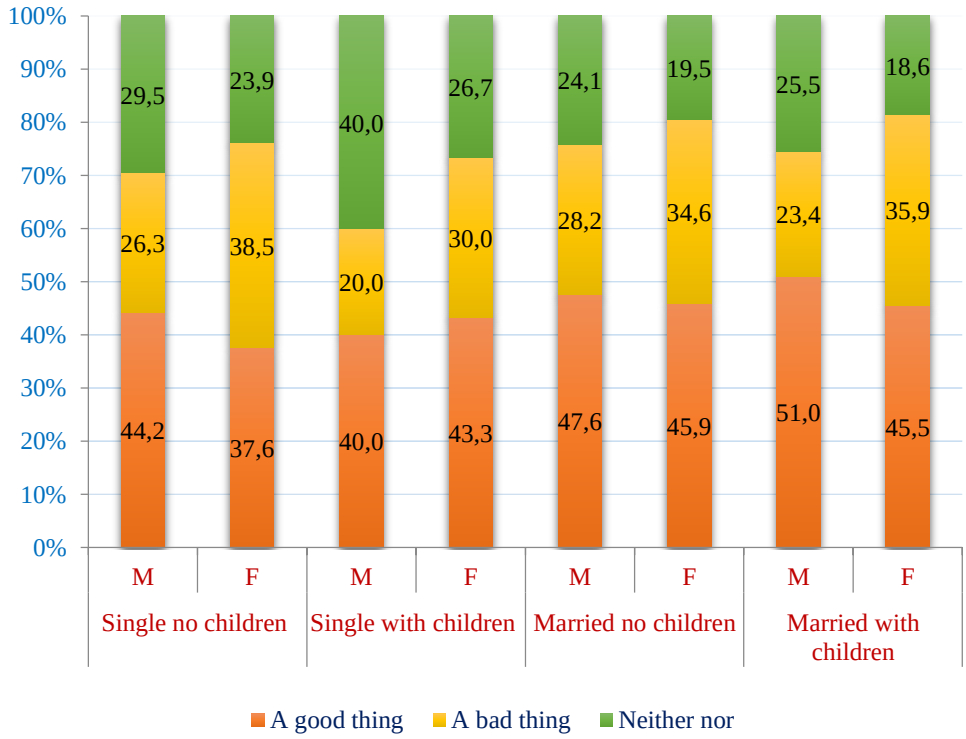
Effects of migration on family

When Romanian respondents were asked if, generally speaking, they thought that when people move across regions or countries within the European Union it is a good, bad or neither a good nor a bad thing for family, most of them have said that moving to another country would be a good thing (45.4%), around 30% said it would be a bad thing and less than one quarter (24.1%) said it would be neither a good nor a bad thing for family. Female respondents from Romania are more convinced than men that moving across regions or countries within the European Union is a bad thing for family regardless of family structure.

Female respondents from Romania are more convinced than men that moving across regions or countries within the European Union is a bad thing for family regardless

of age group also. Among least supportive of migration in terms of impact on the family are women older than 40 years.

Figure 3. Romanians' opinions with regards to the effects of migration on family by family type



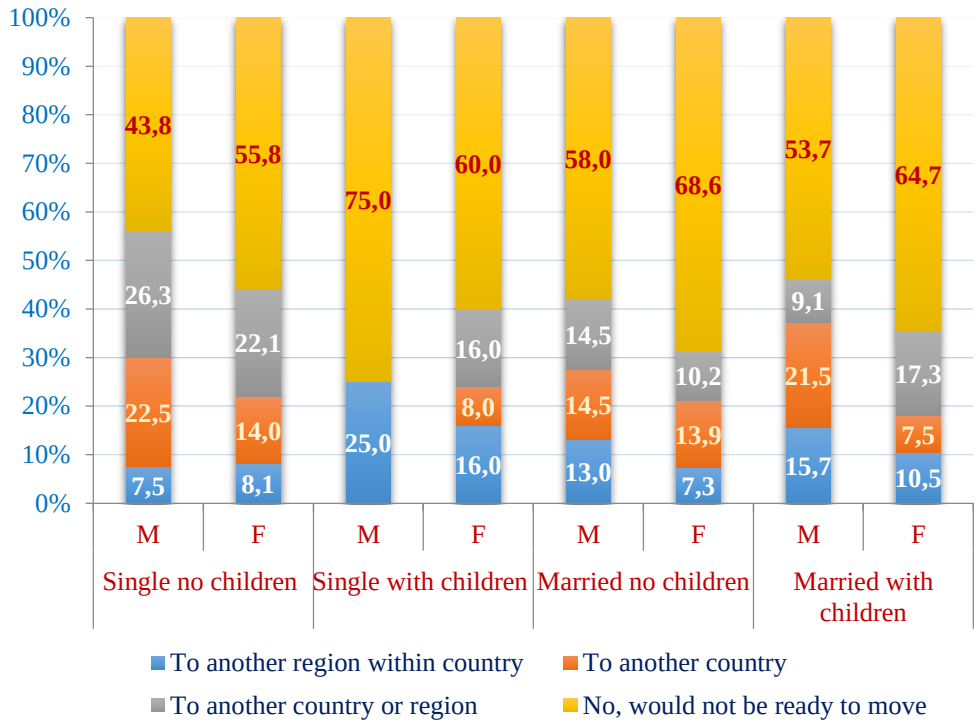
Source: Eurobarometer 72.5 (October-November 2009)

Place of residence is also a variable which separates women from men when asked if moving across regions or countries within the European Union is a bad thing for family. Women from rural areas think in a greater extent that moving across regions or countries within the European Union is a good thing for family (49%) by comparison with women from urban large areas (only 40.6% of women from large towns consider that moving across regions or countries within the European Union is a good thing for family).

Willingness to move if unemployed

If they were unemployed and had difficulties finding a job in their place of residence, most Romanians (56.6%) would not be ready to move to another region or country to find one, while 16.2% would be ready to move to another country in order to find a job. Single-parent families are the ones most resistant to the idea of moving to another region or country, especially in the case of families represented by males. Married families are also less willing to move, especially if the respondents are females. By comparison with female respondents, men are more willing to move to another country if unemployed, especially in the case of families with children.

Figure 4. Romanians' willingness to move if unemployed by type of family



Source: Eurobarometer 72.5 (October-November 2009)

Age is also an important variable with regards to the willingness to move if unemployed, especially in the case of female respondents. Still, women are the least willing to move for work, regardless of age group.

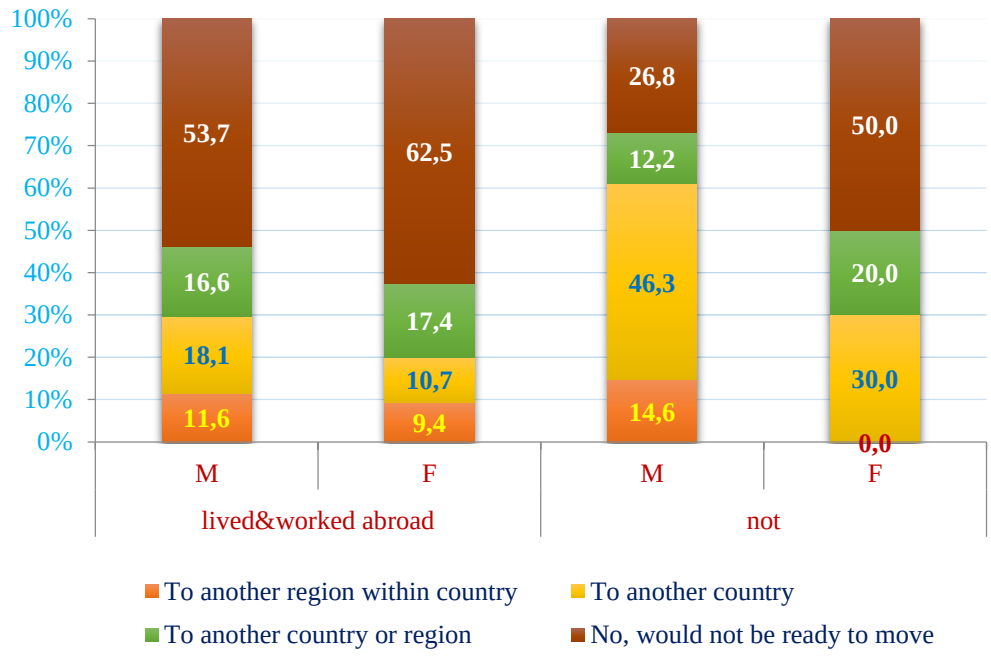
The most willing to move to another country if unemployed are male respondents from the age group 15-24 years.

Women are the least willing to move for work when taking into account respondents' place of residence, also. The most willing to move to another country for work are men from large towns. The least willing to move for work are respondents from rural areas, despite the fact that people most affected by poverty and unemployment, are the ones from rural areas and small towns.

The willingness to migrate for work to another country varies depending on previous experience in living and working abroad.

Thus, people who lived and worked abroad in the past are less willing to move from their current place of residence in Romania. Both in the case of the ones with previous experience abroad and in the case of the ones who never left their home country, women are less willing to move to another country by comparison with men.

Figure 5. Romanians' willingness to move if unemployed



Source: Eurobarometer 72.5 (October-November 2009)

Conclusions

After the fall of the communist regime, migration became one of the most important demographic phenomenon in Romania, as many Romanians failed to find a good job inside their country in order to provide for their family a decent standard of living. Migration was seen as the only way to improve family standards of life and assure a better future for children. Yet, parents' migration for work conducted to changes and new negotiations with regards to statuses and roles of family members who remain in their home countries. The costs of these changes translate into both social and emotional effects. Migration leaves children vulnerable and deprived of parental care, of physical, psychological or emotional protection. A new family model developed in Romania, the transnational family. Children left behind by their migrant parents represent a social problem that needs special attention from the Romanian government, especially when parents, under the effects of poverty and unmet needs, do not realize the negative effects on children deprived of parental care. Of course, family has the freedom to decide on adopting a migratory behaviour and to separate the children from one or both parents. In a democratic society, the State cannot interfere in this decision. Yet, the State can and is obliged to formulate policies and intervention measures in order to protect the rights of vulnerable children left at home and to meet the needs of transnational families. Given the effects of parental migration on children's educational outcomes, it is important to support children left at home and their migrant parents by developing, among others, appropriated tools to unable remote parenting and transnational parent–school communication.

Finding the best ways to respond to the needs of transnational families in order to protect the rights of children left at home is a difficult task. Unfortunately, data sources about migration are scarce and incapable to reflect both the magnitude and structure of the phenomenon of children with migrant parents. The transnational approach developed in recent years represents a good method to promote comprehensive research regarding the effects of migration on family members left in Romania.

Acknowledgment

This paper is made and published under the aegis of the National Scientific Research Institute for Labour and Social Protection as a part of a Romanian research programme funded by the Ministry of National Education through the project "*The Role of Family in Education of Children: Challenges and Educational Strategies for an Effective Educational Partnership between Family and Childcare & Educational Systems*", Romanian funding grant No. PN 09-420212.

References:

Adams, R., Page, J. (2005). Do International Migration and Remittances Reduce Poverty in Developing Countries? *World Development*, vol. 33, (10), 1645–1669.

Antman, F. M. (2012). Gender, Educational Attainment, and the Impact of Parental Migration on Children Left Behind. Discussion Paper No. 6640. In Institute for the Study of Labor, *Discussion Paper Series*. Retrieved from: http://ftp.iza.org/dp6640.pdf.

Berry, J. W. (1997). Immigration, acculturation, and adaptation. *Applied Psychology*, vol. 46, 5-34.

Bhatia, S., Ram, A. (2001). Rethinking 'acculturation' in relation to diasporic cultures and postcolonial identities. *Human Development*, vol. 44, 1-18.

Brown, D. Grinter, R. E. (2014). Aboard Abroad: Supporting Transnational Parent–School Communication in Migration-Separated Families. *Information Technologies & International Development*, 10(2), 49–63.

Bryceson, D. F., Vuorela, U. (2002). *The Transnational Family: New European Frontiers and Global Networks*. Oxford: Berg Publishers.

Castañeda, E., Buck, L. (2011). Remittances, Transnational Parenting, and the Children Left Behind: Economic and Psychological Implications. *The Latin Americanist*, (55), 85-110.

COFACE, (2012). Transnational Families and the Impact of Economic Migration on Families. Confederation of family organisations in the European Union. Retrieved from: http://coface-eu.org/en/upload/03_Policies_WG1/2012%20COFACE%20position%20on%20Transnational%20Families%20en.pdf.

De Haas, H. (2005). International Migration, Remittances and Development: myths and facts. *Third World Quarterly*, vol. 26, (8), 1269-1284.

European Commission (2013). Eurobarometer 72.5 (October-November 2009). TNS OPINION & SOCIAL, Brussels. GESIS Data Archive, Cologne.

European Commission Report. (2010). Geographical and labour market mobility, Special Eurobarometer 337.

Feliciano, C. (2006). Beyond the Family: The Influence of Premigration Group Status on the Educational Expectations of Immigrants' Children. *Sociology of Education*, (79), 281- 303.

Galbraith, J. K. (1979). *The Nature of Mass Poverty*. Cambridge, MA: Harvard University Press.

Glick Schiller, N., Basch, L., Szanton-Blanc, C. (1992). Transnationalism: a new analytic framework for understanding migration. In Glick Schiller N., Basch L., Szanton-Blanc C. (eds.), *Toward a Transnational Perspective on migration*, New York: New York Academy of Sciences, pp. 1-24.

Levitt, P. (2001). *The Transnational Villagers*, Berkeley: University of California Press.

Parrenas, R.S. (2005). *Children of Global Migration: Transnational Families and Gendered Woes*, Standford: Standford University Press.

Portes, A., Fernández-Kelly, P. and Haller W. (2008), No Margin for Error: Educational and Occupational Achievement among Disadvantaged Children of Immigrants. *Annals of the American Academy of Political and Social Science*, (620), 12-36.

Pribilsky, J. (2004). Aprendemos a convivir: conjugal relations, co-parenting, and family life among Ecuadorian transnational migrants in New York City and the Ecuadorian Andes. *Global Networks*, 4 (3), pp. 313-334.

Ratha, D. (2003). Workers' remittances: an important and stable source of external development finance. In *World Bank, Global Development Finance*, Washington: World Bank, pp. 157-175.

Sandu, D. (2010). *Lumile sociale ale migrației românești în străinătate*, Iași: Polirom.

Save the Children România. (2007). Impactul migraţiei părinţilor asupra copiilor rămaşi acasă.

Thoma, D. (2010). Understanding Migrants' Experiences of Social Exclusion and Inclusion: the Case of Bulgarian Immigrants in Greece. In Roth, K. and Bacas, J. L. (eds.), Migration In, From, and to Southeastern Europe. Part 2: Ways and Strategies of Migrating, *Ethnologia Balkanica*, vol. 14, 27-48.

Toth, G., Toth, A., Voicu, O., Stefanescu, M. (2007). Efectele Migraţiei: Copiii rămaşi acasă. Soros Foundation Romania. Retrieved from: http://www.fundatia.ro/sites/default/files/Efectele%20migratiei.%20Copii%20ramasi%20acasa.pdf.

UNICEF Romania. (2008). Analiză la nivel naţional asupra fenomenului copiilor rămaşi acasă prin plecarea părinţilor la muncă în străinătate. Retrieved from: http://www.unicef.org/romania/ro/Raport_final_HAC.pdf.

UN Women. (2013). Valuing the Social Cost of Migration. An Exploratory Study. United Nations Entity for Gender Equality and the Empowerment of Women. Retrieved from: http://unwomen-asiapacific.org/docs/publications/2013/Terminal_Report_SOCIAL_COST_Chapter1_4final.pdf.

Article Info

Received: April 28 2015
Accepted: May 28 2015

RSP • No. 46 • 2015: 208-217

ORIGINAL PAPER

Religious Implications of the Migration Phenomenon. An Orthodox Perspective

Adrian Boldişor*

Abstract
From a problem that concerned only a small number of people, migration has become a constant concern both nationally and internationally. The concrete realities in different regions have become over time subjects of analysis and reflection in order to find solutions that meet the many theoretical and practical issues raised by migration. In Romania people are increasingly discussing about migration and its implications on all sectors of human life. In this context, the Romanian Orthodox Church is called by his priests, to contribute to the integration of people of other nationalities, cultures and beliefs that are established here and at the same time, to help her spiritual children living and working in different parts of the world to preserve and to confess their Orthodox Christian faith. Moreover, it should take care of their families in the country and to contribute to the education of children, whose parents are away, in the spirit of the Christian tradition.

Keywords: *pluralism, globalization, migration, religion, Romanian Orthodox Church*

* Lecturer, PhD, University of Craiova, Faculty of Orthodox Theology, History and Philosophy of Religions Specialization, E-mail: adi_boldisor@yahoo.com.

Introduction

The profound transformations that have been recorded lately in all sectors of life have led to increased migration phenomenon that can be observed across the globe. Massive migration of people is based on different causes, with reference both to the social, political and economic life, as well as religion. Commodity exchanges led to exchanges of ideas and movements from one region to another in order to have a better life led to meetings between different civilizations, cultures and religions. Faced with these new insights they needed to live with people of other faiths and ideologies, which one often does not understand, but feeling the need to know, man had to open their heart and soul to accept the person that he meets daily in public and private life. So, from a matter of concern for only a handful of people, migration has become a constant concern locally, nationally and internationally. Concrete realities from different regions over time become subjects of analysis and reflection in order to find solutions that meet the many theoretical and practical issues raised by migration.

Pluralism, globalization, religion

A topic of great interest nowadays is related to how the Orthodox Church preaches in a pluralistic world. In the context in which we live, Christian values, as confessed by Orthodoxy, are restated in new terms so we can speak of a "new theology" not in the sense that a new Christian teaching is rising, but in the sense that our teaching must be confessed to a world in constant change and transformation, using a new language. "We discover the true dignity of speech. This conversation on pluralism is also an opportunity to discover and to promote the true dignity of speech, in addition to producing a performant speech act" (Demetrios of America, 2004: 2). Analyzing the concept of "pluralism" we notice that it is closely linked to that of "globalization", together representing some of the most important challenges of our times. "The word globalization has acquired a special meaning and is used to summarize certain developments and trends that have characterized the final quarter of the second millennium. In the area of economics in particular, this term denotes the process by which the economies of different countries have become fully integrated into a worldwide economic system, one that has concentrated production, trade, and information around the global in a few geographical centers. The ensuing process of internationalization has led to a greater degree of mutual dependence among societies around the world" (Yannoulatos, 2003: 179).

The researchers emphasize that globalization has, on the whole world, both positive and negative effects, from the economic to the social and political life, without neglecting the profound changes in the cultural field. Among the positive effects of globalization are: the development and advancement of technology, goods traffic and achievements in all areas, ease of communication between people, fight against certain diseases globally, limiting illiteracy, repositioning the role of women and youth in society, freedom of thought, promoting democracy, proximity between people etc. Among the negative effects one highlights: the gap between countries, deepening by the day, the economic gap, people living at the edges of poverty, environmental disasters worldwide, developing crime and corruption, many democratic institutions do not respect fundamental human rights and freedoms last but not least, "we are seeing new, major shifts of labor power, with new waves of immigrants and economic refugees flooding the prosperous countries. The increase in unemployment is becoming a significant threat, and xenophobia and racism have reached dangerous proportions in many countries" (Yannoulatos, 2003: 183).

The effect of globalization is felt everywhere, from the simplest acts and human needs, to the most complex of its actions, the phenomenon is present throughout life as a constant that changes it every day (Alfeyev, 2006: 227-251). The challenges that the Church is facing are not necessarily observing and preventing the negative effects of globalization, but you emphasize values and exploit them positively. The pluralistic world is not an obstacle for Orthodoxy; it is rather an opportunity, in the sense that the Church is challenged to confess its own doctrine that changed the world for 2000 years (Demetrios of America, 2004: 2-3). The words of St. Paul should be interpreted: "For though I am free with respect to all, I have made myself a slave to all, so that I might win more of them. To the Jews I become as a Jew, in order to win Jews. To those under the law I became as one under the law (though I myself am not under the law) so that I might win those under the law. To those outside the law I became as one outside the law (though I am not free from God's law but am under Christ's law) so that I might win those outside the law. To the weak I became weak, so that I might win the weak. I have become all things to all people that I might by all means save some. I do it all for the sake of the gospel, so that I may share in its blessings" (1 Cor. 9.19-23).

Carefully analyzing the concept of "pluralism", its implications in the everyday life of man, advantages and disadvantages brought along recent history of mankind, we can say that it "is not an ideology, not a new universal theology, and not a freeform relativism, Rather, pluralism is the dynamic process through which we engage with one another in and through our very deepest differences" (Eck, 2004: 19). The society in which our Lord Jesus Christ lived and the Apostle of the Gentiles preached love was a pluralistic, with mixed population and with multiple widely spoken languages, with freedom of movement and the right to demand equality for all. Furthermore, "this global perspective is in the blood of the Orthodox, blood that is constantly cleansed in the Eucharist by the blood of Christ, the redeemer of the world. Instead of a globalization that transforms nations and people into an indistinguishable, homogenized mass, convenient for the economic objectives of an anonymous oligarchy, the Orthodox religious experience and vision propose a communion of love, a society of love, and call on people to make every effort in that direction. The truly Christian thing is to continue believing when there seems to be no hope, by grounding oneself in the certainty that ultimately there is Another who controls the evolution of the universe – he *who is and who was and who is to come, the Almighty*. The truly Christian thing is to live with the certainty that a global communion of love between free persons is an ideal that deserves to be struggled for. The truly Christian thing is to be active and productive at the local level by maintaining a perspective that is global, and to fulfil our own obligations responsibly by orienting ourselves toward the infinite – the God of Love – as the purpose and goal of life" (Yannoulatos, 2003: 199).

Universality, as it is understood globally nowadays, was the spiritual space of Orthodoxy over time, being an essential part of our faith as we confess in the Nicene-Constantinopolitan Symbol of Faith ("We believe in one, holy, catholic and apostolic Church"). If you look closely at the history of the Church, we notice that, "during the first phase of its spread throughout the world, the Christian message was set down in the Greek language and expressed through Greek culture, one of whose basic characteristics was its universality. It was this universality, above all, that permeated Greek philosophy, science, and art, as well as the Greek language, and that made it possible for individuals and entire peoples to communicate more easily in diverse ways. This universal consciousness was cultivated with new power by the great hierarchs and ecumenical teachers of the fourth century, who achieved a synthesis between the universalistic thought of ancient Greece

and Christian faith. Later, in its encounter with the peoples of southeastern Europe, The Byzantine empire sacrificed the ecumenical character of the Greek language in order to preserve the universality of its culture" (Yannoulatos, 2003: 195).

Migration challenges for contemporary religious world

Migration occurs as a consequence of pluralism and globalization. Migration has existed in all times, but has increased in recent years especially in the broader context of the exchange of ideas and products, of good transport possibilities, of the rapid circulation of information, etc. At the same time, at global level the problems that affect people have widened, which include conflicts in most territories, difficult economic situations in many regions of the world, leading up to the financial crisis and major social changes, in which the majority populations in different territories must live with minorities which, most often, they do not know and do not accept them. Demographics of our world has changed radically also influencing our way of seeing religions, cultures and ethnicities with which we interact repeatedly. Given these realities the phrase "clash of civilizations" has crystallized, which has become reality every day.

A separation must be done between refugees and migrants, the first being those who, for security reasons, have left their countries and cannot return, unlike who migrants who left their native places having economic reasons. But regardless of these concrete situations that led some people to leave their country of origin, one can speak of the same problems faced by refugees and migrants. It seems that our society was not sufficiently prepared for what happened worldwide following the massive population movements, especially in the millennium in which we live. Important changes occur not only in the everyday life of those who migrate into new territories, but also in that of the people among whom settle populations from other geographical regions. "The map of the world in which we live cannot be colour-coded as to its Christian, Muslim or Hindu identity, but each part of the world is marbled with the colours and textures of the whole" (Eck, 2004: 12). Immigrants bring with them not only the language and the wish for a better life, but also their beliefs, Muslim, Hindu or other, which are different from the beliefs of those in the middle of which they establish. Under these conditions, only listening to the neighbour and the dialogue with him can testify true Christian faith in a pluralistic world. "Whether we like it or not, foreigners constitute a mirror in which societies and churches can see their own reflections. Our behavior towards them, individually and collectively, shows clearly how we measure up to principles of equality, justice and respect for the human person in practice and not simply in theory. Their presence constitutes a call to solidarity, justice and respect for human rights within a profoundly unjust world. They are a challenge to civilization and culture" (Jacques, Farris, 2002: 769).

Over time there have been several attempts to make connections between different migrant organizations and companies working towards defending their rights. Often these meetings ended in failure, but important steps have been taken in order to find solutions to the main difficulties raised by the issue of migration. Thus, on October 1 and 2, 2013, some 100 representatives of sixty-one grassroots, local, regional and international organizations of migrants and religious and ecumenical groups met at the Church Center for the United Nations in New York City for the Fourth International Consultation of the Churches Witnessing with Migrants. The consultation was held in conjunction with the 2013 Second High Level Dialogue on International Migration and Development by the General Assembly of the United Nations.

The declaration signed in October 2013 states that human dignity is a divine gift that cannot be taken by anyone, person, government, public or private entity. Human dignity requires respect for human rights, which include freedom of movement to find a job anywhere, regardless of race, sex or social class. Thus, human dignity entails the freedom to live without fear anywhere. Any affront to human dignity is an affront to God. Under these conditions, migrants are human beings with dignity which no one can threaten. Dialogue with migrants must consider human rights compliance, as provided in all acts recognized throughout the world.

Freedom of movement is a human right and any violation thereof is an affront to the human person. Migrants must be protected from abuse caused by racial discrimination, xenophobia and intolerance, with the same rights as peoples among whom they settle. Religious communities must fight to defend the rights of migrants which are the rights of every human being. Therefore, conditions of migrants should be known and the causes that led to their decision to leave their home country. Only continuous and open dialogue can lead to an adaptation of migrant populations to the new social, economic, political and religious conditions of life.

Migrants talk best about their problems, expectations and failures, and this can only be achieved if the community is perceived as a real family, as taught by St. Paul: "Let mutual love continue. Do not neglect to show hospitality so strangers, for by doing that some have entertained angels without knowing it" (Heb. 13.1-2).

Migrants are not just some foreign neighbors, but equal with us, with the same rights and obligations as us. Finally, we can say that an important point in addressing the problem of migrants is at the intersection of human rights and respect for justice, both seen through the eyes of faith in God. At the same time, nothing is possibly without the earnest prayer to God for everything and for everybody. "Our call is to do justice as we oppose forced migration and speak against clear and present violations of the rights of migrants and their families. We pray that our responses remain true to faith imperatives for compassion and hospitality, for justice and peace, for human dignity and human rights, and for freedom and sustainability, which we hold and share with other religions and faith communities. We pray that our responses do not fall short of the abundance of God's unconditional love and profuse radical hospitality" (Church Center for the United Nations, 2013).

Migration has been a concern in World Council of Churches (WCC) over time (Van der Bent, 1983: 69-75). Thus, one of the first recommendations regarding migration dates from 1956. At the third General Assembly of WCC from New Delhi (1961) and at the Church and Society Conference (Geneva 1966) was examined, in particular, the issue of migration and its implications for the world. In this sense, a secretariat to migration was created within the WCC's Commission on Inter-Church Aid, Refugee and World Service which published the magazine "Migration Today". In 1999 the activity of the sector dealing with migration has been incorporated into the International Relation team. In Europe was created the body the Churches Commission on Migrants in Europe (CCME) acting for the purpose of encouraging employment of local churches to address migration issues in each region (Jacques, Farris, 2002: 770).

The same care for migrants was manifested at the 10th General Assembly of the WCC held in Busan, Republic of Korea, from October 30 to November 8, 2013, who had the theme *God of life, lead us to justice and peace*. During the meeting, the issue of migrants was treated in the broader context of the rights of religious minorities. After analyzing biblical arguments underlying human rights in general, and the rights of

minorities in particular, and are highlighted the main historical moments in which this issue was addressed, and the current state of the discussions on the situation of minorities in different regions of the world, the statement of the General Assembly of WCC reaffirmed that religious freedom is a universal human right for which the Church must fight. Also, freedom of religion must remain an important theme in the ecumenical meetings, emphasizing that it should be respected regardless of the historical, social, political or economic context in which people live, whether minority or majority in the territories where they live daily. Furthermore, it is specified that "we have reiterated the principles and values of freedom of religion and the duty of states and governing authorities to respect, protect and promote the freedom of religion or belief, in all its dimensions, for all individuals under their jurisdiction or control without regard to their religion or belief. It is with these convictions that the WCC emphasizes the need to strengthen the existing protection mechanisms and devise effective safeguards against violations of national and international law relating to religious freedom. We are of the opinion that there should be concerted and coordinated efforts on the part of religious, civil society and state actors in order to protect the right to freedom of religion. In the current context, the fear is quit real that religious minorities may be further suppressed in certain countries by a rising wave of religious extremism. The rights of minority religious communities to live in peace and harmony amidst their neighbors belonging to majority religious communities is vital not only for the people belonging to faith minority groups but also for overall stability and democratic governance, especially in countries that are liberated from past elements of authoritarianism. Rights of religious minorities in all contexts should be rooted in a democratic principle that majority and minority are to be treated as equal beneficiaries of the state, and that dignity and human rights of all people are respected and valued" (World Council of Churches, 2013).

Looking at all these situations, challenges and attempts to find solutions to various issues raised by migration, diaspora the experiences of the diaspora Orthodox Church can be a real guide in terms of addressing the problems of the dialogue with people of other faiths and ideologies of living together with Orthodox believers: "If we Orthodox expect others in a multicultural setting not only to recognize our presence but also to accept the particular gifts of our Church, are we in our turn prepared to accept the gifts of those others with their particular culture, religion or morality?" (Clapsis, 2000: 128). In the context of pluralistic democracy from the modern societies, dialogue is the only option to get in touch with those of other faiths, ideologies, nationalities, ethnicities and cultures. "The recognition that another person, despite his or her difference, is a genuine human person or that the life of a community is an expression of a particular culture implies, furthermore, that we recognize in the other some shared elements of common humanity or culture" (Clapsis, 2000: 138).

The migration phenomenon in Romania and his religious implications

The migration phenomenon in our country migration increases from one year to another leading up to significant changes in terms of economic cultural, social and religious realities. In Romania we can talk about an increase in migration especially after 1989 and in recent times, after joining the European Union in 2007. Migration does not refer only to people of other nationalities who come to our country (after the last analysis, about 60,000 foreign immigrants residing legally and thousands who have not regulated their status), but also the large number of Romanian migrants in other countries. Romania was a transit country rather than a destination (unlike, for example, the USA, which was

built by immigrants). However, with the entry into the European Union a new phenomenon has emerged: the increased number of immigrants from Asia, Middle East, Africa and the republics of the former Soviet Union who decide to stay in Romania. According to official data, most migrants with legal stay on the Romanian territory come from Moldova (28%), Turkey (17%), China (15%) and Syria (4%). With regard to illegal immigrants, 33% of return decisions were issued to Chinese citizens, 26% for Turkish citizens and 12% for Moldovan citizens (Gazeta Românească, 2014).

In connection with distribution in Romania, migrants settled mainly in cities: Bucharest, Timișoara, Sibiu and Constanța. In some cases the religious element mattered more and, when referring to the Muslim community in Dobrogea, whose mufti is based in Constanta (in Romania currently live over 70,000 Muslims living, in 1992 there were 55,928, in 2002 the number increased to 67,257 and in 2011 there was a slight decline to 64,337). A special case is the Jewish community in Romania whose believers were in the past in large numbers in Moldova, increasing considerably from 134,168 in 1859 to 266,652 in 1899, reaching 756,930 in 1930. Historical situation of the interwar period, the loss of territory, after they had been part of Great Romania, and especially the Holocaust led to a reduction in the number of Jews in our country. After the communist period there were only 9,670 Jews in 1992, 6,057 in 2002, while in 2011 there were only 3,519.

Considering the negative consequences, migration of Romanian citizens to other countries, mainly in the European Union is more worrying. The reasons for the migration of Romanians are mainly economic, many citizens leaving the country in order to find better paid jobs. The reason for leaving their own country and family is, in most cases, the desire to have a better life. According to the latest statistics, in the last 10 years over 2,000,000 people have left Romania to work abroad; our country is one of the most important numerically in terms of immigrant labor in the European Union. Following this massive migration, over 81,000 minors were at the end of 2013 at home with grandparents or relatives. It should be noted that most migrants are young Romanian that are around 30, and among those with higher education are most doctors. On the other hand, 60% of Romanian migrants are women. Between 2002 and 2007, after the elimination of Schengen visa appeared the phenomenon that Romanians traveled to Europe for a period of 90 days, then return home to go after another period.

In September 2013, from nearly 60,000 families, one parent left to work abroad, and the children from 16,000 families remained in the care of relatives, both parents working abroad, according to data centralized by the Directorate for Child Protection in the Ministry of Labour. According to data from the National Statistics Institute (INS), at the beginning of 2012 nearly 1,100,000 Romanians were in Italy, about 800,000 in Spain and about 180,000 in Germany. This number has increased in recent years and migrant population has varied in different places in Europe (INS, 2014). There are also parents who chose to move permanently to another country, taking their children with them.

Migration of citizens from weaker economies to developed countries of Europe has led to the phenomenon by which, for example, English language in British schools ceased to be spoken by all students, given that the number of Eastern European children studying in the United Britain has almost tripled in 2008-2013, reaching 123,000 people. The number of Romanian students has increased more than five times in the same period, from 1,400 to about 8,900, according to the "Daily Mail". Therefore, Romanian ranks fourth among the most spoken languages in British education, after Russian, Lithuanian and Polish.

Like any complex process migration has both positive and negative sides. For the families of Romanian migrants, the benefits are great in terms of the economic side of life, Romanians working in different parts of the European Union sending money to families left behind. The benefits can be seen in the economy, where a part of the budget is provided from this money. In this respect, Romania earned 3.6 billion euros only last year, according to the calculations of "Financial Newspaper" based on data from the National Bank of Romania. However, Romanians are among the lowest paid of European employees, with a net monthly income of around 360 euros, about five times lower than in Italy, Spain and Germany (countries with most Romanian immigrants).

The same phenomenon of migration also shows its dark side: families break up, children are left home alone without the support and parental love, and the level of education in these families has suffered much. If in 2008-2009 the high school dropout rate was 3.6% in 2009-2010 and 2.9% in the 2011-2012 school year it rose to 4.2%, according to data from INS (Iftime, Iftime, 2011).

Considering all these facts, the State must promote policies that protect migrant populations and protect the human rights of these communities. At the same time, we must be actively involved in protecting families where one member or more are working abroad and in the education of children who remain in the care of relatives.

In this context and taking into account all these statistics, the role of the Romanian Orthodox Church is extremely important, both in terms of populations of other nationalities that are established in Romania and also regarding Romanian migrants and the social realities that arise from the fact that more and more Romanian leave the country. Migration produces numerous social and economic effects that can be understood and controlled only by a collaboration of Church with the Romanian state authorities, because changes produced by migration have strong religious overtones.

The family has suffered most from migration, and the Church, through her priests who know best the local realities of any kind, can help prevent and solve many problems that can occur, which include: collapse of the family home, loss of ties between parents and children, education increasingly lower in territories where migration is a general phenomenon, etc.

In EU countries local churches working with secular institutions to respect fundamental human rights and rapid integration of immigrants in the new communities in which they want to live. Lately in Romania, the cooperation between the Romanian Orthodox Church and the State has intensified regarding immigrants and the measures of our Church did not fail to appear. The Holy Synod of the Romanian Orthodox Church has established that every year the first Sunday after June 1 to be devoted to parents and children, and a Sunday throughout the year to be named *Sunday of Romanian immigrants.* Our church prays in its holy service for the "faithful Romanian people from everywhere", thus focusing on the idea that every Romanian believer is part of our church, no matter where he lives or works. To help the Romanian migrants worldwide, the Holy Synod of the Orthodox Church in our country founded more Metropolitanes and Episcopates in Paris, Rome, Madrid, Nuremberg, Stockholm, Gyula, Chicago, Melbourne and Jerusalem. In these dioceses, newly established Romanian parishes develop pastoral-missionary and cultural-philanthropic activities for Romanians living or working across borders.

Having always in mind and soul the difficulties and problems posed by migration, Romanian Orthodox Christians living abroad are urged "to foster mutual help and mutual respect, to promote family unity and fraternal cooperation with all people, regardless of ethnicity and social status, and help the poor, elderly and sick that they met in Romania,

to help parishes who build churches" (Daniel, 2013a: 199). Also, the Orthodox Church insists in its teachings on strengthening ties between church, family and school to educate and promote the true Christian values. "The family needs the holy blessing of Church to be sanctified, and the church needs the participation of family in its life and work to strengthen itself" (Daniel, 2013b: 159). Programs of catechesis and pastoral care of families in need carried by the Romanian Orthodox Church including "Christ shared to children" and "Choose School!" which "strive to educate children for the purposes of helping neighbors in distress, to prevent school dropout in poor families and in families where the parents are working abroad, to discover and encourage talented children to develop their skills for the benefit of the Church and society. Also (...) through the creation camps (...), the Church seeks to supplement the lack of parental affection, to cultivate genuine values and strengthen the bonds between parents and children, between the school and the Church" (Daniel, 2013b: 160).

Conclusions

Carefully analyzing the implications involved by migration we can see that this problem has become global, arousing the interest of the population in most countries. At the same time, although the main causes of migration are economic, social and political, religious connotations are not neglected at all. This happens because people belonging to some beliefs and ideologies must manifest and maintain traditions among different populations that often are not aware of these new realities that they encounter every day. In our country people are increasingly discussing about migration and its implications on all sectors of human life. In this context, the Romanian Orthodox Church is called by his priests, to contribute to the integration of people of other nationalities, cultures and beliefs that are established in our country and at the same time, to help her spiritual children living and working in different parts of the world to preserve and to confess their ancestral Orthodox Christian faith and culture. Moreover, it should take care of their families in the country and to contribute to the culture in the spirit of the Christian tradition of children whose parents are away, because "Romanian culture, with everything it has as its specific and major features, is a Christian culture, based on and rooted in the Gospel" (Cândea, 1996: 107). Only through active involvement in these issues and by good cooperation with the Romanian authorities, the Romanian Orthodox Church can fulfill and realize the quality of spiritual mother for all its believers in the country and abroad.

Acknowledgment

This work was supported by the strategic grant POSDRU/159/1.5/S/133255, Project ID 133255 (2014), co-financed by the European Social Fund within the Sectorial Operational Program Human Resources Development 2007-2013.

References:

Alfeyev, H. (2006). *Orthodox Witness Today*, Geneva: WCC Publications.

Cândea, V. (1996). The Gospel in the Romanian Culture. In Sauca, I. (ed.), *Orthodoxy and Cultures*. Geneva: WCC Publications, pp. 105-113.

Church Center for the United Nations (2013). The Intersections of Migration, Human Rights and Development Justice. Retrieved from: http://www.oikoumene.org/en/press-centre/news/CWWM4AdvocacyPaperonMigration 2013.pdf.

Clapsis, E. (2000). *Orthodoxy in Conversation*. *Orthodox Ecumenical Engagements*, Geneva: WCC Publications.

Daniel (Patriarch of the Romanian Orthodox Church) (2013a). Binecuvântare pentru ortodocşii români din străinătate (Mesaj adresat la Duminica românilor migranți, 19 august 2012). In Daniel, Patriarhul Bisericii Ortodoxe Române, *Semne de speranță în vreme de suferință*. *Lucrarea Bisericii în societate în anul 2012*, Bucharest: Basilica, pp. 199-200.

Daniel (Patriarch of the Romanian Orthodox Church) (2013b). Părinții și copiii în lumina iubirii lui Dumnezeu (Mesaj adresat la Duminica Părinților și Copiilor, 3 june 2012). In *Semne de speranță în vreme de suferință*. *Lucrarea Bisericii în societate în anul 2012*, Bucharest: Basilica, pp. 159-160.

Demetrios of America (2004). The Orthodox Churches in a Pluralistic World. An Ecumenical Conversation. In Clapsis, E. (editor), *The Orthodox Churches in a Pluralistic World*. *An Ecumenical Conversation*, Geneva: WCC Publications, pp. 1-10.

Eck, D. L. (2004). The Christian Churches and the Plurality of Religious Communities. In Clapsis, E. (ed.), *The Orthodox Churches in a Pluralistic World*. *An Ecumenical Conversation*, Geneva: WCC Publications, pp. 11-21.

Gazeta Românească (2014). Costul migrației: familii destrămate și copii părăsiți. Retrieved from: http://www.gazetaromaneasca.com/observator/36-comunitate/7682-costul-migraiei-familii-destrmate-i-copii-prsii.html.

Iftime, L., Iftime, C. (2011). Migrația aduce beneficii, dar și neajunsuri. *Lumina*. Retrieved from: http://ziarullumina.ro/interviu/migratia-aduce-beneficii-dar-si-neajunsuri.

Jacques, A., Farris, E. G. (2002). Migration. In Lossky, N., Bonino, J.M., Pobee, J., Stransky, T.F., Wainwright, G., Webb, P. (eds.), *Dictionary of the Ecumenical Movement*, Second Edition, Geneva: WCC Publications, pp. 768-770.

National Statistics Institute (INS) (2014). Populația rezidentă și numărul estimat de emigranți. Official source. Retrieved from: http://www.insse.ro/cms/ro/content/populatia-rezidenta-si-numarul-estimat-de-emigranti.

Van der Bent, A. J. (1983). *Six Hundred Ecumenical Consultations, 1948-1982*, Geneva: WCC Publications.

World Council of Churches (2013). Statement on the Politicization of Religion and Rights of Religious Minorities. Retrieved from: http://www.oikoumene.org/en/resources/documents/assembly/2013-busan/adopted-documents-statements/politicisation-of-religion-and-rights-of-religious-minorities.

Yannoulatos, A. (2003). *Facing the World*. *Orthodox Christian Essays on Global Concerns*, (translation by Pavlos Gottfried), Geneva: WCC Publications.

Article Info

Received: March 17 2015
Accepted: May 18 2015

RSP • No. 46 • 2015: 218-228

ORIGINAL PAPER

The Szekler Identity in Romania after 1989

Áron Coceancig*

Abstract
This article aims to analyze the development of the Szekler identity in the post-communist Romania. The Szeklers, Hungarian speaking population of Romania, have had an interesting process of identity that has been reinforcing in the last years. Starting points of the article are the categories of ethnic and national identity. Based on the theoretical framework of the modernist and the ethno-symbolism (the first focused on the idea of Nation-building, the second on the presence of an ethnic background to the national consciousness) we want to look for factors and promoters of the Szekler identity, paying particular attention to the institutions, rituals and symbols that have favoured the transmission of national culture. The article want to identify the main tools used to reinforce the Szekler identity after 1989, also analyzing the space that the Szeklers have had in the socialist Romania. Educational institutions, folklorism, symbols, monuments and national holidays were battlefields and tools to strengthen this peculiar identity, not separated from the Hungarian national consciousness but with its own characteristic. The arise of a strong Szekler identity has, in fact, created "conflicts" not only with the Romanian state, but also within the Hungarian minority, where many looked at it with concern, thinking about the possibility of the spilt of the Hungarian community in Romania. Through a reflection on the formation process of the national identity we want to explore the role of the political and cultural elite in this identity definition; analyzing instruments, forces and promoters of the "revival" of the Szekler identity.

Keywords: *Transylvania, szeklers, national identity, minority rights*

* PhD, Institute for the Central European Cultural Encounter, Gorizia (Italy). Email: aroncoce@gmail.com.

The Szekler Identity in Romania after 1989

Introduction

The subject of this article is the "revival" of the identity of the Szekler community. In the recent years there has been a redefinition of "being Szekler" through symbols, rituals and an energetic development of a collective memory that sparked internal debates and conflicts with the Romanian State power. The Szekler issue was placed in the spotlight many times, and not only for the claim of territorial autonomy. In 2012, the prohibition of the prefecture of the Covasna County to use the Szekler flag on public buildings caused a strong popular mobilization crossing the state borders. These examples highlight three main elements to the process of defence and "create" a national identity: the first element is the struggle for recognition of the particular community; the second is the creation and defence of national symbols; and the third is the spreading and sharing of a common sense. This community is experiencing a process of identity redefinition which includes different aspects, and interfaces both with the Hungarian community and to the Romanian State.

The objective of this paper is to analyse how the feeling of Szekler identity has developed in post-communist Romania. Our goal is to pinpoint tools, factors and institutions that have contributed to the formation of the Szekler identity.

Theoretical Framework

This paper is based on categories such as identity, ethnicity and nation. These elements are still at the centre of the public debate. In terms of the relationship between an individual and society, the concept of identity is described in the way the individuals see themselves inside the society and the way they feel as a part of it (Koller, 2006: 11). National identity, strongly connected to the modern state (Connor, 1991), was the protagonist of the twentieth century in Europe, for the better or for the worse. However, today we must face the emergence of new identities, such as regional identities (favoured by the decentralization policy promoted by the EU) which, without the obligation of wanting to build their own independent states, set out to create a new form of nation that contributes to the formation and to the conservation of a common cultural sense, demanding specific forms of autonomy (Grilli di Cortona, 2003: 19). The French philosopher Renan in 1882 defined nation as: "A nation is a soul, a spiritual principle. Two things which properly speaking are really one and the same. Constitute this soul, this spiritual principle. One is the past, the other is the present. One is the possession in common of a rich legacy of memories; the other is present consent, the desire to live together, the desire to continue to invest in the heritage that we jointly have received" (Renan, 1993: 4).

Past and present are two key elements for identifying the different approaches to the nation that developed from the 1980's to today. There are two different tendencies. The first approach, a modernist one, considered the nation as a creation of the contemporary age, a product of the political and cultural *elite*. This theory identifies the nation like a new element, created *ad hoc*. In this case, the present is using the past for its own purpose in order to create the modern national state. The second approach, named ethno-symbolism and defended by the British sociologist Anthony D. Smith, recognizes that nations are modern social forms but imputes their birth with a strong connection with pre-national "ethnic" groups. For Smith, it is the past, made of ethnic groups and the "myth-symbolic complex" that influences the present by creating nations. Nations are so an evolution of ethnic groups, their modern and politicized version.

Particularly interesting in Smith's analysis is the fact that he referred to the Szekler ethnicity which, according to the sociologist, in the eighties had disappeared (Smith, 1992: 225). However, if Smith travelled today in Szeklerland, he would admit that this community, nowadays, is more alive than ever.

Historical brief

The Szekler question is a complicated and highly disputed issue. Szeklers are a population that settled in the 12th century in Eastern Transylvania, but there is still a great debate about their origins. Szeklers live compactly within three regions of Romania: Mureş, Harghita and Covasna. During the Middle Ages Szeklers represented an autonomous social group authorized by special rights and privileges. The peculiarities of the Szekler society have always been in the centre of the tensions with Wien and its modernizing and centralist policies. Conflicts with the Habsburgs were constant and culminated in 1848 when Szeklers decided to support the revolution started in Budapest; they also decided to join the battles, merging with the Hungarian armies. Since 1848, Szeklers officially became part of the Hungarian nation. However, after the fall of the revolution, Szeklerland was in fact marginalized within Austria-Hungary and subjected to Budapest centralism. It wasn't until the First World War and the subsequent peace treaties that determined strongly the future of the Szekler identity. The Szekler region was in fact annexed to Romania, a State where the community conceived them as foreigners. Between the two World Wars, the debate and the definition of their identity entered a new phase, defined by the Italian historic Bottoni as "identity-building". This period was marked by the interest of the motherland, Hungary, in defending the identity of the Hungarian minority. This interest was also reflected in the strengthening of their local common sense (Bottoni, 2013: 477-511).

So it was after the First World War that the Szekler identity, squeezed between the interest and efforts of the Hungarian revisionist and the Romanian cultural nationalism, had found new strength. This was a new approach that developed a sense of belonging to a local identity, without scratching the membership with the Hungarian nation. After World War II, Szeklerland experienced territorial autonomy granted by socialist Romania on the direct advice of Stalin (Bottoni, 2008). This was a project for autonomy in the style of those found in the USSR. The RAU (*Regiunea Autonomă Maghiară* – Magyar Autonomous Region), entered into force in 1952, did not provide any autonomous decision-making, political or economic. Nevertheless it was able to develop and strengthen linguistic and cultural rights that were lost in other parts of Transylvania. After the end of RAU in 1968 and a short period characterized by new possibilities offered by the socialist government, with the 1980's a new phase of repression and assimilation attempts by Bucharest had started. The "1989 revolution" and the fall of the communist regime started a new phase in which the Hungarian community hoped to increase the minority rights.

Szeklers and the census

A privileged instrument for the assessment of national identity is the population census. However, statistical science, particularly survey data on nationality and language, offers numerous questions. Especially in Eastern Europe, owing to the fact that minorities protection laws identify the territory of protection on the results of the census, so surveys often become fields of battles for nationalist politics, and, as a result, surveys lose accuracy.

In the case of Szeklers, the census has more complex problems because in the collected data there aren't people who claim themselves Szeklers, if not in a minimal number. Indeed, the large majority of Szeklers identify themselves as Hungarians. This may seem obvious after the brief historical introduction made previously, but it was not always so clear. In November 1991, shortly before the first post-communist census, the Szekler newspaper *Hargita Népe* (People of Harghita) wrote on its first page: "We are proud of our Szeklerness, but in the context of the census we need to claim ourselves quietly of Hungarian mother tongue, although there are many people who doubt this". In the Hungarian community, and particularly among the members of the political class, there was a strong fear that people would declare themselves to be Szekler in nationality and therefore would not be counted among the Hungarians, causing great damage to the Hungarian minority. Domokos, President of UDMR (*Unionea Democrată Maghiară din România* - Democratic Union of Hungarians in Romania) then, asked the Romanian government to remove the "Szekler" option from the census form. This option was introduced for the first time in 1977, with 6 other nationalities that were never used before. The main purpose of this was to numerically fragment the minorities. In 1977 only 1075 people declared themselves as Szekler in nationality (Varga, 1998-2002: 5). In our article, for both a matter of simplification and a lack of accurate data, we counted as Szeklers all the Hungarians inhabitants of the Mureş, Harghita and Covasna regions, although a part of Mureş isn't a part of the traditional Szeklerland. The analysis of these data shows us an interesting fact. Comparing the Hungarians living in these three regions (Szeklerland) and those living in the others regions of Romania, we see a trend that strengthens the weight of these regions in the Hungarian community. And in 2011, for the first time, Hungarian in others regions were overtaken by the Szeklers in numbers. This is another important fact, especially if we will analyse the dynamics of the Hungarian political parties and their electoral constituencies.

Language as symbols of identity

The linguistic identity is considered the foundation of national or ethnic identity, both by theorists who believe that the choice of identity is a natural choice and those that emphasize the cultural aspect. Linguists assign to the language two main functions: a communicative and a symbolic one. The first is fundamental to the relationship between individuals. The second gives the communication functions a symbolic value, and so with this that becomes not only a political symbol, but one of the strongest national symbols. Kymlicka and Grin underline the functions of language stressing the relationship with the concept of identity.

So the defence of our own language becomes a "holy" task, as to assume higher values: "when a language group fights to preserve its language, it is never just preserving a tool for communication: It is also preserving certain political claims, autonomous institutions, cultural products and practices, and national identities" (Kymlicka and Grin, 2003: 11). The question to ask now is: "Does a Szekler language exist?" The answer is clearly no. Szeklers speak Hungarian, or rather an Eastern dialect of Hungarian (Kiss, 2003: 25-27). Therefore any attempts to consider Szekler an independent language are dictated mainly by political motivations.

From the linguistic point of view there are two interesting elements for our discussion: the system of protection of the language of minorities in Romania and the Szekler-Hungarian runic alphabet. As for the first element, the system of protection minority languages in Romania has proved weak, with inadequate laws and often not

implemented ones. Despite of this, owing to the fact that the Hungarian speakers are a majority, bilingualism existed *de facto* in Szeklerland.

The Szekler-Hungarian runic alphabet is a peculiar issue that intersects directly with the Szekler history and identity. The use of an idiom most often isn't subjected to linguistic aspects but "to the influence of politics, the economy conjunctures, to the fashions of the time, to the destiny of history, and even the power of army" (Mulinacci, 2010: 8). This alphabet was used until 19th century in Szeklerland, but then disappeared. In public space it reappeared in 1989, on 2nd of June 1990, when in Cristuru Secuiesc some youth of the *Székely Ifjak Forum* (Forum of youth Szeklers) placed a unofficial sign with the name of the city in runic at the town entrance. This action triggered vehement protests, particularly from city government led by UDMR which criticized methods and purposes. In an open letter written by the mayor the position taken by the local UDMR is clear: "the runic alphabet cannot be considered a container of culture". There is a long accusation to the intent to reaffirm the Szekler identity.

The mayor expressed that in this time of great difficulty (this discussion takes place after the events of "Black March" in Târgu Mureş) "in this fight against the Romanian nationalism the greatest weapon that we have is unity", and "our enemies are doing everything to divide us [...] they speak about Hungarian and Szeklers [...] they speak of magyarized Szeklers". With this position this first attempt to bring the runic alphabet in the public space was ended. The sign was removed by the authorities a few days later. For several years the runic letters disappeared from public places, but it became a subject of study for linguists and ethnographers.

The interest in this alphabet became stronger in the second half of the nineties when it was also supported by some local governments. At this time the runic went back to the public space: official welcome signs appeared in some villages in Hungary and Romania and in general the alphabet was used in several recreational situations.Finally, it emerge with the series of conferences entitled "*Quo vadis Szeklerland?*", organized in several Szekler cities. At these conferences the role of the runic alphabet was reiterated in defence of Szekler identity. The final document of the conference takes a clear stance in favour of the spread of the runic alphabet, emphasizing the deep cultural relationship existing between this alphabet and being Szeklers.

The history of the runic alphabet and its use, especially in Romania, provides interesting elements. The spread of these signs began extensively from 2000. Until now, hundreds of municipalities have opted for the placement of runic signs; while many schools have started optional courses. However the great majority of the population cannot write in this alphabet, but they still keep emphasizing its symbolic importance.

Folklore and the reinforcement of local and national culture

Traditional song and dance plays an important role in the defence of identity, covering communicative, social and identity functions like the language. The mayor of Ocna de Sus, a szekler village, in 2011 at the opening of the "Camp of the dances of Szeklerland", told: "The battle for the defence of our identity does not take place on the border of the Carpathians anymore, today we fight it in politics and music". Folklore, seen as a collection of dance, song and rural traditions, and folklorism understood as a cultural movement in defence of these traditions, plays an important role in determining identity. The debate between modernists and ethno-symbolists on the role of folklore in the national identity acquires important aspects. Gellner shows that "society doesn't venerate itself anymore through religious symbols; a superior modern culture, efficient, motorized,

celebrates itself with songs and dances, which borrows from a popular culture that naively believed to perpetuate, defend and reaffirm it" (Gellner, 1992: 66). As a contrast Smith recognized folklore as a natural element for ethnic groups. Folklorism, as a category marked by the emergence of institutions and movements, has developed in a particular way in socialist Romania.

The Ceausescu regime has strongly used it for propaganda purposes and for support the national ideology of Communist Party with shows, festivals and the support of a huge number of amateur groups. At the beginning, Szeklers had the opportunity to become part of this movement but in the 1980's the regime reinforced the control over folkloristic exhibitions and limited the numbers of Hungarian-Szekler shows.

As an opposition to the official folklorism, the *Táncház* (Dance house) movement was born (Sándor, 2006: 12-13). The first event in Romania was held in Cluj in 1977. These events, initially granted by the regime, at the 1980's became a target and they were forced to shift in a semi-clandestine space. *Táncház* is very important because it provides new energy and audience for Hungarian folklorist movement, and it helps to reinforce a strong local identity.

In 1989 culture and folk traditions were finally free from ideological control. New perspectives and possibilities were opening to the movements and to the new cultural associations of minority, however new possibilities were soon followed by new problems. Könczei, Hungarian anthropologist and dance teacher, analyses these changes "therefore everything depended on political power, now all depend on the material possibility. Therefore the chance to get a room for the Táncház depended on power concession, today this depends from renting" (Könczei, 2004: 85).

The opening to capitalism connect the country with globalization and commercialization of culture that follow the invasion of Western musical products, many of which are of dubious quality but often treated as a fetish by a population who was keep out for many years.

The communist regime has repeatedly obstructed the movement of *Táncház*, but paradoxically had also helped it: television broadcasts were just two-three hours for day and most were ideological programs discredited by viewers; places of entertainment were scarce, and therefore young people, especially in the villages, if they wanted to play were forced to self-organize, take a musical instrument, dance and sing. All this has favoured the maintenance of traditions and the spread of the movement of *Táncház*.

In the post-1989 the folklore movement among the Hungarian community can resume with force, thanks to *Táncház* and to the formation of local folk groups. In 1990 there are three Hungarian folk groups recognized by the Romanian Ministry of Culture, all three in Szeklerland. These groups, such as the cultural institutions of the Szekler-Hungarian community are part of national culture, are tools used in order to defend the national identity thanks to the strong connection between traditional dances and local identity.

It is worth dwelling on *Hargita Nemzeti Székely Népi Együttes* (Harghita Popular National Szekler Ensemble) group from Miercurea Ciuc, whose name has already an evident and strong connection to Szekler identity. According to the Director András: "The name of the group is a profession of faith at the foot of the Harghita, the sacred mountain of the Szeklers, be Szekler nation and popular group. The word "Szekler" does not mean provincialism, but a tribute to a specificity part of the universal Hungarian culture" (Sarány, 2003: 7).

Symbols and monuments

Common identity needs symbols, rituals, ceremonies and a collective memory with which not only constantly remembers the difference between 'us' and 'others', but also reaffirms and updates its specificity, its history and their common destiny. According to Smith, myths, values and symbols are the true heart of ethnicity, he calls that "the myth-symbol complex", a factor that guaranteed the unity of individuals in a nation.

The symbols have two main purposes: the conquest of space; and the function of remembering and transmitting the self-representation of the community, contributing the construction of a collective memory. The idea of the collective memory was developed by Halbwachs (Halbwachs, 2001), highlighting the relationship with the dominant forces of the society from which it is redefined.

The flag is one of the most important symbols of identity. Szeklers, as mentioned previously, in 1848 decided to join the Hungarian Nation and since then they started to use Hungarian symbols. These symbols were assimilated and were only used until the end of the nineties. Effectively, a Szekler flag didn't exist, or at least was not widespread in the society. In the 1990's, however, the most common Szekler flag was the red-black flag.

This "unofficial" flag was replaced in 2004 when the Szekler National Council, thanks to the work of the historian Kónya, created the "official" flag with blue-gold colour. In the following years the use of this flag started to spread, but the real success came only when the Covasna prefect in 2012 has banned the use of it on public buildings. As it usually happens, the power prohibitions have contributed to the spread of new symbols.

The monument in Lutița, a village near Odorheiu Secuiesc, built in memory of the 1848's Szekler Meeting and represents well the complexity of the formation of their identity. This monument was planned in 1973, granted by the communist regime thanks to the pressure of local politicians, and completed in 1980. But it wasn't opened because the regime had turned into nationalist ideology that closed the Hungarian commemorative space. So, the official opening was postponed after the downfall of the regime. The following year the strong tension within the Hungarian-Szekler community ended with the organization of two separate ceremonies, one on 12th October and the other one on 19th October.

The radical part of UDMR, linked with Szekler issues, announced their intention to dedicate the celebrations to the project of land autonomy. The idea came from Katona, a member of the Odorheiu Secuiesc section of UDMR, whose intention was to ask to the crowd the opinion about the declaration of territorial autonomy. This position caused strong arguments within UDMR, and the party eventually rejected this proposal. So, in 1991, two celebrations took place, one with the participation of UDMR and local institutions, the other one with Katona and the political group that claims for autonomy. The split within the party will resulted in the marginalization of the claim of territorial autonomy and the memory of the monument. In fact, this commemoration was "forgotten" in the following years. The monument is now seen in a detached manner as it represents a fracture, the first, within the Hungarian political community and, perhaps, also because the monument itself, the architectural style and its history, was linked with the socialist period. The monument has played an important role once more in the recent years, although the fracture of 1991 remains an indelible part of it. In 2003, during the celebrations, Markó, President of UDMR, remembered this split: "*The question is not one who is radical and who is moderate, the point is that we must be united and move forward together*" (Harghita Népe 17th October 2003).

The political institutions

Political institutions have a key role in the process of construction national identity and the spreading of nationalism, understood as a political ideology. According to Smith, national identity is always linked to a political community it is its characterization (Koller, 2006: 88). The difference between ethnicity and nation is that nation is politicized. When an ethnic group becomes a nation equally we have a transition from a cultural phenomenon to a politician, in other words: "Every ethnic group that aspires to become a nation must become politicized [...] have to enter into the political ring" (Smith, 1992: 317). The British sociologist underlines the relationship between ethnicity and State, or the claim to have a slice of the state budget, posts in the bureaucracy and administrative structures. This goal forced the community to leave isolation and passivity marked in the past, in favour of political activism. Before 1989, the Szekler community could in some moments enjoy a political space. The RAU had created a "small Szekler world" where he had been able to develop a Hungarian political *élite*, who until the end of the seventies could play a role in the Communist Party. The total closure of the regime will come with the eighties. In the months immediately following the "revolution" the Hungarian community have high hopes and the UDMR, founded on 25th December 1989, aims to represent them. But the first months of "free Romania" were troubled: the transition highlighted its particularity by continuity with the past regime and by the nationalist tensions (Linz, Stepan, 2000). This situation allowed the former communist Iliescu to easily win the first two elections in 1990 and 1992.

The Hungarian community was shaken by the situation and at the first UDMR Congress in 1990 emerge the need to defend the democratic development in country, so the issues linked on minority rights went in second line. In this moment the Szekler question is extremely marginal, only two delegates talked about it (Varga, 1990: 67). The line of Domokos, President of the party, is clear: first support the stabilization of the country, no space for now to Szeklerland autonomy request.

The first great debate on the Szekler issue in UDMR takes place at the Braşov Congress in 1993 when the word "autonomy" was inserted in the final document, but without a clear definition, a task assigned to a workgroup. The group propose in 1995 an autonomy project draft written by Csapó and Katona. Nevertheless the project was sacrificed and marginalized by the leadership of the party when in 1996 was formed an alliance with the Romanian parties of Romanian Democratic Convention.

In these early years, three different souls emerge within the UDMR. The first supported by the diaspora, where Hungarians are in minority. This area is not interested to territorial autonomy and indeed the Szekler question is seen as a threat to their rights. The second is represented by the political leadership of Târgu Mureş. This is a moderate political group wanting especially to influence the government in Bucharest and to create a system of broad alliances with Romanians parties. For this claim autonomy represents a danger to the political goals proposed. The third area is supported by the more radical forces see in the autonomy of Szeklerland the objective of the party. This area is strong in the Szekler community, which with the first local elections of 1992 has a great number of mayors and important role in regional councils.

The gap between Szekler community and diaspora become larger in the following years. In Szeklerland the vast majority of municipal councils are in the hands of the Hungarians, like the management of local power. None of this can be said for the Hungarian diaspora where even the law on bilingualism isn't respected. However, these different souls are held together by the scare and threat from Romanian nationalist forces

and by the hope of improving the situation when the party will get on government. Nonetheless the 4-year government (1996-2000) prove extremely unsatisfaying. Despite the European integration process the government collects little results and even splits inside the party increase.

In the early 2000's the pressure of the "szekler group" increases: the conference series "*Quo vadis Szeklerland?*" and, the increasing fracture among the party brought the first serious scission, it born the EMNT [Hungarian National Council of Transylvania], follow by the *Székely Nemzeti Tanács* - Szekler National Council [SNC]. A political structure not affiliated to any party that proposed itself as representative of the interests of the all Szeklers, and pay attention in particular to the claim of autonomy. The official birth of SNC and the election of Csapó for president, occurs in Sfântu Gheorghe on 26th October 2003. The final declaration states: "Today's the Szeklers citizens, as inhabitants of Szeklerland declare their willingness to self-administration, the autonomy of Szeklerland, through the approval of the Autonomy Statute Law" (Harghita Népe 27th October 2003), the tools to achieve these goals are "those characteristic of the rule of law [...] the democratic process and the laws in force" (Harghita Népe 28th of October 2003). The SNC statement is made explicit on January 2004 with the approval of the Szeklerland Autonomy Statute. The same day SNC defined the Szekler national symbols, the first official codification of those symbols.

The birth of the SNC opened a new phase in both the claim of autonomy and the build of identity. This political institution did not become a political party, so it operated on a different level. The SNC proposed itself like a structure above the parties, open to different contributions, which has its purpose in the territorial autonomy and the defence of Szekler rights. In the following months, the Council worked to strengthen the Szekler identity and for the acquisition of a broad consensus in the claim of autonomy, both through the mobilization of the civil society, and contacts and pressures spilled into European Union and Romanian Parliament. Since 2004 the "Szekler issue" and the autonomist projects rose up in the public space. The Szekler community acquired greater importance in political scene, thanks to two factors: the demographic endurance, and the European integration process that gradually increased the power of local governments. These two elements, as a result of the birth of the SNC, contributed to the revitalization of the Szekler identity that entered into a new phase, which was characterized by activism and by the growing on political and social consensus around the claim for autonomy and cultural identity.

The UDMR, after the Congress of 2003, despite the outflow of the radical wing, was subjected to an internal review. A partial replacement of the leadership and the resumption of issues related to autonomy occurred. Inside the party emerged a group of young politicians. This new leadership forged a closer relationship with municipalities and counties that, as a result of the decentralization process initiated by European integration, gained more weight and institutional power. Mayors and Presidents of regions were co-participants in the process of strengthening local governments and defend Szekler's peculiarities.

Conclusion

In this paper we have analysed different junctures of the development of Szekler identity in post-1989 Romania: areas related to cultural and political aspects. The identity of Szeklers has been proved irregular, and in some case even troubled, pressed and influenced by intense political, social and cultural changes, and not least of powers and

state institutions. Romanian journalist Manolăchescu has written that the consciousness of Szekler identity manifest itself based on the interlocutor, namely: in Bucharest the Szeklers claimed themselves as Hungarians, in Budapest as Szeklers, in Brussels either of these two, depending on the situation (Manolăchescu, 2009). This statement confirms the idea of the American sociologist Brubaker that identity is a multiple and variable choice, depending on the context (Brubaker, 2006); especially for a peculiar identity like the Szekler, not completely established, but still present. The Szekler identity in fact stands on a middle floor, still under construction, located between a strong local context, primarily related to micro-social units (the village), and a national representation, projected to Hungary which remains a far homeland. Between these two levels there is a space, occupied by the Szekler identity, which had its reasons in medieval ages, but gradually lost its importance in the 19th century, to reappear after the First World War.

The Czech sociologist Hroch identified three phases in the emergence of Nations (Hroch, 1985). The first is characterized by the interest of small groups of intellectuals, involved to language, culture and history. The next phase is called "patriotic agitation" that means the activities of the first small organizations that recognize themselves part of the Nation. The third stage is defined by the emergence of a mass movement, when the national category starts to extend its influence to the majority of the population. This period, in my opinion, characterized the situation in Szeklerland after 2004 when the SNC was born. Since then the Szekler identity has undoubtedly strengthened.

References:

Bottoni, S. (2008). *Sztálin a Székelyeknél*, Miercurea Ciuc: Pro-Print.

Bottoni, S. (2013). Szeklerland in Greater Romania (1919-1940). *Hungarian Historical Review*, (2), 477-511.

Brubaker, R. (2006). *Nationalist Politics and Everyday Ethnicity in a Transylvanian Town*, Princeton and Oxford: Princeton University Press.

Connor, W. (1991). *Ethnonationalism: The Quest for Understanding*, New Jersey: Princeton University Press.

Gellner, E. (1992). *Nazioni e Nazionalismo*, Roma: Editori Riuniti.

Grilli di Cortona, P. (2003). *Stati, nazioni e nazionalismi in Europa*, Bologna: Il Mulino.

Halbwachs, M. (2001). *La memoria collettiva*, Milano: Unicopli.

Hroch, M. (1985). *Social preconditions of national revival in Europe*, Cambridge: University Press.

Kiss, J. (2003). *Magyar dialektológia*, Budapest: Osiris.

Kymlicka, W., Grin, F. (2003). Assessing the Politics of Diversity in Transition Countries. *Nation-Building, Ethnicity and Language Politics in Transition Countries*, Budapest: Open Society Institute.

Koller, B. (2006). *Nemzet, Identitás és Politika Európában*, Paris: L'Harmattan.

Könczei, C. (2004). A táncház kulturális paradoxonjai. In Könczei Cs. (ed.), *Táncház*, Cluj: Kriza.

Linz, J., Stepan, A. (2000). *L'Europa post-comunista*, Bologna: Il Mulino.

Manolăchescu, D. (2009). *Mituri ale Ţinutului Secuiesc*, Sfântu Gheorghe: Zaka.

Mulinacci, R. (2010). La geopolitica delle lingue in poche parole. *I quaderni speciali di Limes. Lingua è potere*, Roma: Gruppo Editoriale l'Espresso.

Renan, E. (1993). *Che cosa è una nazione: e altri saggi*, Roma: Donzelli.

Sándor, I. (2006). *A betonon is kinő a fű*, Budapest: Hagyományok Háza.

Sarány, I. (2010). *Hivatás. Húz éves a Hargita Nemzeti Székely Népi Együttes*, Miercurea Ciuc: Kiadóhivatal Miercurea Ciuc.
Smith, A. D. (1992). *Le origini etniche delle nazioni*, Bologna: Il Mulino.
Varga, Á. (1998-2002). *Erdély etnikai és felekezti statisztikája. Népszámlálási adatok 1850-2002 között*, Miercurea Ciuc: Pro-Print.
Varga, G. (1990). *A Romániai Magyar Demokrata Szövetség I. Kongresszusa*, Oradea: RMDSZ.

Article Info

Received: April 29 2015
Accepted: May 27 2015

RSP • No. 46 • 2015: 229-237

ORIGINAL PAPER

Recent Approaches to Criminal Policies in Romania: Critical Overviews and Local Inputs

Cristina Ilie Goga*

Abstract
The article, based on the analysis of social documents as the main research method, aims to study the development and transformation of sentences and penal policies in our country, during the Contemporary period. The undertaken study involves a research from two perspectives, a historical one that reflects the types of punishment and methods of their application, specific to each period and a judicial one that highlights the main normative acts which substantiated throughout time the criminal policies of Romania. The article will mainly mark the changes stipulated by the Criminal Codes and laws of execution of sentences.

Keywords: *Romania, punishment, criminal policies, contemporary period*

* Assistant Professor, PhD, University of Craiova, Faculty of Law and Social Sciences, Sociology specialization, Phone: 0040766291455, E-mail: cristin_il@yahoo.com.

A stepwise analysis of the evolution of the punishment system is found in Jean Pradel, who identifies five stages: the stage of corporal punishment; the stage of imprisonment/ the classical school of criminal law; the stage of the first substitution measures of detention; the stage of development of alternatives to imprisonment; the stage of appearance of intermediate punishment - between probation and imprisonment (Pradel, 1995: 569-570). Globally analyzing in a previous study the history of the punishment system (Goga, 2015: 183-194), we made a phasing of it, managing to synthesize some features of every age, as it follows: 1. the Middle Ages (6th Century / Justinian Code – The second half of the 18th century and early 19th century): it is characterized by corporal punishment, torture and public executions; 2. the Modern Age (Early 19th century / second half of the 19th century – late 19th century): it is characterized by the predominant application of the penalty of deprivation of liberty, there appear most criminal codes that focus on imprisonment even for minor offenses, thus appearing an "experimental fever" in the organization of prison; 3. the contemporary Age (early 20th century – present): it is characterized by the emergence and development of substitution measures of deprivation of liberty. This period can be divided in other 3 sub-phases: a. the first half of the 20th century: it is characterized by the appearance of the first measures of substitution of imprisonment like probation and suspension of sentence; b. the second half of the 20th century: it is characterized by the development of alternative measures to the penalty of deprivation of liberty and the process of individualization of punishment, by developing the institution of suspension of sentence, etc.ș c. the end of the 20th century – present: it is characterized by the development of intermediate punishment, intensive probation.

The present study aims to analyze the evolution of punitive systems in Romania, during the Contemporary period. First, we must mention that about "Romania" we can talk starting from the modern period, the year 1862 is when, under the leadership of Prince Alexandru Ioan Cuza, the first General Assembly of Wallachia and Moldavia adopted the Proclamation attesting that "Romania" is the official name of the Romanian territory. Also, the first Romanian Constitution of 1866 has kept this name. However, the construction of the Romanian culture and identity is a long process (Niță, 2011: 62), shaped over thousands of years and thus when considering the history of Romania, we must investigate the history of the Romanian geographical region, found in Southeastern Europe, on the lower Danube basin (Șerban, 2014: 17-25), on south and north of Southeastern Carpathians and Northwestern Black Sea. The Middle Ages, in Romania, considering the punishment system, began in the 3rd century and lasted until the late 18th century. That period was characterized by a pronounced class character of the justice, the absence of *res judicata* (Chiș, 2012: 134-135), the predominance of cruel punishment, also in the detention system, which was seen as the forerunner of death (Dianu, 1900: 11-12). At the end of feudalism appeared the first written documents reffering to punishment and their execution mode. In terms of punishment, the Modern Age began along with the first elements of punishment humanization, found in Organic Regulations of 1831/1832, which imposed the penalties humanization in the detention system (Chiș, 2013: 123-125). In 1864 the first Romanian Criminal Code was enacted, entering into force on 1865, along with the Criminal Procedure Code. The Criminal Code of 1864 distinguishes three types of offenses: *faults, crimes* and *contraventions* (Criminal Code, 1864, article 1). In 1874, came into force the Law on the regime of prisons. On 1st of January 1930, when the Law from 1874 ceases to have effect, there were 28 county departments of preventive prisons and 54 prisons (Gorescu, 1930: 48). The Modern Age period was characterized by the humanization of the punishment, the first elements of the institution of *release on parole*

only for minors (Sorescu, 2015: 27), the appearance of legal regulations in terms of criminal law and criminal execution law and the emergence of a large number of prisons.

The contemporary period in Romania is the one beginning, according to Constantin C. Giurescu in 1821 (Giurescu, 1946: 15), and according to Florin Constantiniu at the Paris Conference (1919-1920) (Constantiniu, 1997) and lasts up to the present. We consider the onset of the contemporary period in Romanian criminal law, starting with the year 1930, along with the entry into force of the Law of 1929 on the organization of prisons and prevention institutions, because in this act we find a more detailed description of the institution and application procedure of "conditional release". The aforementioned law was the one that transformed the purpose of punishment, from isolation for the committed deed to redeem through moral (courses, religious assistance), intellectual (courses, professional training, conferences, music, etc.), physical (physical education in gyms, work becomes compulsory) education and specialization based on skills, thus giving the penitentiary institution a "deeply pedagogical character". The prison's purpose is that of giving society "unharmed people, physically healthy, who loved good and truth" (Gorescu, 1930: 37-40). This law provided the division of prisons into: forced labor prisons (for life or time period); hard labor ones; detention ones as punishment for murder; reclusion; correctional; of easy prison; detention as punishment for misdemeanors; agricultural and industrial colony prisons; stray colonies; county and health houses (Gorescu, 1930: 40). A great emphasis is put on maintaining prisoners in terms of hygiene, sanitation, food and free medical assistance (Gorescu, 1930: 43). At the same time, the law provides for the obligation of each county to organize in its capital the operation of a prison for people preventively arrested and majorly convicted to a police or correctional punishment up to 6 months or the convicted juveniles up to 3 months (Brezeanu, 2007: 272). Also, the law introduces the "noting"of prisoners so that, depending on the marks obtained and their behavior, they could switch to an easier sentence or even get parole (Gorescu, 1930: 43). By means of the Law on the organization of prisons and prevention institutions, in 1929, prisons have been classified into 81 units, as it follows: five 1st class Main penitentiaries and prevention institutes; three 2nd class Main penitentiaries; thirteen 3rd class Main penitentiaries; thirty-two 1st class County penitenciaries; twenty eight 2nd class County penitenciaries (Gorescu, 1930: 49-50). In 1936 it is published in the Official Gazette number 65 of 18th of March, a new Criminal Code. This legal document divides sentences in: "main", "complementary" and "accessories" (Title III) and at the same time differentiate custodial sentences, into the sentences of coomon law and political sentences (Chapter III), as it follows: 1. *"Main" sentences* were: For "crimes" in common law: forced labor for life; hard labor for limited time from 5 to 25 years; hard prison from 3 to 20 years; For "crimes" in politics: heavy imprisonment for life; heavy detention from 5 to 25 years; rigorous imprisonment from 3 to 20 years (Criminal Code, 1936, article 22); For "crimes" in common law: correctional prison from one month to 12 years; fine from 2,000 to 20,000 lei, unless the law provides another maximum; For "crimes" in politics: simple imprisonment from one month to 12 years; fine from 2,000 to 20,000 lei, unless the law provides another maximum (Criminal Code: 1936, article 23); For contraventions: police prison from one day to one month; fine from 50 to 1,500 lei (Criminal Code: 1936, article 24). 2. *"Complementary" sentences* were: Civic degradation from 3 to 10 years, for crimes; Correctional interdiction from one to six years, for misdemeanors; Deprivation of parental power, in the cases prescribed by the law; Publication and display of conviction sentences, under the law; Fine, the maximum and minimum limits set for the fine as main sentence and only for crimes

(Criminal Code: 1936, article 25). 3. *Accessory sentences* were: Civic degradation; Correctional interdiction; Deprivation from parental power (article 26).

Code of Military Justice of Romania of 20th of March 1937, provided in addition to the penalties of the Penal Code also death penalty, as main punishment for murder and military degradation and dismissal, as accessory punishments. However, it is specified that death penalty is applied only in case of war and executed by shooting, and pregnant women were executed after birth (Military Justice Code, articles 453-454). However, the Constitution of the Kingdom of Romania dated 24th of February 1938 during the reign of Carol the second (Șerban, 2010: 143-152), provided death penalty in article 15, both for war and peacetime, "for attacks against the Sovereign, members of the Royal Family, heads of foreign state and state dignitaries in connection with the exercise of their entrusted functions, as well as cases of robbery with murder and political assassination" (Constitution of Romania, 1938, article 15). In 1968 it was published a new version of the Criminal Code in the Official Gazette of the Socialist Republic of Romania no. 79 bis of 21st of June. Compared with the previous Criminal Code, the legislative act of 1968 removes political penalties and those of common law. The Criminal Code of 1968 was republished twice, first in 1973 in the Official Gazette no. 55 of 23rd of April and again in 1997 in the Official Gazette no. 65 of 16th of April. Penalties of this code are divided such (articles 53-55): a. *Main penalties*: Inprisonment from 15 days to 25 years (from 15 to 30 years in the Criminal Code republished in 1997, thereby adding the "life sentence"); Fine from 500 to 5,000 lei (from 500 to 20,000 lei in the Criminal Code republished in 1973 and from 100,000 to 50,000,000 lei in the Criminal Code republished in 1997); b. *Complementary sentences*: Prohibition of some rights from one to 10 years; Military degradation; c. Confiscation of fortune, partial or total (repealed in the Criminal Code republished in 1977); d. *Accessory sentence* is the prohibition of some rights expressly provided by the law (article 53); e. *Death penalty* (Criminal Code, 1968, articles 54, 55) (is repealed in the later republished variants). Criminal penalties could be replaced by the court with administrative sanctions, but only under certain conditions. These sanctions were: reprimand; reprimand with a warning or a fine from 100 to 1.000 lei (amended in the 2007 version to the value between 100,000 and 1,000,000 lei). The criminal act committed by juveniles attracted punishment or an educational measure: reprimand; supervised freedom; hospitalization in a rehabilitation center; hospitalization in a medical-educational institute (Criminal Code: 1968, articles 99, 101).

Precautionary measures under the Criminal Code apply to persons who have committed crimes and are aimed at "removing a state of danger and preventing the acts to be committed under criminal law". These measures are: "ordered medical treatment; medical hospitalization; prohibition to occupy a position or pursue a profession, a trade or other occupation; prohibition to stay in some places; expulsion of foreigners; special confiscation" (Criminal Code, 1968: article 111, 112). In the 1968 Criminal Code death penalty is found, provided "as an exceptional measure for the most serious crimes" and is applied "in the cases and conditions provided by the law", except for persons under 18, pregnant women or women who had a child up to 3 years at the time when the offence was commited or the sentence was pronounced (Criminal Code: 1968, article 54). In the Code republished in 1973 death penalty was no longer provided, articles 54 and 55 being repealed, however the capital penalty being provided for certain crimes "against the state" (Criminal Code, republished 1973, articles 156, 162). In the 1997 republished Criminal Code death penalty does not appear, but it is introduced the"life imprisonment" penalty, and the maximum prison sentence is changed to 30 years. Moreover, in Romania, by

Decree-Law no. 6 of 7th of January 1990, the death penalty which was "prescribed for certain offenses in the Criminal Code and special laws was abolished and replaced with life imprisonment" (Decree-Law 6, 1990, article 1).

Release on parole is governed by the Criminal Code of 1968, being applied after the inmate " has executed at least half of the penalty in case of imprisonment not exceeding 10 years, or at least two thirds of imprisonment higher than 10 years", and the convict "gives solid evidence of reformation" (article 59). The Criminal Code republished in 1997, partially amends the conditions of parole, so the terms imposed in the original form of the Code, apply this time for crimes of negligence, and the rest of the offenses must be executed "at least two thirds of the penalty of imprisonment not exceeding 10 years, or at least three-fourths biggest for prison higher then 10 years" (Criminal Code, republished 1997, article 59).

The institution of *conditional suspension of sentence* is found in the Criminal Code of 1968 and is applied if: punishment is "imprisonment of 2 years or fine, and for offenses against public property the penalty imposed is 1 year at most", "the offender has not been previously convicted to imprisonment", or the previous conviction is not considered recidivism and "it is estimated that the purpose of punishment can be achieved even without its execution" (article 81). In the Criminal Code republished in 1997 the conditional suspension of sentence conditions change in the sense that "the penalty imposed is imprisonment of up to three years or fine" and "the offender has not previously been convicted to imprisonment exceeding six months" (Criminal Code, republished 1997, article 81).

In the Code republished in 1973 we also find the institution of *suspended sentence under supervision*, applied if the court considers that the purpose of the punishment can be achieved without deprivation of liberty, by doing some work (on construction sites, in agricultural or forestry units, or in other socialist organizations), thus disposing "ordered correctional labor of the convict, for the duration of the applied sentence, if "the penalty imposed is imprisonment up to two years" and "the offender has not previously been convicted to imprisonment" (articles 86^1, 86^3). In the Code republished in 1997, the institution partly changes its conditions, so, it disposes if "the penalty applied is imprisonment of up to four years" and "the offender has not been previously convicted to imprisonment exceeding one year", except the cases not attracting relapse (article 86^1). We also find in the Criminal Code republished in 1997 the institution of *execution of punishment at work*, by means of which the court may dispose work "in the unit where the convict works or in another unit, with the unit's written consent", while the "sentence imposed is imprisonment up to 5 years" and if "the accused has not been previously convicted to imprisonment exceeding one year" except cases that do not attract relapse (Criminal Code, republished 1997, article 86^7).

On 1st of January 1970, there entered into force Law no. 23 of 18th of November 1969 on the enforcement of sentences. The law stipulated that the rehabilitation of prisoners was done through work (paid except for housework), through training, retraining, through "cultural and educational activities, as well as through promoting and rewarding those who are persevering at work and give strong evidence of reformation" (article 5). Juveniles could "continue their general compulsory education and were ensured the opportunity to acquire professional training according to their level of schooling and skills" or could attend professional training courses (article 6). On June 29th 2004 it was published in the Official Gazette number 575 a new Criminal Code, which entered into force on 1st of September 2009. The 2004 Code differentiates punishments

applied on natural persons from the penalties for legal persons. Penalties for natural persons are of three types: main, complementary and accessory. The main penalties are as it follows: main punishments for crimes and main punishments for offenses. *The main punishments for crimes* were: life detention; severe detention between 15 and 30 years. *The main punishments for offences* are: Strict prison between one and 15 years; Prison between 15 days and one year; Fine under the form of fine-days between 5 and 360 days, every day accounting between 100,000 lei and 1,000,000 lei; Community work, between 100 and 500 hours. *Complementary punishments for crimes and offenses* were: prohibition of certain rights from one year to 10 years and military degradation. *Accesory punishment for crimes and offenses* is to prohibit the exercise of all rights provided as complementary penalty" (article 58). For minors who are criminally responsible, the Code of 2004 provided approximately the same measures as the former Code, except for *release under strict supervision*, which is additionally introduced (articles 114, 115). Regarding the *precautionary measures* provided by the Criminal Code of 2004, they coincide with those in the earlier legislation, being extra added a new measure, namely *the prohibition to return to the family home for a specified period* (article 129). Furthermore, "the execution of main imprisonment penalties is based on the progressive system", the convicts being able to move from one regime of execution to another and custodial sentences are executed in one of the following regimens: maximum security; closed; semi-open; open (article 60). The punishment of *community service*, could be imposed only with the consent of the defendant, "if the law provides for a felony imprisonment or strict imprisonment not exceeding 3 years" and thus "the court may sentence instead of imprisonment the execution of unpaid work community service, for a period of at least 100 hours and 300 hours maximum, if the law provides imprisonment or up to 500 hours, where the law provides strict imprisonment not exceeding 3 years" (article 70). The 2004 Code regulated the institution of *release on parole* of the convict to imprisonment, strict imprisonment and hard detention, establishing that it applies after serving a minimum of "two-thirds of imprisonment or strict imprisonment or three-quarters of severe imprisonment" and for minors after serving one third of the sentence (article 71). For prisoners sentenced to life imprisonment, release on parole applies "exceptionally, after the effective execution of 20 years of imprisonment" or 15 years for people over 60 years (article 72). The institution of *conditional suspended sentence* imposed to a natural person, was provided by the Criminal Code in 2004, the court being able to order the suspension if "the sentence imposed for an offense is imprisonment or strict imprisonment up to 5 years or fine-days","the perpetrator has not been previously sentenced to a custodial sentence unless the conviction" does not attact relapse (article 95).We also find the institution of *suspended sentence under supervision applied to a natural person*, ordered if, "the penalty imposed for the offense is imprisonment or strict imprisonment not exceeding seven years", "the perpetrator has not been previously convicted to imprisonment or strict imprisonment or has been sentenced to imprisonment or strict imprisonment not exceeding 2 years, unless the conviction" is not relapse (article 101). Courts in Romania may also apply *suspended sentence under supervision* with the convict's obligation to perform community service for a maximum of 300 hours (article 107).

Two new institutions introduced in the 2004 Criminal Code are: *waiving the penalty* and *postponing the sentence for a natural person*. If abandoning punishment, "the court may not apply any penalty to the defendant who had no criminal record, has covered the damage caused and has solid evidence that he can reform even without the imposition of a sentence" (article 108). Postponing penalty can only be applied for crimes "for which

the law provides imprisonment or strict imprisonment for up to 5 years" and in the conditions fulfilled for waiving the penalty, described above. The effect of postponing the penalty, if the defendant had an adequate conduct, is the non-application of punishment (article 109). Law 275/2006 on execution of punishments and measures ordered by the court during the criminal trial has regulated the conditions for punishment enforcement in Romania, during October 2006 - January 2014. The law differentiates between *prisons* and *special prisons* (prisons for juvenile and youth; women's prisons and hospital prisons) and emphasizes the separation of *preventive arrest sections*. There is also the distinction between enforcement regimes of custodial sentences, namely: maximum security regime; closed; semi-open and open (articles 1-74). The Penal Code of 17th July 2009, entered into force on 1st of February 2014, distinguishes between main, accessory and complementary punishments. *The main penalties* are: life imprisonment; imprisonment (from 15 days to 30 years); fine ("The fine amount is determined by fine-days system. The corresponding amount of a fine-day, between 10 lei and 500 lei, is multiplied by the number of fine-days, which is between 30 days and 400 days". If the fine is not paid in bad faith, it is replaced by imprisonment, and if the fine is not paid for reasons not attributable to the convict, the fine is replaced by an obligation to perform free community service) (Criminal Code, 2009: Art. 53, 60, 61, 63, 64). *The accessory penalty* ("consisting of deprivation of some rights, from the time the sentence becomes final and until execution or the consideration as executed the deprivation of liberty penalty") (article 54).

The complementary penalties are: prohibition of some rights and military degradation; Publishing the sentence (Criminal Code, 2009: article 55). For minors who are criminally responsible, the current criminal legislation provides for two types of measures: *Non-custodial educational measures* ("civic training course; supervision; recording on weekends; daily assistance) and *custodial educational measures* ("admission in an educational center; admission in a detention center") (article 115). The *safety measures* ordered by the court are "ordered to medical treatment; medical admission; prohibition of employment of a function or exercise of a profession; special confiscation; extended confiscation" (article 108). In the current Criminal Code we find, as in the previous code the *waiving of penalty* institution, but amended so that it applies when "the offense has a low gravity, given the nature and extent of the produced consequences, means used, method and circumstances in which it has been committed, the motive and aimed purpose" and "respect the person of the offender, the conduct previous to the offense, his efforts to eliminate or mitigate the consequences of the offense, as well as his means of reformation". In case of waiving the penalty, the accused "is not subject to any disqualification, prohibition or incapacity that may arise from the offense" and the court is applying only a *warning* to the person (articles 80-82).

We also find the *cancellation of penalty* institution, amended, compared to the previous legislation, so that it applies when "the punishment established, including in the event of multiple offenses is a fine or imprisonment not exceeding two years"; if "the punishment provided by the law for the offense is less than 7 years and if the offender has not evaded criminal prosecution or trial or tried thwarting the truth or identification or the criminal responsibility for the author or participants"; if "the offender has not previously been convicted to imprisonment, unless it is not considered relapse or for whom rehabilitation intervened or the rehabilitation term has been fulfilled" and when "the offender has expressed agreement to provide unpaid community work" (articles 83, 90).

In the current Criminal Code, in order to apply the institution of the *suspended sentence under supervision* the following conditions must be met: "the punishment

imposed, including in the event of offenses is imprisonment up to three years"; "the offender has not been previously convicted to imprisonment exceeding one year, unless the cases" that does not result in relapse "or for which rehabilitation has intervened or the rehabilitation term has been fulfilled" and "the offender has expressed agreement to provide unpaid community work" (article 91). *Release on parole* applies to life sentence if "the convict has effectively served 20 years of imprisonment' and for convicts to prison, when "the convict has executed at least two thirds of the penalty, if the prison is not exceeding 10 years, or at least three quarters of the penalty, but not more than 20 years, for prison of more than 10 years"; the convict "is serving the sentence in open or semi-open regime"; "has fully complied civil obligations established by the sentence, unless he proves he had no opportunity to fulfill them" and "the court is convinced that the sentenced person is reforming and can reintegrate into society" (article 100). Since February 2014, the conditions for punishment enforcement, educational measures and other non-custodial measures ordered by the courts of law in criminal proceedings are regulated by Law 253 of July 19th, 2013.

The conditions of sentence and custodial measure execution ordered by the courts of law in criminal proceedings are governed from February 2014 by Law 254 of 19th of July 2013. The law contains some changes from the previous law, made to adapt to the new criminal regulations. The places of punishment execution are divided into "prisons" and "special prisons" (for youth, women and hospital-prisons), indicating at the same time the organization of "special sections for enforcement custodial educational measures" and "preventive arrest sections" in prisons (articles 11-14). Currently, in the prison regime in Romania there are forty-four units, distributed as it follows: sixteen prisons with open and semi-open regime; sixteen prisons with maximum security and closed regime; six hospital-prisons; one prison for women (including 6 women's sections in other prisons); three detention centers; Two educational centers. In twenty three of these units there are preventive arrest sections (National Administration of Penitentiaries, 2015: 3). After studying the punitive system on Romania's territory, we see that it fits in the overall characteristics identified for the three historical phases, noting an evolution of punishment from the corporal one in medieval times, to the intense deprivation of liberty in the modern ages, the Romanian state currently managing to update legal dispositions, in accordance with the current trends of European criminal policies, developing intermediate and alternatives punishment to imprisonment.

Acknowledgment

This work was supported by the strategic grant POSDRU/159/1.5/S/133255 Project ID 133255 (2014), cofinanced by the European Social Fund within the Sectorial Operational Program Human Resources Development 2007-2013.

References:

Brezeanu, O. (2007). Criza din sistemul penitenciar. *Revista de criminologie, de criminalistică și de penologie*, (1), 270-287.

Chiș, I. (2012). *Istoria dreptului și statului românesc*, Bucharest: Universul Juridic Publishing.

Chiș, I. (2013). *Drept execuțional penal*, Bucharest: Universul Juridic Publishing.

Criminal Code (1864). In *Official Monitor*. Retrieved from: http://idrept.ro/DocumentView.aspx?DocumentId=00040047 .

Criminal Code (1936). In *Official Monitor* (65). Retrieved from: http://idrept.ro/DocumentView.aspx?DocumentId=00033229 .

Criminal Code (1968). In *Official Bulletin of the Socialist Republic of Romania*, (79). Retrieved from: http://idrept.ro/DocumentView.aspx?DocumentId=00008380 .

Criminal Code (1968/ 1973). In *Official Bulletin*, (55-56). Retrieved from: http://idrept.ro/DocumentView.aspx?DocumentId=00040049.

Criminal Code (1986/ 1997) republished on 1997. In *Official Monitor*, (65). Retrieved from: http://idrept.ro/DocumentView.aspx?DocumentId=00015710 .

Criminal Code (2004). In *Official Monitor of Romania*, (575). Retrieved from: http://idrept.ro/DocumentView.aspx?DocumentId=00075139 .

Criminal Code (2009). In *Official Monitor of Romania*, (510). Retrieved from: http://idrept.ro/DocumentView.aspx?DocumentId=00124086.

Constantiniu, F. (1997). *O istorie sinceră a poporului roman*, Bucharest: Univers Enciclopedic Publishing House.

Constitution of the Kingdom of Romania (1938). In *Official Journal of Romania*, (48). Retrieved from: http://idrept.ro/DocumentView.aspx?DocumentId=00040054.

Dianu, G. I. (1900). *Istoria închisorilor din România. Studiu comparativ: legi și obiceiuri*, Bucharest: Tipografia Curții Regale F. BÖBL FII.

Giurescu, C. (1946). *Istoria românilor din cele mai vechi timpuri până la moartea regelui Carol I*, Bucharest: Cugetarea-Georgescu Delafras.

Goga, C. I. (2015). Historical evolution of punishment systems. *Analele Universității din Craiova. Seria Istorie*, (27), 183-194.

Gorescu, O. (1930). *"Văcărești" Mânăstire. "Văcărești" Penitenciar. Precedat de un scurt istoric asupra regimului penitenciar în România*, Bucharest.

Military Justice Code of Romania (1937). In *Official Journal of Romania* (66). Retrieved from: http://idrept.ro/DocumentView.aspx?DocumentId=00040043.

National Penitentiary Administration (2015). *Raportul Anual 2014.* Retrieved from: http://anp.gov.ro/documents/10180/4605968/Raport+de+activitate+al+ANP+pe+anul+2014.pdf/318e6305-8299-44c8-b016-a64f6465a670.

Niță, A. (2011). Cultural phenomena and processes in contemporary society-determinants of cultural policies. *Revista de Științe Politice. Revue des Sciences Politiques*, (32), 61-69.

Pradel, J. (1995). *Droit penal comparé*, Paris: Dalloz.

Sorescu, M. E. (2015). Romanian Social Work Education – History, Standards and Perspectives. *Revista de Asistență socială*, (1), 23-34.

Șerban, I. (2010). Proclamarea Regatului României în viziunea Diplomației Italiene și Europene. *Analele Universității din Craiova. Seria Istorie*, (17), 143-152.

Șerban, I. (2014). Political and diplomatic relations between Romania and Italy and their role in the European Danube Commission.. *Analele Universității din Craiova. Seria Istorie*, (25), 17-25.

Article Info

Received: April 2 2015
Accepted: May 27 2015

RSP • No. 46 • 2015: 238-246

ORIGINAL PAPER

Enforcing New Regulations in the Romanian Criminal Law on the Public Officer: Selective Analysis of the Institutional Change and Mechanisms

Ruxandra Răducanu*

Abstract
The new Criminal Code of Romania has reshaped the institution of the public officer – as active subject of the offense and at the same time, has imposed much more requirements on its behavior. The extent that corruption has taken and the notification of the attitudes and behavior inconsistent with the status of the public officer have imposed the criminalization of some actions which, under the old penal code were outside of the criminal area, such as abuse of office in sexual purposes or usurping the function. At the same time, existing regulations were clarified to ensure their efficient implementation. The constitutive content of the offense of bribery was amended so as to include the act of receiving undue benefits, which had a separate criminalization in the previous legislation. gheorIt is necessary to observe what theoretical and practical consequences of these changes and new incrimination generate in relation to criminal offenses of service.

Keywords: *public officer, work related duties, bribery, abuse of office, usurping the function, criminal liability, criminal offence*

* Associate Professor, PhD, University of Craiova, Faculty of Law and Social Sciences, Law specialization, Phone: 004035117700, E-mail: raducanuruxandra@gmail.com.

General considerations on the need to criminalize acts committed by public officials

Criminal law pays special attention to acts committed by public officers in the performance of their duties, to intervene and severely punish a behavior which, in addition to failing to comply with ethical norms, has a pronounced criminal fingerprint. What is sought, in the first place, is to ensure that legal compliance in the performance of work related duties, as an abusive behavior, beyond the legal limit, diminishes the prestige of the institutions where the civil servants are working, but also their proper functioning.

As shown in the scientific literature, the proper performance of the activities of public interest, as well as of other activities regulated by law, is incompatible with the idea of corruption of public officers in that they could be influenced by outsiders in the performance of their duties by offering them benefits to which they are not entitled to by law (Loghin, Toader, 1998: 333). Romanian law has undergone many changes and additions to harmonize with the EU legislation; their need was justified by the internationalization of corruption, the emergence of foreign elements in the legal structure of certain crimes. Criminal law provisions are aimed at ensuring the effective exercise of public interest and other activities regulated by law. The right behavior of the officials is the foundation of proper conduct of employment relationships and also guarantees compliance with the legislation and implementation of the legal interests of individuals. Acts committed by a public officer in the performance of work duties are incriminated by the Romanian legislature in offenses of corruption or work duties.

Offenses of corruption or service, with few exceptions, are crimes that require a qualified active subject determined by the quality of "public officer" as required by the text of criminality in case most of the cases of offenses of corruption or service (taking Bribe – article 289 Criminal Code, embezzlement – article 295 of the Criminal Code, abuse of office – article 297 Criminal Code., negligence in service – article 298 Criminal Code, misuse of office in sexual purposes – article 299 Criminal Code., usurping the function – article 300 Criminal Code., conflict of interests – article 301 Criminal Code). The offenses referred to in articles 289, 295, 297-301 committed by other persons exercising, temporarily or permanently, with or without remuneration, a commission of any kind in the service of an individual provided by article 175 paragraph 2 or under any other legal person, represent attenuated versions of crime which know a distinct sanction regime, in this case, special limits of the punishment are reduced by a third.

Understanding the need for separate incrimination by the criminal law of acts committed by public officers in the line of duty should be based on the analysis and interpretation of the concept of public functioning as it is configured Romanian criminal law. Thus, according to article 175 paragraph 1 of the Criminal Code which came into force on 1 February 2014, a public servant within the meaning of the criminal law, means "a person who, permanently or temporarily, with or without remuneration: a) exercises the powers and responsibilities established by law in order to achieve the prerogatives of the legislative, executive and judicial powers; b) exercises a public dignity or a public office of any kind; c) exercises, alone or with others, in an autonomous, of another operator or a legal entity owned or majority state tasks related to achieving the objects of it". Also, by provisions, article 175 paragraph 2 of the Criminal Code operates assimilation, as a public officer, for "person exercising a public service which has been entrusted by the public authorities or which is subject to their control or supervision of the fulfillment of that public service".

The new regulation and reconfiguration of the notion of the "public officer" in the Romanian criminal law has raised many issues and required clarification from the Supreme Court to ensure uniform practices. Thus, as a public officer, the surgeon with an employment contract of indefinite duration in a hospital in the public health system, it was necessary to determine if he has this capacity, the existence of quality, depending on its existence lays the criminal liability for the offense of bribery. As practice alternated between incriminating doctors for the offense of bribery, there were even solutions of the High Court of Cassation and Justice in which such person who was acquitted for the offense of bribery, considering that, according to the new regulation of the concept of public officers, he does not qualify as a public officer.

The High Court of Cassation and Justice, binding judgment pronounced by the Complete for unraveling certain law related problems on a problem that had already generated uneven practice stating that "a contract employed doctor in a hospital in the public health system is a public office in the sense of the provisions of article 175 paragraph. (1) b) second sentence of the Criminal Code" (High Court of Cassation and Justice, The Complete for unraveling certain law related problems in the matter of criminal law, Decision no. 26/2014, published in the Official Gazette of Romania, Part I, no. 24/13.01.2015).

In establishing the fact that the doctor is a public officer, exercising a public office of any kind, the Supreme Court started from the Romanian legislator's rational interpretation, bringing in support of this claim elements of comparative law. Thus, it was found that the new regulation of the notion of public official, in the New Penal Code, the legislator did not want a decriminalization of corruption committed by doctors, especially that from this point of view, the medical field is an area that requires increased attention and effective solutions. It was also found that, based on liberal character of the medical profession, it cannot justify the lack of criminal liability and "with the importance of the public health service, patients cannot be left unprotected by the criminal law, on the grounds that any acts of claiming or receiving money or other benefits by the doctor operating within the health system can be integrated in the sphere of incidence of non-criminal legal provisions". Regarding corruption committed by the technical judicial expert, The High Court of Cassation and Justice has determined that he "exercises a public service – drawing expertise to establish the truth and resolving pending cases handled by courts or prosecution bodies – service for which he was invested by a public authority – The Ministry of Justice" (The High Court of Cassation and Justice, The Complete for unraveling certain law related problems in the matter of criminal law, Decision no. 20/2014, published in the Official Gazette of Romania, Part I, no. 766/ 10.22.2014).

An important criterion that the High Court of Cassation and Justice had in mind when stating that if the judicial expert's assimilation with the public officer operates under the provisions of article 175 paragraph 2 of the Criminal Code was that although such a profession is organized in the absence of budgetary financing, it pursues a public service and is subject to the control or supervision of a public authority. Furthermore, certain professions that are supported from the national budget was one of the arguments that the Court relied to in determining the quality of public officer – understood as the exercise of a public office of any kind – a doctor hired with a contract in a hospital in the public health system. Therefore, determining the quality of public officers is essential to criminal liability for corruption offenses and service and reconfiguration of the meaning that the legislator gave to the concept of public officer. It produced non-unitary solutions in practice, solutions that could not be ignored and that required the intervention of the

Supreme Court for setting some clear directions leading to the unification of judicial practice.

Novelties brought by the 2009 Criminal Code in relation to corruption offenses.

The extent of corruption and frequent findings of commissions of such acts, despite an extremely tough sanctioning system, prompted the legislator of the Criminal Code of 2009 to pay special attention to this group of offenses. What is to be observed is primarily related to the punitive treatment of these crimes. Although the Criminal Code of 2009 has adopted a preventive criminal policy, opting to mitigate punishment provided by law for various offenses in relation to criminal offenses of corruption this principle was not applied. Although for the offenses of bribery and influence trafficking the maximum punishment was diminished, though the sentence is quite severe at 10 years imprisonment and respectively 7 years imprisonment, especially when compared with other changes to the system of enforcement of other offenses (for theft, for example, after the maximum of imprisonment was reduced from 5 to 3 years, the new Criminal Code provided an alternative penalty of fine). The reason for maintaining this highly repressive sanctioning system is precisely the legislator's desire to repress such acts signifying an incorrect and misconduct behavior of public officers, given that corruption is difficult to eradicate and certainly impossible to stop.

Particular attention of the legislature on these facts is proved by the many changes in this area. Thus, as the offense of bribery changes were necessary in order to grasp and sanction all situations that may manifest an attitude of public officers may signify the breach of the correct way of fulfilling their duties. Experience has shown that there are cases where the official demanding money or undue benefits were made in the interest of another person, not in the interest of the public officer. The Criminal Code of 1968 did not regulate such a possibility which fell under criminal law and may not apply a criminal penalty. It was obvious that in such a situation – of claiming an undue advantage by the public officer to another as equivalent to fulfill, not fulfill, speed up or delay an act falling within the officer's duties or performing an act contrary to these duties – the severity of the offense was the same as in the case where such was claimed for the use of the public officer himself. And identical situations require identical solutions, provided that, in criminal matters, they are required by law. Or, what was newly brought in the Criminal Code of 2009 was just filling in the gaps of the law to punish all facets possibility of bribery.

Also, another supplement to the Criminal Code of 2009, also in the idea of sanctioning all situations where an incorrect behavior can be seen in the public officer refers to money or undue benefits related to service of his duties. They may be claimed in connection with the speeding of an act falling within the duties of service of public officers. Such a hypothesis was not foreseen in the Criminal Code of 1968; its regulation by the Criminal Code of 2009 is further proof of the attention of the legislator to punish all acts that mean corruption in the field of service and activities of public officers.

The desire of the legislator to suppress such behavior also led to a disproportionate treatment provided by it for situations of different gravity. Thus, the regulation and punishment of the situation after the public officer fulfilled his job duties has received money or undue advantages in the absence of a prior agreement with the briber, the 1968 Criminal Code regulated a distinct offense as the reception of an unfair advantage for such a situation. Obviously, in this case the public officer's behavior was

not correct and did not correspond to the ethical and moral requirements imposed by his function. The presence of interference with the social value protected by law in this situation was serious enough to justify the criminal liability. The 1969 Code distinctly regulated the situation, penalizing it less seriously than bribery, considering that although not done correctly, the public officer has conditioned the performance of his service to receiving money or undue benefits. It was a legal distinction between the two situations and the gravity was reflected in the penalties provided by law. The Criminal Code of 2009 does not distinctly regulate this fact. Apparently, the crime of receiving undue benefits is not criminalized. This is only an appearance, because the intention of the legislator, especially in the matter of corruption offenses has not been to decriminalize such offences, but, on the contrary, to punish them more severely.

The new formulation of the offense of bribery states that between the action of claiming by the civil servant, receipt or acceptance of promises of money or undue benefits should be linked to the performance that he engaged to have fulfilled on the act of service. The Criminal Code of 1968 provides that the offense of bribery had to be committed in order to perform, not to perform or delay the fulfillment of an act falling within the duties of service or perform an act contrary to these duties. This statement leads to the conclusion that receiving money or profits could not be made before the performance of the officer. If the legislator requires that the action is to be committed by public official about his performance, the new wording, although seemingly insignificant, produces two important consequences. Absence of purpose of incrimination means, on the one hand that committing the offense of bribery is possible both with direct intent and indirect intent, and, on the other hand, demanding, receiving or accepting the promise may take place either before and after the time of the public officer's fulfillment of his duties which enter his service (Crișu-Ciocântă, 2014: 469).

The conclusion resulting from the interpretation of the text of incrimination is that, not only there was no intent to decriminalize the offense of receiving benefits, but it was incorporated into the crime of bribery. The will of the legislator was therefore to equate public officers who have, from the beginning a misconduct behavior in that he conditions his performance by certain benefits, and public officers acting in accordance with the requirements of professional and moral performance of the service and only after the fulfillment of this act, without claiming, accept, receiving undue benefits. It is worth noting that, given that in both cases the same punishment is provided, in addition to an extremely harsh punitive treatment, it also creates a disproportionate treatment to the seriousness of the offence, which can cancel the preventive nature of the criminal provision that represent the desire of the Romanian legislator.

The offense of receiving undue benefits was considered a variety of species of the offense of bribery (Diaconescu, 2004: 94). The criminalization of the offense they are in the tradition of the Romanian legislator, and also its attenuated character to bribery resulted in milder punishments treatment is a constant Romanian legislator. Therefore, it might be consistent with the principle of proportional penalty to the seriousness of the offense, provided that the offense of undue advantages is an attenuated variant of the crime of bribery. The option of the Romanian legislator to identically treat the two offenses, although obviously different in severity provides no evidence of criminal prevention, but instead of an exaggerated repress.

Another element that comes to argue the predominant character of the rule of preventive criminality is everything related to the enforcement regime provided by the 2009 Criminal Code for the offense of bribery. Thus, besides imprisonment, there was an

additional punishment provided of prohibition to exercise the right to hold public office or to practice or work in performance of the offender. Complementary punishment is a criminal sanction, besides constraint acts in the directions of re-education and exemplarity (Mitrache, Mitrache, 2014: 239). Prohibition by the legislature of the right to hold public office or to practice or work in performance that was committed bribery is evidence of a thorough regulation of the legislature in this matter; by providing this additional punishment was completed and preventing the conduct of bribery, which was a priority for the legislator to change in criminality rule.

But there were aspects neglected by the legislator and that would have required attention, especially since we wanted a proportional amount of punishment provided to the seriousness of the offense. The material element of the offense of bribery can be seen in several alternative ways: receiving, demanding or accepting money or promises undue benefits. The Criminal Code of 1968 also provided the distinct possibility of a crime of not rejecting the promise of bribery. Although the Criminal Code of 2009 has not expressly provided this way, the offense is also achieved through not rejecting the promise which is a tacit acceptance that falls within the scope and content of the notion of acceptance of promises provided as a means of committing a material element.

Strangely enough these ways were maintained by the legislator even in the form and type of offense intended to treat, in terms of penalties, as if the offender receives or claims money or undue benefits. Claiming represents a request of the public officer, made out of initiative and consists of taking possession receiving money or undue benefits (Boroi, 2011: 371) and folds right on the content of "taking" marginal name used in the crime. By comparison, accepting the promise of money or other benefits, involving even tacit acceptance of any such promises relates to the agreement on a public officer being promised money or consideration. However, this agreement is preceded by the offer, promise, and deed initiative belonging in this situation briber. Surely criminal law imposes public officers a right attitude, asking them to take a firm stand, unequivocal and reject such a promise.

The public officer's attitude of tacit acceptance of the promise of the briber is undoubtedly an act of corruption which affects the social value protected and requires the sanction of criminal law. But the choice and actual penalty, the legislator ought to exercise caution and define an appropriate penalty commensurate with the seriousness of the offense of accepting the promise. The preventive nature of the criminal provision would have been better highlighted and would have been materialized the propose that the legislator had, to deter the commission of such acts and to form a different attitude of the public officers in the performance of their duties. In conclusion, what stands in relation to corruption offenses is, on one hand, maintaining a repressive character of the criminal provision, and, on the other hand, the inclusion in the scope of the criminal provision of all situations that may represent acts of corruption of public officers.

Novelties brought by the 2009 Criminal Code offenses in the field of service

The novelty of the 2009 Criminal Code in the matter of offenses in the field of service can be synthesized in more systematic and structured criminal rules in this area. Undoubtedly, in this matter, the importance of the value protected by the legislature is in the foreground, and the public officer is the central pillar of the existence of which the existence of the crime itself depends. A first difference from the 1968 Criminal Code refers to the crime of embezzlement. The content of this crime remained unchanged from the previous regulation, what is different is regarding the place of the crime. Conceived

by the legislator in 1968 as a patrimonial crime, embezzlement was naturally placed, by legislator of the Criminal Code of 2009, among service offenses. It is not coincidental such a transfer, and not lacking in criminal meaning. Embezzlement has been and remains a crime that affects both the service of activity and economic relations. If you weigh what offence is more serious, obviously, the service relations pose a greater threat. And this conclusion derives mainly from a public officer in charge of managing and administering the active subject of the offense. It is an argument that the 2009 Code's systematization tried to achieve in relation to criminal offenses provided for in the special part.

Regulation of the offense as a crime of embezzlement in service takes into account other European criminal laws (The Spanish Criminal Code, French Criminal Code, the Italian Criminal Code) which consider and criminalize embezzlement as a service offense. The introduction of the offense of embezzlement in service offenses is not new in Romanian criminal law, the same solution was consecrated by the Criminal Code of 1936. The new regulation is an acknowledgment of the Romanian legislator tradition which means that the embezzlement is not primarily affect heritage but social relations on the effective exercise of public service units or other legal entities. The quality of the active subject, that a public officer is the main element of a criminal offense scene prints service since its action is related to the assets they manage or administer appropriate disciplinary, and there is the view that if the offense is committed by a manager actually need it to be a person, even if in fact fulfill these tasks, it must be an employed person in that unit. Regulating the crime of embezzlement as a service offense illustrates the relevance of this opinion that conditions the crime by the existence of a relationship of service.

There are also new incriminations in the matter of service offenses that come to fill gaps in the legislation since the period indicated during the applicability of the Criminal Code of 1968. The offenses of abuse of position for sexual purpose (article 299 of the Criminal Code) and usurping the function (article 300 of the Criminal Code) are such examples. What the legislator missed and also presents seriousness, affecting protected social values, was the action of a person who promotes or offers sexual favors to public officers in order to perform, not perform, speed-up or delay the performance of an act regarding the duties of his office or in order to perform an act contrary to these duties.

Misuse of position for sex is, according to article 299 paragraph 1 of the Criminal Code, is the act of a public officer which in order to perform, not perform, speed-up or delay the performance of an act concerning the duties of his office or in order to perform an act contrary to these duties, claims or obtains favors of sexual nature from a person directly or indirectly interested of the effects of that act of service. Under the provisions of article 299 paragraph 2 Criminal Code the offense is an attenuated variant requesting or obtaining sexual favors by a public officer who makes use or takes advantage of a position of authority or superiority over the victim arising from his position.

This new indictment replaces a regulatory loophole and sanctions the abuse of public officers, manifestation encountered ever more frequently in practice. Creating this incrimination took as its starting point a reality that could not be tolerated nor ignored and that justify the intervention of criminal law. No doubt there is detriment to the conduct of business service and abusive behavior of an unworthy officer that conditions, fulfillment, non fulfillment, speeding-up or delaying of an act concerning the duties of his office or carry out an act contrary to these duties to obtain sexual favors.

The limitations imposed to the behaviour of the public officer derive from the general interest of the society to ensure the effective exercise of service, and as shown in doctrine, when the state limits the exercise of liberty, it has to affirm the general interest in such a way not to affect the free development of human personality (Dănişor, 2014: 20). The expression used by the legislator "sexual favors" is very general and involves any act which may help to acquire sexual satisfaction.

The attenuated variant in paragraph 2 was started from the old regulation of the crime of sexual harassment which, rightly, has found its place in the crimes of the civil service while abusing public authority or superiority over the victim, authority or superiority arising from its position. Even if between the victim and the officer there is no relationship of subordination resulting from a service relationship, undermining social value protected there since the civil behavior is abusive and unfair. Another difference from the old regulation refers to conditions in the absence of the incriminating text, a condition which in practice was difficult in the probation of the offense of sexual harassment. The Criminal Code of 2009's legislator has not provided the required repeatability act of sexual harassment as an indispensable element for the existence of the crime. In conclusion, the act is an offense even if it promises a single action claiming or obtaining sexual favors. This new regulation is yet another proof of better systematization and structuring the rules of criminal offenses in the field of service. Usurping the function, according to article 300 of the Criminal Code is the act of a public officer during the service performs an act that does not fall within his duties if this has produced one of the consequences provided for abuse of office.

This new regulation also fills a legislative gap, completing the offense of abuse of office. As for the offense of abuse of active subject it is all public officers through abusive behavior who produce the same track as in the case of abuse of office: damage or harm to the rights or legal interests of a natural or a legal entity. The essential difference of the additions to criminalize usurpation is that the public officer performs an act that does not fall within his remit. In contrast, the existence of the crime of abuse of office was conditioned by the fact that the public officer poorly performs an act which falls in his duties (Răducanu, 2009: 278). Although the rule does not provide incrimination provided that the public official who usurped his position to poorly produce an act, however, implicit in this condition that must follow a cause offense (either damage or harm to the rights or interests of a natural or legal person), which therefore cannot occur when the proper performance of the act is done (Dobrinoiu, Neagu, 2012: 506).

The common feature of all the crimes that have as qualified active subject a public officer is that criminal participation in the form of coauthors, imposes that the coauthor must be a public officer as the active subject. Instead, the accomplice and instigator can be any person, but they answer for participation in the crime committed by the public officer (Vasiliu, Antoniu, Daneş, Dărângă, Lucinescu, Papadopol, Popescu, Rămureanu 1977: 55). Thus, the public officer quality of the active subject reflects on the offense itself and therefore, under its influence on the situation of the participants follows the real circumstances regime. Thus, the instigator and accomplice shall be considered participants in the crime committed by the public officer if they knew or foresaw the status of the author.

Conclusions

Therefore, the extent that corruption has reached, and referral of inappropriate behaviors and attitudes inadequate with the public officer status have imposed the

incrimination of facts, which under the old penal code were outside the criminal area, such as misuse of office for sexual favors or usurping the function. In conclusion, the quality of public officer of the active subject of an offense distinctly triggers either criminalizing offenses committed by him or framing in an aggravated offense. The legislature sought sanctioning of violations of official duties committed by public officers, considering that this is undermining the prestige of the institution in which they operate, but also damage the interests of individuals, and their confidence in the proper conduct of duties by officials.

References:

Boroi, A. (2011). *Drept penal. Partea specială*, Bucharest: C. H. Beck Publishing House.

Dănişor, D. C. (2014). Justification of necessity to limit the exercise of rights and liberties in a liberal society*, Revista de Ştiinţe Politice. Revue des Sciences Politiques*, (41), 13-23.

Decision of the High Court of Cassation and Justice no. 20/2014. In *Official Gazette of Romania*, Part I, no. 766/10.22.2014.

Decision of the High Court of Cassation and Justice no. 26/2014. In *Official Gazette of Romani*a, Part I, no. 24/13.01.2015.

Diaconescu, H. (2004). *Infracțiunile de corupție și cele assimilate sau în legătură cu acestea*, Bucharest: All Beck Press.

Dobrinoiu, V., Neagu, N. (2012). *Drept penal. Partea specială,* Bucharest: Universul Juridic Press.

Loghin O., Toader T. (1998). *Drept penal. Partea specială*, Bucharest: Şansa Press.

Mitrache C., Mitrache C. (2014). *Drept penal. Partea generală,* Bucharest: Universul Juridic Press.

Răducanu, R. (2009). *Drept penal. Partea specială,* Bucharest: Universul Juridic Publishing.

Toader, T., Michinici M. I., Răducanu R., Crişu-Ciocântă A., Răduleţu S., Dunea M. (2014). *Noul Cod Penal. Comentarii pe articole*, Bucharest: Hamangiu Press.

Vasiliu, T., Pavel, D., Antoniu, G., Daneş, Şt., Dărângă, Gh., Lucinescu, D., Papadopol, V., Popescu, D., Rămureanu, V. (1977). *Codul penal comentat şi adnotat. Partea specială,* vol. II, Bucharest: Scientific and Encyclopedic Press.

Article Info

Received: April 7 2015
Accepted: May 29 2015

RSP • No. 46 • 2015: 247-259

ORIGINAL PAPER

Investment in Health and Economic Inclusion of South Eastern European Countries

Denada Frasholli[*]
Eglantina Hysa[**]

Abstract
Contrary to the well-recognized and studied causality running from economic growth to health, this study presents evidence of the reverse causation – from health to economic growth. The study tries to analyze the processes and connections that trigger the relationship between investment in health and the achievement of economic growth. This paper goes through a review and an analysis of the effects that health investment has on economic growth and the economic rationale for investing in health. The focus of this research paper is finding out how better health serves as a predictor of economic growth and the degree to which economic growth is explained by health expenditures in South Eastern European countries. Regression analysis, used in identifying the relation between health expenditure per capita and GDP per capita for SEE countries are based in the data of World Bank for years 2000-2011. Based on the findings, there exist a strong relationship between investment in health and economic growth in all SEE countries. By comparing the regression's results of the SEE countries, it can be concluded that health expenditures per capita in Albania, as a measure of investing in health, explain slightly more of the variation in GDP per capita than in the other countries. On the other hand, Macedonia and Albania are the countries where health expenditure has the highest impact on economic growth. To sum up, SEE countries have to consider investment in health sector as a crucial instrument for achieving both, economic and social inclusion.

Keywords: *Health, Investment, GDP per Capita, Economic Inclusion*

[*] Associate Professor PhD, Epoka University, Faculty of Economics and Administrative Sciences, Phone: 0035542232086, E-mail: dfrasholli10@epoka.edu.al.
[**] Lecturer, PhD, Epoka University, Faculty of Economics and Administrative Sciences, Phone: 00355672057557, E-mail: ehysa@epoka.edu.al.

Introduction

Health is an invaluable asset for human beings. Being healthy and living a long life are the most important goals of every individual. Good health has a significant importance for human existence and is a very important source of well-being. It is a key factor in a person's ability to develop his skills and knowledge and allows individuals to fully live their lives, without shortcomings or deficiencies. Health problems prevent people from performing their daily activities and are reflected as obstacles in the development of individual's potential during their entire lives.

According to economic theories, health is directly related to education and vice-versa. Meanwhile both, health and education are much correlated to the investments done in these sectors. On the other side, investments are related to the economic capacities of countries. Based on this perspective, rich countries are supposed to invest more and par consequence to have healthier population and skilled labor force, which means additional possibilities for investing more and more. Conversely, poor countries are supposed to have serious problems in investing for health and education and par consequence they suffer from different issues related to these two sectors.

In individual context, health is seen as a predictor for personal and economic development of everyone that possesses it. It is considered as basic factor in worker's productivity and individual's capacity to learn and grow intellectually. In economic context, health and education are the foundations of human capital, which is the basis of an individual's economic productivity (Shultz, Becker, 2001).

The macroeconomic evidence confirms that countries with the weakest conditions of health and education have a much harder time achieving sustained growth than do countries with better conditions of health (World Health Organization, 2001). Therefore, investment in health is an important strategic action for poverty reduction and a contributor to the general well-being of the population, leading to higher levels of economic growth in the long run.

This paper will study the causality from health investment to economic growth. The following sections will provide a review of the literature related to this topic and evidence of the causality from health investment to economic growth. The performance of a regression analysis of GDP per capita in SEE countries run on health expenditure per capita over the period 2000-2011 is taking place, in order to better understand how and at what extend GDP per capita varies with the changes in health expenditure per capita. The countries used in this regression analysis are: Albania, Bosnia and Herzegovina, Croatia, Former Yugoslav Republic of Macedonia, Montenegro and Serbia, excluding Kosovo since there are no available data. After analyzing the ANOVA table with the respective results, a brief conclusion of the research is being summarized.

Literature Review

One of the main issues in the field of health economics is to establish the direction of the causality between health and income. An informal explanation of this causality is: "a lot of people who otherwise wouldn't be poor are, simply because they are sick; however, few people who otherwise would be healthy are sick because they are poor" (Harold, 1978). There are several benefits that result from good health. Good health can enhance educational outcomes, both through school attendance and performance (Bloom, Canning, 2000; Schultz, 1999; Baldacci et al., 2004). Investing in health can improve individual productivity; healthy individuals are more likely to be efficient at assimilating knowledge, have stronger mental and physical capabilities and, in consequence, obtain

higher productivity levels, and hence higher incomes (Strauss and Thomas, 1998). Healthy populations tend to have higher productivity due to their greater physical energy and mental clearness (Bloom, Canning, 2000). There is a general agreement among authors that better health can increase labor supply and productivity, ultimately leading to an increase in income (Muysken, Yetkiner, Ziesemer, 2003).

In the analysis of the impact of health on economic growth, Sorkin (1977) concluded that health, seen through reductions in mortality, had an important impact on economic growth during the early twentieth century. The relation between health expenditures and gross domestic product was studied by Heshmati in 2001 in a research through generalized Solow model. The variable representative of health status in the growth function was health expenditure.

After analysis, he concluded that health expenditures have a positive and significant impact on gross domestic product growth. A more general explanation of health impact on growth is given by Robin Swift. He argues that the improved health can positively impact economic growth via several channels, which include the rise in total GDP, but more significantly, through long term increases in both human and physical capital that in turn stimulate productivity and GDP per capita". There are two main approaches that the economists try to find some results. The first one is the effect of GDP in the health expenditure in a certain country. The other one is the amount of the health expenditure and its impact on the GDP growth on an economy. This study deals with the second issue, the observation of health expenditure in the overall GDP of a country.

Contribution of Health to Economic Growth

It is well recognized that economic growth leads to better health, because wealth means better nutrition and increased capability to invest in health. Anyway, this relation also runs in the other direction, which means better health contributes to economic growth. Investment in health is increasingly seen as a means of achieving economic growth. Good health, which results from health investments, contributes to the achievement of economic growth through: better efficiency or high labor productivity of healthy employees, reduced treatment burden, higher incentive to invest in education and training to obtain better skills, improved human capital, higher domestic saving and investment, higher rates of foreign investment and lower "dependency ratio".

Healthy employees are more efficient and productive in their work than others that suffer from diseases. The output per hour worked of healthy employees is higher compared to unhealthy ones. This is due to better physical and mental abilities of healthy employees and their reduced incentives to take days off work. As a result, better health leads to increased production as well as profitability of the firms. An indirect positive impact in the worker's productivity has the improved health of family members, which allows for less time devoted to caring for dependants and more time to work.

As people become healthier, their motivation to continue education and being equipped with better skills increases. Healthy individuals have better abilities to learn because of reduced diseases and better nutrition, generally miss fewer days from school and complete higher levels of education compared to unhealthy ones. What's more, if good health is a predictor of higher life expectancy, healthier individuals would have more incentive to invest in education and training, as the rate of depreciation of the gains in skills would be lower (Strauss, Thomas, 1998). Motivation by better health, better skills and education contribute to a growth in the human capital base which is a determinant of

economic growth. Consequently, investment in health is an important predictor of economic growth.

The health status of an individual has potential impacts on the income level and its distribution between consumption, savings and investment. Healthier individuals will be more encouraged to save because of the expectation of a higher life expectancy. They also have more resources available to save, since they devote a small amount of resources to their health and usually save for their retirement.

These savings are a potential fund for investment. In addition to this, companies are more likely to invest when workforces are healthier or better educated. Investments in health with the target to prevent illnesses or treat them in the early stages are an efficient way to avoid larger expenses related to the illnesses and their possible complications. Individuals and also governments would be able to spend less for illnesses if investments to prevent them would have been made. This would provide more capital available for different investment purposes. Better health, increased labor productivity and control of diseases encourage foreign investment. Health improvements attract higher levels of foreign investment due to lower health risks for employees and higher growth opportunities for the companies. Increases in the level of foreign investment positively impact economic growth.

One way reduced poverty can be achieved is by investments in sexual and reproductive health. These investments result in demographic changes that could favorably lead to economic growth. The outcomes of these investments are generally smaller sized families due to lower fertility rates and a reduction of the "dependency ratio", which is the ratio of active workers to dependants. This allows for increased saving for individuals and increased investment opportunities to get higher profits. In the population level, increased national savings enhance economic growth by providing funding for investment.

Methodology

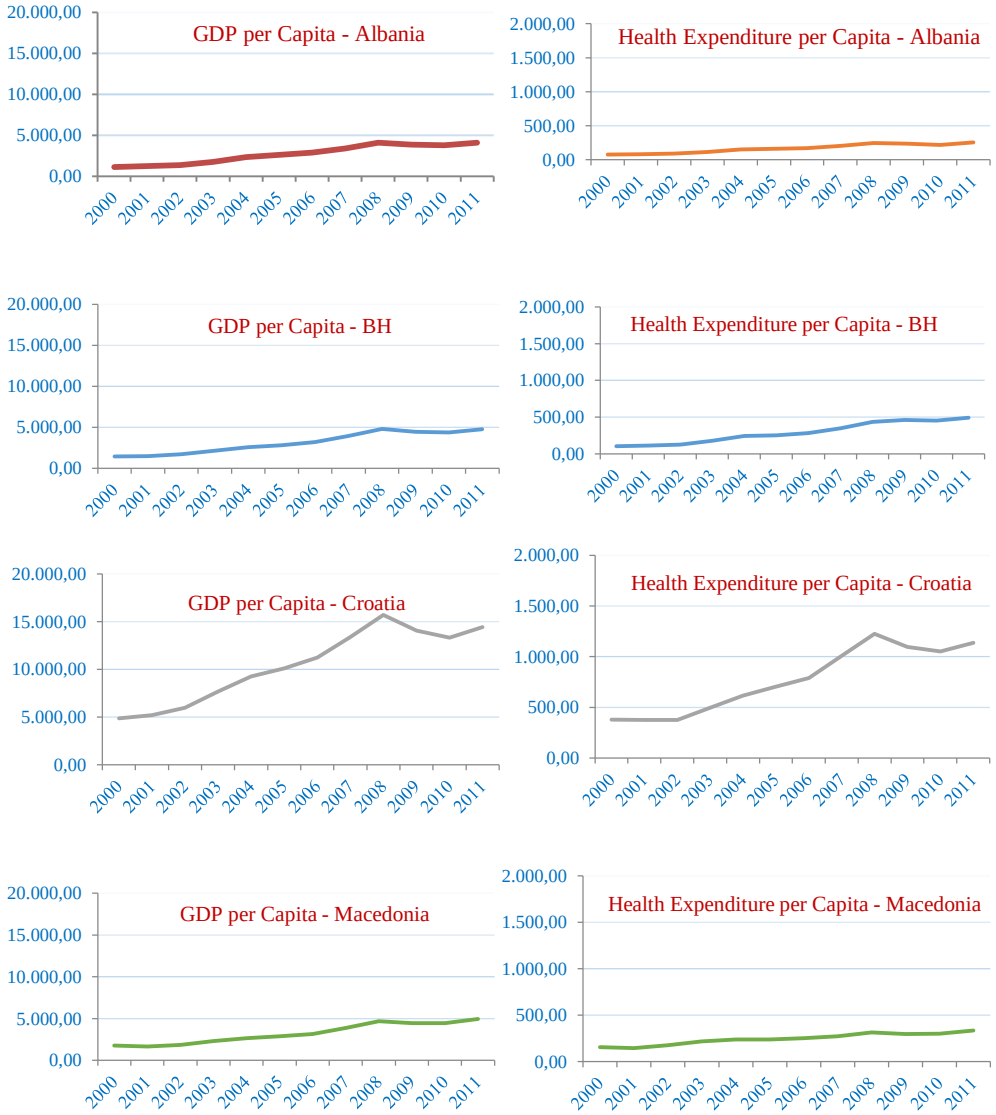
This study investigates the relation between health expenditure per capita and GDP per capita in South Eastern European Countries over the period 2000-2011. The goal is to infer the effect of health expenditure per capita on GDP per capita. It is important to know the effect that an increase in health expenditure per capita has on GDP per capita, while holding all other factors fixed. A regression of GDP per capita on health expenditure per capita is run in order to explain the first in terms of the second or in studying how GDP per capita varies with changes in health expenditure per capita. The data for the regression are taken from World Bank database.

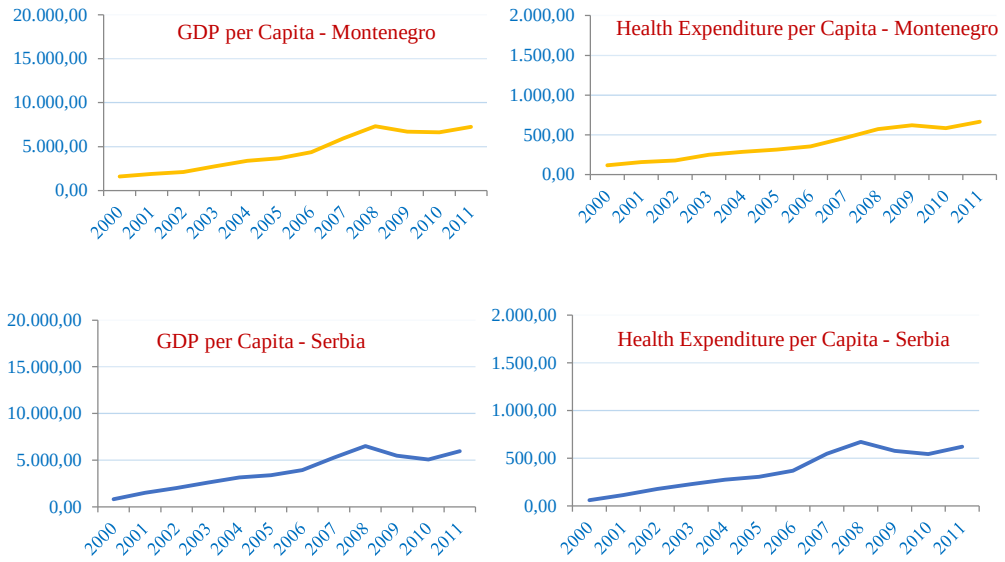
Regression Analysis

Rivera and Currais estimated the relationship between health and economic growth of The Organization for Economic Co-operation and Development (OECD) member countries over the period 1960-1990 and showed that countries with higher health expenditures had higher economic growth. Other authors have also made research on the impact of health expenditures on economic growth. A study in thirty-three developing countries over the period 1990-1998, using the generalized Solow growth model and panel data model, resulted in a positive and significant impact of health expenditure on economic growth (Mojtahed, Javadipour, 2004). Based in the previous studies, higher levels of health expenditure per capita are associated with higher levels of GDP per capita. This study also expects the same relationship between the variables for the South Eastern

European Countries. It is of great importance the analyses of both variables' trend for each country, which has been drawn in the graphs below. Albania, Bosnia and Herzegovina, the Former Yugoslav Republic of Macedonia, Montenegro and Serbia show the same trend of GDP per capita. They experience a constant increase from year to year for the period 2000-2008 and a decrease after 2008 followed by an increase in 2011. But it is not exactly the same trend for Croatia. It has experienced rapid and larger increases in GDP per capita from 2000 to 2008, and a higher fall during 2008-2010. The health expenditure per capita trend is almost the same for all SEE countries as that of GDP per capita.

Graph 1. Variables trend for South Eastern European Countries (2000-2011)

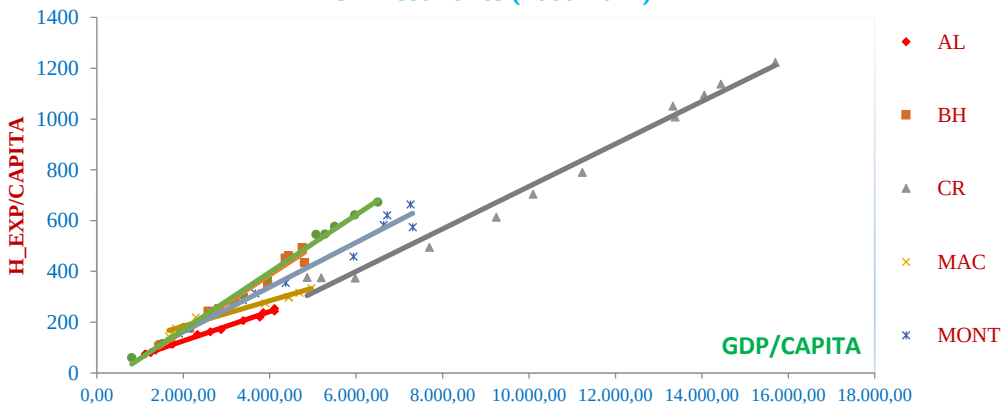




Source: data processed by the author based on the information provided by the World Bank database

The Scatterplot of GDP per capita and health expenditure per capita shows the picture of this relationship for years 2000-2011 for South Eastern European Countries. All these countries show positive relationship between health expenditure per capita and GDP per capita. The main conclusion based on this graph is that there exists a "unification" of these countries in health expenditure per capita - GDP per capita relationship. Croatia shows a quick recover of its economy which has been reflected as huge amounts of expenditure in health sector.

Graph 2. Scatterplot of GDP per Capita and Health Expenditure per Capita for SEE countries (2000-2011)



Source: data processed by the author based on the information provided by the World Bank database

The other countries of the region show positive trends through years, theirs economy has been recovering. Even if the GDP of Albania, Bosnia and Herzegovina, Macedonia, Montenegro and Serbia have increased from 2000 to 2011, this growth rate was very slow and par consequence, the health expenditure in these countries is seen to be slow too. Meanwhile, all these countries show almost the same trend by showing that they have almost the same performance and they belong to the same region, having the same difficulties and challenges.

Next, the research demonstrates the regression equations and its' results. The regression equation is as follow:

$$y = \beta_0 + \beta_1 x + \mu \quad \text{(eq. 1)}$$

Where:

y- is the depended or explained variable, in this case GDP per capita in current US $.

β_0- is the intercept parameter, sometimes called the constant term; it is the predicted value of y when x=0.

β_1- is slope parameter in the relationship between y and x, holding the other factors in u fixed; it measures the predicted change in y for one-unit change in x.

x- is the independent or explanatory variable, in this case health expenditure per capita in current US $.

μ - is the error term or disturbance in the relationship, represents factors other than x that affect y. It stands for the "unobserved".

This equation is used for all the SEE countries data. It has been applied for each country in specific. The results founded help us comparing the countries with each other. The regression tries to explain the relation between GDP per capita and the independent variable, health expenditure per capita. Health expenditure per capita is expected to be statistically significant and have positive coefficients. An increase in this independent variable should increase the GDP per capita. The regression results are founded in table below.

Table 1. OLS Regression of GDP per Capita on Health Expenditure per Capita

	AL	*BA*	*HR*	*MR*	*SR*	*MK*
Health Expenditure						
Coefficient:	*17.24*	*8.80*	*11.74*	*11.12*	*8.77*	*19.14*
P-value:	*0.00*	*0.00*	*0.00*	*0.00*	*0.00*	*0.00*
	(43.41)	*(20.98)*	*(23.91)*	*(20.15)*	*(38.59)*	*(14.52)*
R2_adj.	*0.99*	*0.98*	*0.98*	*0.97*	*0.99*	*0.95*
Note: The values in brackets are t-values						

Regression results and output tables for each country are founded in Appendix. Each table is statistically called an ANOVA table. The variation in the dependent variable is separated into two components: the explained variation and unexplained variation.

The total degrees of freedom for each equation is $(n - 1) = 11$ since totally there are 12 observations. The degree of freedom for regression is *k*, the number of independent

variables. The degrees of freedom associated with the error term is $n - (k + 1) = 10$. The SS refers to the sum of squares, or the variation.

$$\text{Total variation } = SS\,total = \Sigma\left(Y - \bar{Y}\right)^2$$

$$\text{Error variation} = SSE = \Sigma\left(Y - \hat{Y}\right)^2$$

$$\text{Regression variation} = SSR = \Sigma\left(\hat{Y} - \bar{Y}\right)^2 = \left(SS\,Total - SSE\right)$$

MS refers to the mean square and is obtained by dividing the SS term by the *df* term. Thus, MSR, the mean square regression, is equal to SSR/*k*, and MSE equals SSE/ $[n - (k + 1)]$.

It is likely that the estimation can include some error. The error in the predicted value of the dependent variable is measured by the ***multiple standard error of estimate***.

$$s_{y.12\ldots k} = \sqrt{\frac{\sum\left(Y - \hat{Y}\right)^2}{n - (k + 1)}} = 14.305$$

Another measure of the effectiveness of the regression equation is the ***coefficient of multiple determination***, which is the proportion of the variation in the dependent variable, *Y*, that is explained by the set of independent variables x_1, x_2, $x_3, \ldots x_k$

The coefficient of multiple determination, R^2, take the values from 0 to 1, which is the percent of the variation explained by the regression. The closer R^2 is to 1, the stronger the association between Y and the set of independent variables, x_1, x_2, $x_3, \ldots x_k$.

The ANOVA table is used to calculate the coefficient of multiple determination. It is the sum of squares due to the regression divided by the sum of squares total.

$$R^2 = \frac{SSR}{SSTotal} = 0.981$$

As the number of independent variables in the regression model increases, the coefficient of multiple determination increases. Even if the additional independent variable is not a good predictor, its inclusion in the model decreases SSE which in turn increases SSR and R^2. In this case R^2_{adj} is used to measure the effectiveness of multiple regression models.

$$R^2_{adj} = 1 - \frac{\frac{SSE}{n - (k + 1)}}{\frac{SSTotal}{n - 1}} = 0.976$$

The overall ability of the independent variables $X_1, X_2, \ldots X_k$, to explain the behavior of the dependent variable *Y* can be tested. Two tests of hypotheses are considered. The first one is called the ***global test***, which investigates the possibility that all the regression coefficients are equal to zero.

It tests the overall ability of the set of independent variables to explain differences in the dependent variable. The null and the alternative hypothesis are as below:

H_0: $b_1 = 0$

H_1: b_1 is not = 0

The test statistic used is the *F* distribution is calculated to be the following:

$$F = \frac{MRS}{MSE} = \frac{SSR/k}{SSE/[n-(k+1)]} = 208.76$$

By comparing F-stat to critical value of F, the null hypothesis is rejected,

Health expenditure per capita is found to be statistically significant for all the countries. In all of the cases related to the regression analysis, P-value is found to be less than 5 percent, showing the significance of the "health expenditure" variable in the respective equation. R square adjusted is another indicator showing that Gross Domestic Product is explained by health expenditure exactly by the amount of that value. For example, GDP of Albania and Serbia are 99 percent explained by "health expenditure" variable, GDP of Bosnia and Herzegovina and Croatia are 98 percent explained by "health expenditure" variable, GDP of Montenegro and Macedonia are explained by 97 percent and 95 percent respectively by "health expenditure" variable. There is a strong positive relationship between these two variables for all countries. Health expenditure per capita in Albania, as a measure of investing in health, explains slightly more of the variation in GDP per capita than in the other countries. On the other hand, Macedonia and Albania are the countries where health expenditure has the highest impact on economic growth. For the Albanian case, one percent increase in health expenditure, the GPD of this country increases by around 17 percent, while the GDP of Macedonia is affected by 19 percent. Croatia and Montenegro have an increase of GDP by 11 percent for a one percent increase of health expenditure. Meanwhile, Bosnia and Herzegovina and Serbia remain the countries less affected by the health expenditure; one percent increase in the health expenditure shows around 9 percent increase in their GDP.

Conclusion

Research indicated that health can actually drive or lead to economic growth. Good health is important both at individual and economic context. At the individual context, good health is a determinant of economic productivity. At the economic context, it is a determinant of human capital, which positively affects productivity and economic growth. As the review of the literature indicated, the impact of health in economic growth is extensively analyzed by many authors and there is a general agreement among them that better health effects positively the economic growth of a country. Investments in health contribute to the achievement of economic growth in a variety of ways, such as by higher labor productivity of healthy employees, reduced treatment burden, improved human capital, higher domestic saving and investment, higher rates of foreign investment and lower "dependency ratio". The study of the data for the South Eastern European Countries case supports the theory that health investment leads to economic growth. Research results reveal that there is a statistically significant positive relationship between health expenditure per capita and GDP per capita. The relationship between health expenditure per capita and GDP per capita is found to be slightly stronger in Albania, followed by Serbia with a very small difference. The findings of this study suggest that policy-makers interested in promoting the economic growth of a country should consider

the role that health investment plays in it. The more contribution to the health sector, the more the GPD of South Eastern European Countries is supposed to be enhanced.

References:

Bloom, D. E., Canning, D. (2000). *Population Does Matter: Demography, Growth, and Poverty in the Developing World*, New York: Oxford University Press.

Schultz, T. P. (1999). Health and Schooling Investments in Africa. *Journal of Economic Perspectives*, American Economic Association, vol. 13(3), 67-88.

Baldacci, E. et al. (2004). Social Spending, Human Capital, and Growth in Developing Countries: Implications for Achieving the MDGs. *IMF Working Paper*, wp/04/217, Washington DC.

Heshmati, A. (2001). On the causality between GDP and health care expenditure in augmented Solow growth model. *Stockholm School of Economics Working Paper in Economics and Finance* 423.

Luft, H. S. (1978). *Poverty and Health: Economic Causes and Consequences*, Cambridge: Ballinger Publishing.

Mojtahed, A., Javadipour, S. (2004). An investigation of the effects of health expenditure on economic growth (case study of developing countries). *Iranian Journal of Economic Research*, (19), 31-54.

Muysken, J., Yetkiner, I. H., Ziesemer, T. (2003). Labour Productivity and Growth. In Hagemann H., Seiter S., Health, *Growth Theory and Growth Policy*. London: Routledge.

Murphy, K. M., Topel, R. H. (2003) *Measuring the Gains from Medical Research: An Economic Approach.* Chicago: The University of Chicago Press.

Nordhaus, W. D. (2002). The health of nations: The contribution of improved health to living standards. *NBER (National Bureau of Economic Research) Working Paper Series*, Cambridge. Retrieved from: http://www.econ.yale.edu/~nordhaus/homepage/health_nber_w8818.pdf .

Rivera, B., Currais, L. (1999). Income Variation and Health Expenditure: Evidence for OECD Countries. *Review of Development Economics*, 3(3), 258-267.

Shultz, T., Becker, G. (2001). *Macroeconomic and health: investing in health for economic development*, Report of the Commission on Macroeconomics and Health, WHO, Geneva.

Sorkin, A. L. (1977). *Health Economics in Developing Countries*. Lexington, MA: Lexington Books.

Strauss, J., Thomas, D. (1998). *Health, Nutrition and Economic Development, Journal of Economic Literature*, vol. 2, 766-817.

Swift, R. (2011). *The Relationship between Health and GDP in OECD Countries in the very Long Run. World Bank*. (n.d.). Retrieved from: http://www.worldbank.org/.

World Health Organization (2008). Health systems, health and wealth: Assessing the case for investing in health systems. Retrieved from http://www.euro.who.int/__data/assets/pdf_file/0009/83997/E93699.pdf.

World Health Organization (2001). Macroeconomics and Health: Investing in Health for Economic Development. Report of the Commission on Macroeconomics and Health. Retrieved from http://www.who.int/.

Appendix: E-views Outputs

Albania

Dependent Variable: Y
Method: Least Squares
Date: 01/15/14 Time: 14:12
Sample: 1 12
Included observations: 12
Y=C(1)+C(2)*X

	Coefficient	Std. Error	t-Statistic	Prob.
C(1)	-175.9593	71.03645	-2.477029	0.0327
C(2)	17.24291	0.397252	43.40548	0.0000

R-squared	0.994720	Mean dependent var	2707.588
Adjusted R-squared	0.994192	S.D. dependent var	1143.518
S.E. of regression	87.14557	Akaike info criterion	11.92405
Sum squared resid	75943.50	Schwarz criterion	12.00487
Log likelihood	-69.54429	Durbin-Watson stat	2.657200

Bosnia and Herzegovina

Dependent Variable: Y
Method: Least Squares
Date: 01/15/14 Time: 14:31
Sample: 1 12
Included observations: 12
Y=C(1)+C(2)*X

	Coefficient	Std. Error	t-Statistic	Prob.
C(1)	583.1715	135.0020	4.319725	0.0015
C(2)	8.800493	0.419361	20.98546	0.0000

R-squared	0.977797	Mean dependent var	3139.561
Adjusted R-squared	0.975577	S.D. dependent var	1289.851
S.E. of regression	201.5773	Akaike info criterion	13.60124
Sum squared resid	406334.3	Schwarz criterion	13.68205
Log likelihood	-79.60741	Durbin-Watson stat	1.163349

Croatia

Dependent Variable: Y
Method: Least Squares
Date: 01/15/14 Time: 14:40
Sample: 1 12
Included observations: 12
Y=C(1)+C(2)*X

	Coefficient	Std. Error	t-Statistic	Prob.
C(1)	1376.965	408.0474	3.374523	0.0071
C(2)	11.74771	0.491241	23.91434	0.0000

R-squared	0.982815	Mean dependent var	10430.05
Adjusted R-squared	0.981096	S.D. dependent var	3837.021

S.E. of regression	527.5553	Akaike info criterion	15.52540
Sum squared resid	2783146.	Schwarz criterion	15.60621
Log likelihood	-91.15238	Durbin-Watson stat	0.436508

Macedonia

Dependent Variable: Y
Method: Least Squares
Date: 01/15/14 Time: 14:47
Sample: 1 12
Included observations: 12
Y=C(1)+C(2)*X

	Coefficient	Std. Error	t-Statistic	Prob.
C(1)	-1476.947	332.6863	-4.439459	0.0013
C(2)	19.13914	1.318370	14.51727	0.0000

R-squared	0.954700	Mean dependent var	3215.173
Adjusted R-squared	0.950170	S.D. dependent var	1223.475
S.E. of regression	273.1115	Akaike info criterion	14.20865
Sum squared resid	745898.9	Schwarz criterion	14.28947
Log likelihood	-83.25189	Durbin-Watson stat	0.692166

Montenegro

Dependent Variable: Y
Method: Least Squares
Date: 01/15/14 Time: 14:54
Sample: 1 12
Included observations: 12
Y=C(1)+C(2)*X

	Coefficient	Std. Error	t-Statistic	Prob.
C(1)	250.1458	233.3168	1.072130	0.3089
C(2)	11.12278	0.551981	20.15064	0.0000

R-squared	0.975964	Mean dependent var	4470.322
Adjusted R-squared	0.973561	S.D. dependent var	2190.841
S.E. of regression	356.2340	Akaike info criterion	14.74006
Sum squared resid	1269027.	Schwarz criterion	14.82088
Log likelihood	-86.44039	Durbin-Watson stat	1.374570

Serbia

Dependent Variable: Y
Method: Least Squares
Date: 01/15/14 Time: 13:41
Sample: 1 12
Included observations: 12
Y=C(1)+C(2)*X

	Coefficient	Std. Error	t-Statistic	Prob.
C(1)	523.7757	96.85058	5.408080	0.0003
C(2)	8.770967	0.227282	38.59067	0.0000

R-squared	0.993330	Mean dependent var	3813.941
Adjusted R-squared	0.992663	S.D. dependent var	1858.165
S.E. of regression	159.1641	Akaike info criterion	13.12876
Sum squared resid	253332.0	Schwarz criterion	13.20958
Log likelihood	-76.77256	Durbin-Watson stat	1.025289

y- GDP per capita in current US $ (2000-2011)
x- Health expenditure per capita in current US $ (2000-2011)

Article Info

Received: April 29 2015
Accepted: May 30 2015

RSP • No. 46 • 2015: 260-273

ORIGINAL PAPER

Screening Romanian Medical and Social Security System: Self-Ratings and Healthcare Feedback at Local Level

Andreea-Mihaela Niţă*
Maria Stoica**
Irina-Petria Trușcă***

Abstract
In a two speed economic union, the social medical system has different patterns according to the region of development and its history. Furthermore in the new entered countries, as Romania, where this system is consolidated by the authorities which are combining features of other European Union models, is expected that the level of trust of the populations in the healthcare system from the national hospitals to increased. Therefore seen either as a set of rights of the citizens which have to be fulfilled by the national authorities of a state, in accordance with its resources, either as a set of action programs created in order to guarantee and promote the health and well being of the people, the medical security system involves rights that must be known, trust and reliance in this system, good communication channels between those involved, good infrastructure and professionalism of the medical personal. This paper also aims to present the real picture of the medical security system from a regional hospital, from Dolj county, a sample of what happens at the national level through the results of a survey research held in July 2014 on a sample of 313 people in the Craiova Emergency County Hospital. The objectives were to see if the patients know their rights, if there is a good communication between them and the medical personal, if the accommodation is proper, if the medical personal is complying with its responsibility in an ethical manner or not were just a few of the objectives. This research was meant to establish the problems of the health system agenda, a fundamental and necessary one for the people, the responses to the national health policy and also the challenges and opportunities to it in Dolj county.

Keywords: *medical sociology, social security, healthcare system, paradigmes*

* Lecturer, PhD, University of Craiova, Faculty of Law and Social Sciences, Sociology Specialization; Phone: 0040743108885, E-mail: andreea_nita2005@yahoo.com.
** Assistant Professor, PhD, University of Medicine and Pharmacy from Craiova, Faculty of Medicine, Phone: 0040742052313, E-mail: mia.stoica69@gmail.com.
*** M.A. student, University of Craiova, Faculty of Law and Social Sciences, Political Sciences specialization, Phone: 0040786711992, E-mail: truscairina17@gmail.com.

Pleading for a medical system sociology cause in the world interconnected history

Among the present paper objectives we can mention the intent of briefly sum-up a pallet of events from the medical sociology history, both from the history of our country and from around the globe that have influence the evolution of this discipline, hopping that we can create a bigger, more comprehensible imagine of how this phenomenon has evolved over the 19th, 20th, 21th century, until now. The very general phases that we present are in such a way pointed out that those unaware can easily draw connections between the world′s most known events to understand how the medical security system has generally evolved. Moreoverm "this shared history between warfare, medicine, and society also entailed shaping modern medicine as a strategic science of public health and social security [...]" (Howell, 2014: 975). The current situation of the Romanian medical system is considered to be a extension of the last decade, if not, of the last centuries policies, combined with a more accentuated focus on the phenomena that came along with the integration of our country in the international organizations, one at the time, first in the communist organizations, and second in the democratic organizations, as in the Europe Council organization or European Union. "Although there is a burgeoning historiography of international aid and its impact on the developing world, little is known about how international development translates from policy to practice" (Neelakantan, 2011: 15).

The intent to stress the historical aspects of this very complex and vague system as clearly as we can, both in our country and worldwide is done in order to establish several of the paradigms that have governed the medical sociology for the last decades. Is important to take notice of what happened in our country during the communist and the democratic political regime, both having different features, programs, results and consequences over the actual medical system. System described and analyzed in our practical research which has been taken in a region of our country, precisely in Dolj County, in the Craiova Emergency County Hospital. The year 1950 represents for the entire world the date used as a parallel between the Second World Word and the establishment of the communist regime, the emergence of medical sociology and in our case represents also a parallel between an almost non-existent medical system with the according institutions and the begging of a long and overwhelming process of development of what we intend to call today a Romanian medical system.

In a separate chapter of the paper is presented a small part of a real picture from the regional medical system through the research we have undertaken in July 2014 on a sample of 313 people in the Craiova Emergency County Hospital, in order to see if the patients know and understand their rights, if they are satisfied with the hospital conditions, with the communication channel and the medical personal. All these more specific objectives and hypotheses are following up in order to establish the problems of the health system agenda, a fundamental and necessary one for the people, the responses to the national health policy and also the challenges and opportunities from this county. "In a context of increasing life expectancy and population ageing, healthy life years has been endorsed as an important European policy indicator to address whether years of longer life are lived in good health" (Eurostat Pocketbook, 2013: 68). Therefore the continuous parallel that we do stands for understanding how and why events have evolved in a certain way and not in other and how those are to influence the near future. "In the past two decades the history of medicine has shifted from an exclusive focus on great doctors and their medical innovations to a new interest in the social history of medicine" (Hardy, 2002: 484).

Between past and present medical sociology in Dimitrie Gusti's native land. Historical background of the modern medical sociology in the world and in Romania

Medical sociology is one of the over 100 different branches of sociology that begins to develop, as an independent science, in the nineteenth century with the emergence of two works of paramount relevance for the universal sociology, namely: "The situation of the working class in England" (1845) written by Frederick Engels and "Suicide" by Émile Durkheim. These two studies through the correlations that are made between the population and the social factors, on the one hand, and between social and health policy makers, on the other hand, marked the beginning of a series of empirical studies that are under the influence of multiple and various macro-social phenomena that can be placed at the base of the social medicine and medical sociology. In this picture "the patient's point of view remains enigmatic" (Condrau, 2007: 529). Professionals as sociologists who wanted to capture, describe, analyze and provide possible solutions to the studied medical phenomena, either forensics medicals interested to eradicate the possible conditions that would affect the local population mass, plus the philanthropic associations and/or personalities who saw their interests in the blessings actions paved the way for a future "Medical Department" (Steer-Williams, 2014: 25) not only in the begging of the ninenthy century social medicine but also in our days.

The Romanian Principalities in the nineteenth century following the trend of the European research "The hygienic state of the country" (Iacob, 1990: 1), and in the heavy development stages of these studies have got involved different personalities, as Ioan Cantacuzino, Victor Babes, Constantin Caracas, C. I. Istrati, Iacob Felix, Ştefan Stâncă. "Through their socio-medical activity, the personalities mentioned above have contributed significantly to the scientific foundation of measures aiming to improve the state of health of the population, to eliminate harmful factors which determined the widespread diseases" (Rădulescu, 2002: 31). In order to complete the picture of the evolution of these studies in the national space we can mention that adjacent medical sociology research continued and expanded in the first decades of the twentieth century. "The history of medicine in the last decades has opened a new window on the past; indeed, the distinction between medical history and social history has become increasingly obscure" (Brant, 1991: 208).

Given that there were not sufficient funds allocated by national authorities for study hygiene and health status of the population, almost non-existent laws and institutions resulted in a particularly difficult evolution of the treatment and social prevention of various social maladies. "In the past, in the Romanian Countries, the healthcare and the aid offered to the sick and the poor people, was better organized than disease prevention" (Iacob, 1990: 68). Therefore over the time we discover that within our national borders "only with the work of G. Banu, in the first decades of the twentieth century, that its shaped a distinct framework in Romania, systemic concerns of social medicine, being established in 1942, the University of Bucharest, the first chair of medicine social Romania" (Rădulescu, 2002: 32).

As a distinct field of research we can talk about medical sociology as a branch of sociology after 1950. The creation of this particular field of sociology was able to happen because of the convergence of medicine with sociology. In particular, the convergence of the society, of the social intitutions and relations with the human biologie. The professional and organizational profile of the medical act, on one side, and the raports between the medicine and the others social and professional fields of activity were only just few of the main reason that medical sociology is based on.

After the Second World War, the medical progress along side the technological progress, under the institutionalization framework paved the way to the birth of one of the most appreciated modern sciences. Among the best known scientific and technological developments that have influenced this fuzion we can mention the fallowing: "the shift from the privat medicine towards complex teams of medical specialists" (Rădulescu, 2002: 37). This comunity orientated medicine has allowed sociology to analyze this changes. Furthermore, another change was produced by the modification that have taken place in the demographical profile of the population; the use of expensive tehnology system in the medical field, the high rate of "specialism" of the medical personnel; the change produced in the sector of financing this field. Along side all this factors we have to consider that there were other very complex and different phenomena that have determined the birth of this science, as the rise in the death statistic (morbidity), the mass demands for social medical services and the social psychiatry studies. Furthemore, fifty years ago Talcott Parsons introduced two analytical tools – the sick role and the profession of medicine – to the study of health and medicine (Riska, 2003: 33). Medical sociology it`s very appreciated worldwide, especially, in the Western countries where, since the 1990s has receive much of attention from the non governmental organizations and also from the national governments because of its successful practical benefits. Therefore, this very powerful and complex field is considered to represent a social value, not only a psyhical and biological issue, one of great importance to all the people of a society.

As a general definition of the medical sociology concept "as we can see from above, medical sociology helps to understand the various factors related with a healthy or ill person and not the disease process itself and its specific aetiology. Thus, its contribution is more towards understanding the problem from a preventive and promotive aspect" (Sigdel, 2012: 27). Our country hasn't responded in the same way yet, but in the future is expected the same reaction from our national representatives considering the over twenty years of democratic medical models taken from other "success medical system". As this american branch of sociology has shown us over the last decades, the change plays always a role in human history, weather is good or bad.

Being born on the american ground, this branch of sociology has been developed by specialists who have created a very complex literature, from the most simple studies up to a wide range of theories and scientific instruments of research. To better understand why its recognized as having a great american influence, we can mention the great contribution of famous american sociologists, as Talcott Parsons or Robert Merton, but also of other great specialists from the social psychoanalysis and health studies field. Progressively with the research of the medical community programs and minority health programs, the field of medical sociology studies has grown wider, deeper and more person focused. The preoccupation for the people's health has gained after the XIXth century a greater social impact, as part of the public heath process and this phenomenon happened because the medical professionals have understund that the medical act cannot be reduced only to the medical intervention and that the people`s life and their medical past, privacy and opinions have to be taken into account. In Romania, the first medical sociology preoccupation have taken place during the 1940s when the professor Banu has created at the University of Bucharest, the first social medical university board (Rădulescu, 2002: 41). The development of the social medicine has lead to the deveopment of the communities, of the local and national social and medical services and of the national policies concerning this field.

The medical sociology object is "the study of the way in which the diseases affect the human groups and the treatment solutions through which this groups react towards disease" (Rădulescu, 2002: 43). From the very beginning of this its emergence the sociologists have considered several roles, first, as a researcher of the public health system; second, as an expert that helped medical specialists and governmental authorities to take decisions in different situations; third, creator of national actions or plans concerning the action in this system; fourth, professor that can teach further the know-how has revealed to himself over the long years of research. "What are the virtues that animate(d) the sociology of medicine? There are, I think, five: 1. A belief in « something more » that is responsible for health and illness [...]; 2. An outsider perspective/constantly critical; 3. No fear of being useless; 4. Creativity and playfulness; 5. Reflexivity" (De Vries, 2003: 35).

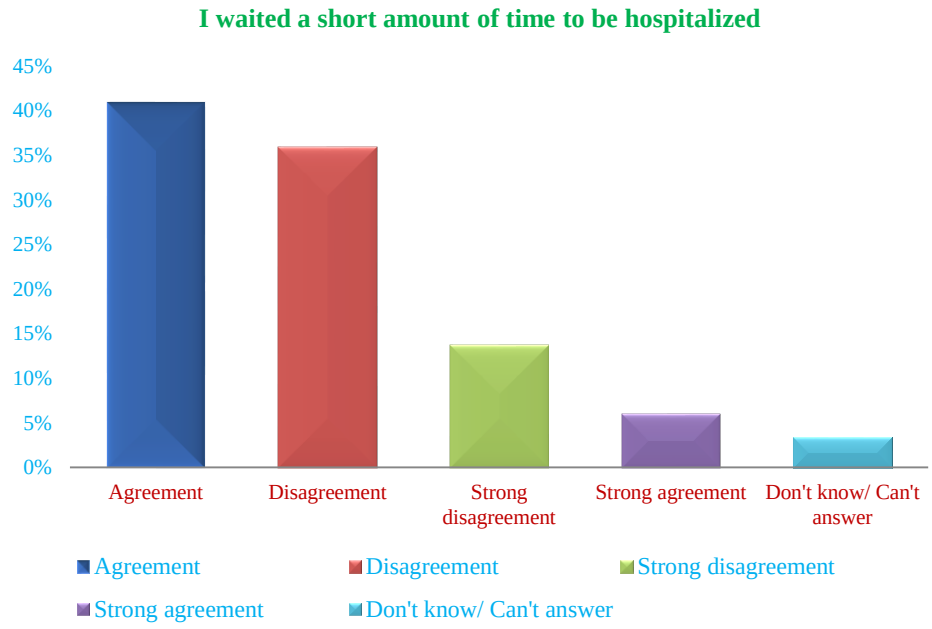
Some of the theoretical models and paradigms developed over the time in the medical sociology are represented by the pioneer work of Talcott Parsons, Robert Merton, E. Goffman and others famous sociologists that have offered their entire life to the medical sociology studies and to the medical organizations. Talcott Parsons`s structuralist theoretical model was constituted on the presumption that the diseases should not be seen only through the spectrum of the medical vision, but through the perspective of the social structure and values of the american society. "The health issue is closely connected with the functional demands of our social system. Almost all the health definitions contain the functional needs of the individual as member of the society" (Radulescu, 2002: 114). The same author has defined health as the optimal estate that provides the individual the capacity to solve all his social roles. And the diseases is considered as a perturbation of this normal estate of the individual that makes him disable of acting proper in the same situations. The authors that have supported this perspective, as Malinowski, have considered from the structuralist perspective that medical institutions are created to satisfy the patients biological and psychological needs, based on the assumption that the need creates the function. And therefore, according to Parson all the patients should have the same rights and should not be discriminated. This perspective has been well know and agreed upon until the 1970s when another paradigm has shifted the approach towards this discipline, the interactionist model.

Approach that is considered by Sorin Raulescu in his book entitled "Health and disease sociology" through some features: the medical professional should not take into account the apriori presumptions; the consideration for the subjectivity of the human world; the researcher are to be seen from this decade on as social actors that act as insiders of this medical world in researching it, not like outsiders. This theory states that the health and the disease are build socially through the interactions of the individuals, therefore in this framework, the people build different semnifications and languages through which they let know each other of their health estate. Therefore, there are different perceptions over a disease from a group to another and inside different social categories, so the interactionists have concluded that every aspect of the health estate of an individual is influenced by the education, past, experiences, social group, beliefs of the culture he belongs to. These two perspectives have influenced the middle and late XX century and played an important role into the medical sociology field, perspectives that have determined the structure of the present research instruments.

History repeat itself once more in Romania. Case study: Craiova Emergency County Hospital

It's important to study the regional medical health system from our country in order to have a perception over the reality that affects the people every day. Also undertaking such studies provides the local and national level specialists with a great data source that can be used in accordance with the local and national strategies in building up programs and strategies that may improve the people`s life level. In the following subchapter is presented a very small part of a research released in 2014 that presents how the persons hospitalized don't regard kindly the lack of modern infrastructure and also their opinions over the treatment, the communication channels, the medical personnel attitude and professionalism.

Figure 1. Time expectancy in order to be hospitalized (July 2014)

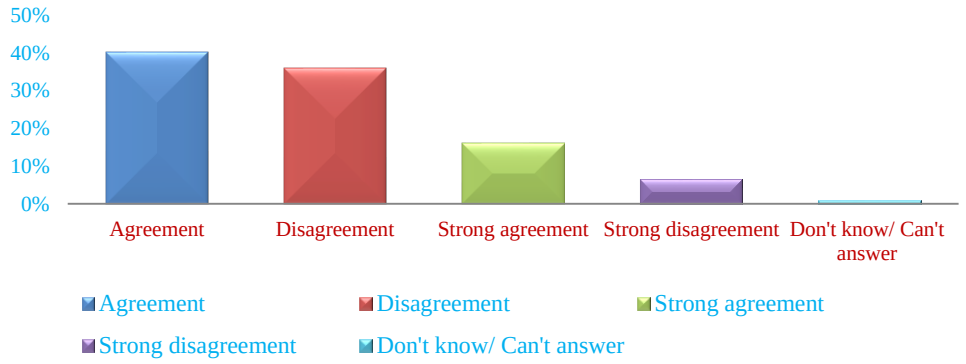


Regard the time patients had to expect in order to be hospitalized, 49.6% of the respondents said that they had wait a lot of time, meanwhile 47.0% of patients believe that the time of admission in the regional emergency hospital was relatively short. A small 3.4% have answered that they can`t or don`t know how to answer. This graph shows us the fact that more of the persons surveyed had to wait a lot of time in order to get hospitalized then the other way around.

This aspect casts doubts about the efficiency of the auxiliary staff in solving this matter and or the procedure. After getting hospitalized the persons wait for their consultation, which requests another waiting time and new steps to follow, as shown further.

Figure 2. Waiting time until consultation (July 2014)

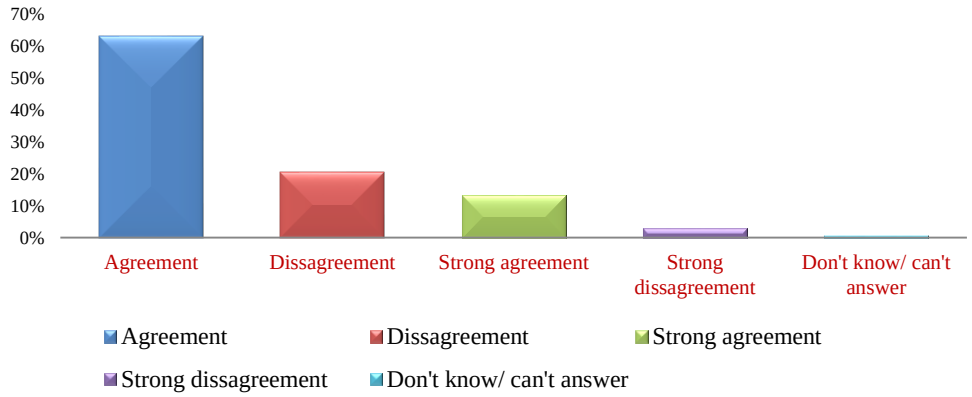
The waiting time for the consultation is high



The time that patients have to wait until consultation can range from different reasons 1) the patients number, 2) the availability of the doctors, 3) the appointments schedule and others. Therefore, 56.4% of patients surveyed believe that the waiting time for consultation is very high. Meanwhile, 42.6% stated that they were waiting a short amount of time, which gave them a relatively satisfaction. In the study "Patient satisfaction in hospitals ASSMB, 2012" the percentages obtained at the same question is similar to those of the study conducted at Emergency County Hospital Craiova. Thus, 49.4% of respondents consider the waiting time for the consultation as relatively high, 50.6 percent stated their disagreement with this question. Following the course of patient-doctor discussion its important to see how much time its spend on discussing the actual medical problem and in the next graph we can see this part of the problem.

Figure 3. Discussing in details the medical problem (July 2014)

The doctor discusses in details my medical problem



The communication with the patient is an important aspect of the evaluation of medical performance, aspect carefully watched in large academic medical centers by

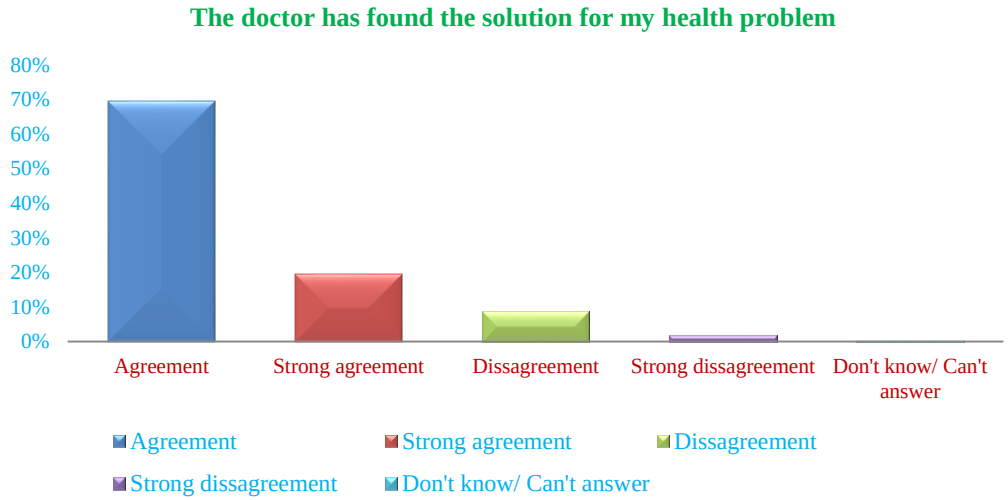
professors, residents and tutors. In Romania, the patient has the right of access to information of medical nature related to his medical records through medical personals and the medical discharge documents.

Some of these rights are: the right to be informed about their health status, the proposed therapeutic procedures, diagnosis and prognosis of the disease; information shall be notified in a manner appropriate to the patient's ability to understand. Other rights, in the foreign cases, the persons are entitled to receive information in an official language or through an interpreter if they don't know not an official language; have the right to freely express their views on the hospital care.

Over three quarters of the patients surveyed stated that doctor explains them into detail different aspects of the disease, meanwhile 23.1% of respondents said that the doctor did not discuss the issue further, declaring themselves in disagreement with this statement.

After the entire discussion over the medical problem we have another step to follow, the solution for the health problem.

Figure 4. The doctor finds solutions for the health problem (July 2014)

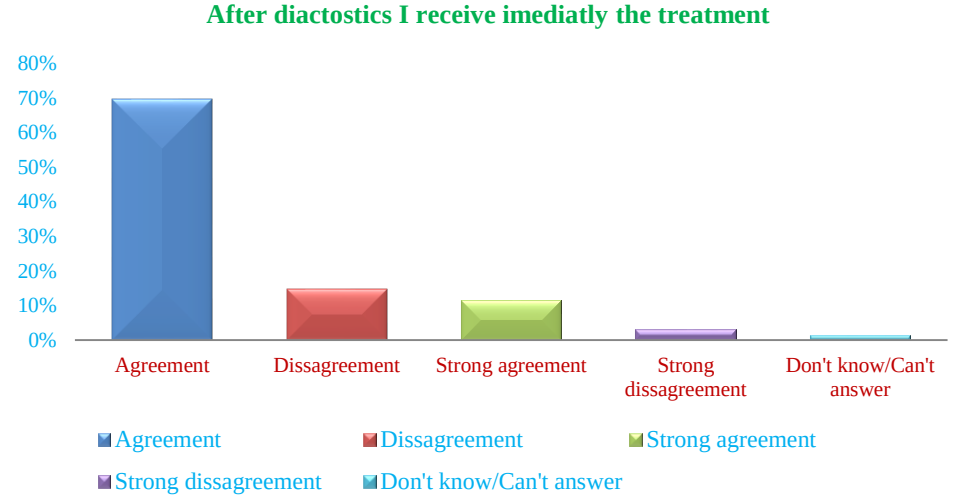


Although the state health system in terms of utilities and infrastructure is precarious, Romania has no shortages of specialists. As emerges from this study, 89.1% of the respondents stated that the doctor has found the solution to solving their health problem and only 21.5% disagreed with it.

In the study "Patient satisfaction in hospitals ASSMB", conducted in 2011, the percentage of those who said that the doctor found the solution to their health problem is higher, 93.8%. "Patient satisfaction is a subjective and complex concept, involving physical, emotional, mental, social, and cultural factors" (Wu, Naqibuddin, Fleisher, 2001: 196).

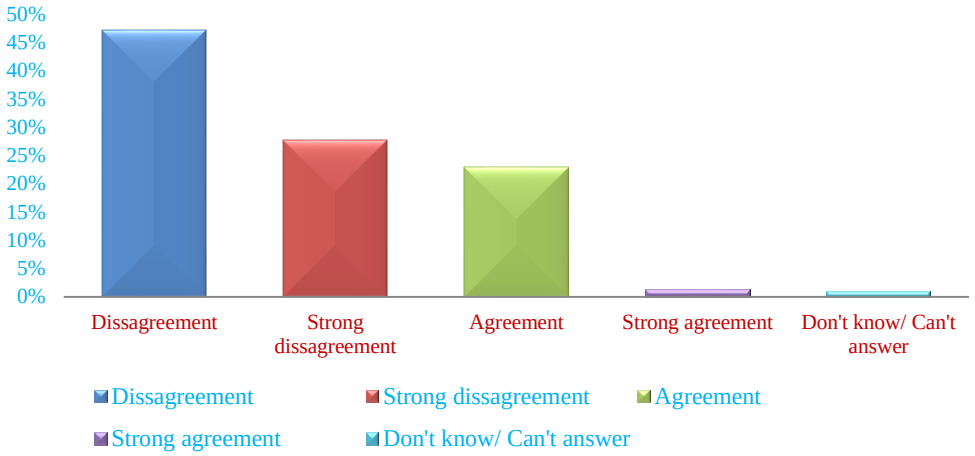
After receiving the medical diagnostics, the patient should receive the medical treatment, and in accordance with this phase of the investigation in our research we have found the following.

Figure 5. The amount of time is received diagnosis (July 2014)



81% of the persons surveyed sustained that they received the specialist treatment immediately after diagnostic. Furthermore, 17.7% of the patients have declared that they disagree or strongly disagree with this statement. "The focus on the body is perhaps more of a problem" (May, 2003: 46). In accordance with the hospital infrastructure and the patients satisfaction over this aspect the results of the research show us not only that the patients desire for better accommodation conditions but also they strongly disagree when they don`t find it in the hospitals.

Figure 6. Modern hospital infrastructure (July 2014)



"During the past century the general hospital emerged as the most visible symbol of modern medicine, yet historians until very recently overlooked this development" (Numbers, 1982: 254). The outdated infrastructure is a very common within the Romanian health system, most hospitals in our country facing this problem. This situation is

encountered and assigned at the Emergency County Hospital Craiova too, three-quarters of the patients surveyed stating that the hospital is not a modern one, and only 24.1% believed the opposite, expressing agreement with the question asked. Relating the degree of satisfaction of the patients with the accommodation conditions thus with the hospital modern infrastructure we can see how comfortable the patients feel during their stay in the hospital.

Figure 7. How comfortable the patients feel in the hospital (July 2014)

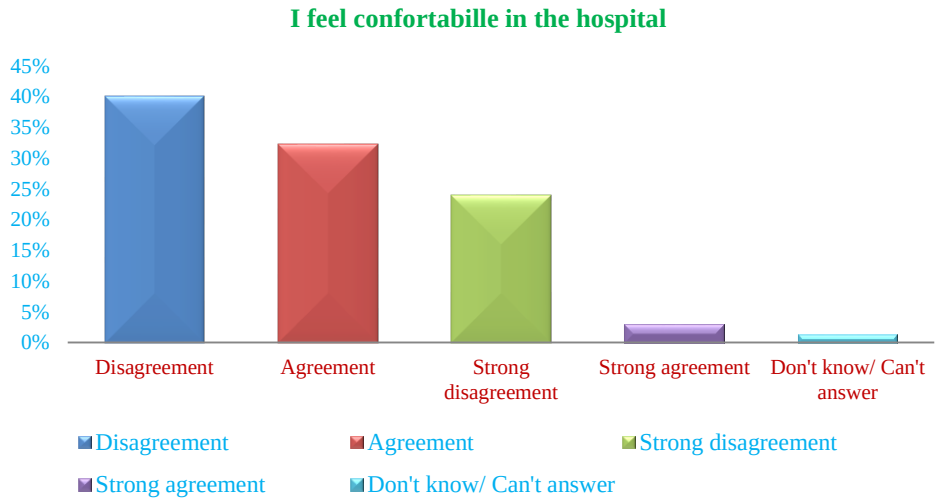
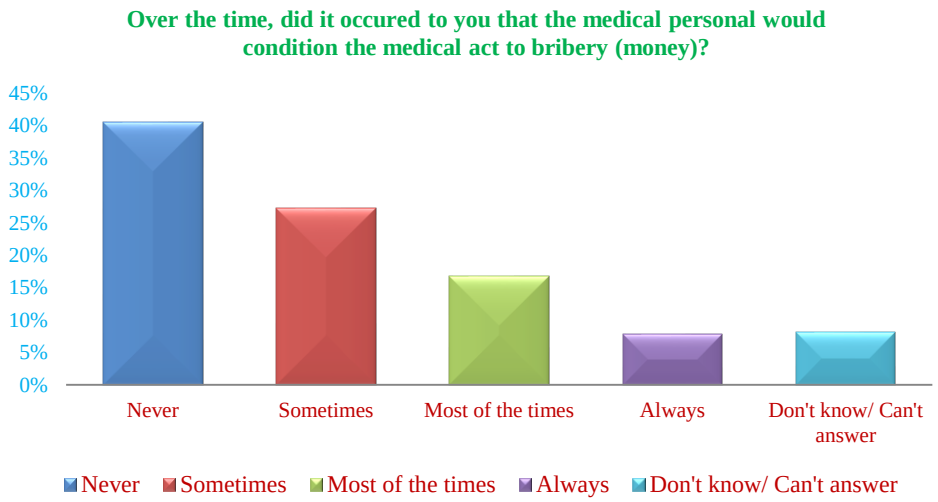


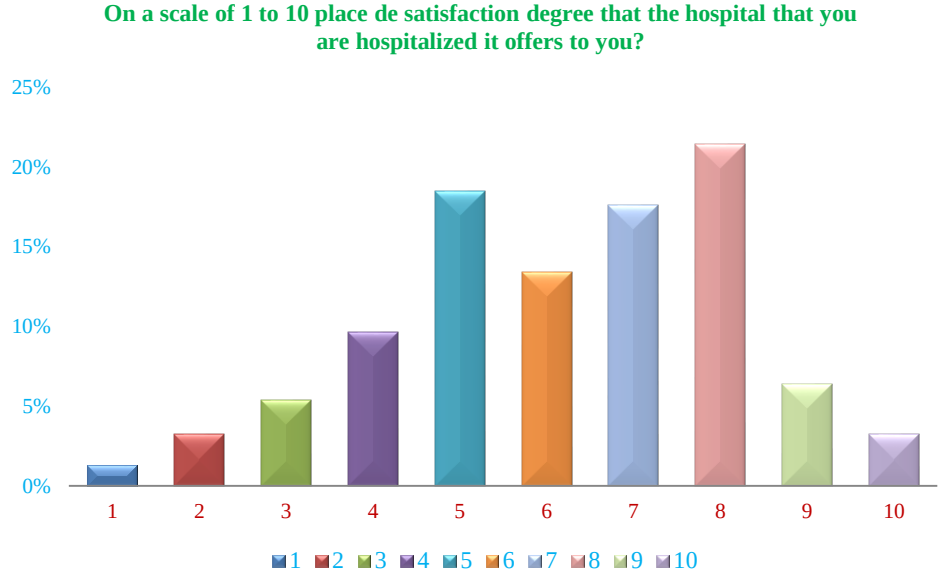
Figure 8. Medical acts conditioned or not by bribery (July 2014)



Regarding the level of comfort of the patient hospitalized in the Emergency Clinical County Hospital Craiova, 63.8% of respondents said the level is low and only 35.3% expressed their agreement with the statement that they feel comfortable within the hospital. When we talk about outdated hospitals we refer to the salons inadequately arranged, missing or outdated technology and other facilities. The possible bribery acts are also taken into account when is established the degree of satisfaction of the patients. Asked if it ever happened to them that doctors and/or the medical personnel to condition the solving of their medical issues of a payment of money, 40.4% of the respondents indicated the first variable "never", while 27.2% admitted they were sometimes placed in such a situation.

However counting the "sometimes", "most of the times", and "always" variables that were answered 51.6% of the patients surveyed said confirmed that to them it was conditioned the medical act of a form of bribery, while 8 percent of respondents preferred to abstain in giving a response in this regard. Getting close to the common knowledge of the people about the corruption phenomenon in public hospitals from our country, our research raises questions about the alarming corruption in public hospitals.

Figure 9. Satisfaction degree of the patients from the Emergency County Hospital Craiova (July 2014)



When asked how satisfied are about the hospital, the patient had to choose from about 10 variables, with 1 meaning very dissatisfied and 10 meaning very satisfied. The first two variable, the nine and tenth variable, those that represented the highest level of satisfaction of the patients have gathered 9.6%. Furthermore 21.4% of the patients interviewed were selected have chose the eighth variable. Other 17.6% of the patients have chosen the seventh variable and the sixth variable has been chosen about 13.4%, followed by the fifth variable about 18.5%. The first four variable have summed 19.5% of the patients answers.

Romanian medical security system a reminiscence of the 20th century or a need to integrate in the "global village"?

The health sociology countless studies conclusions have shown that the future of medicine must be a preventive one and the people should consider necessary the prevention rather than the cure of different diseases. "Fifty years ago Talcott Parsons introduced two analytical tools – the sick role and the profession of medicine-to the study of health and medicine" (Riska, 2003: 33).

But over the last half o decade certain events and premises have influenced enormously the disease distribution and in our days we have to take into account "those social features from the macrostructural level, component of economic nature, social and spiritual, which define together the global type of society in which this population lives" (Rădulescu, 2002: 195).

According to the same source the training procedure of the persons specialized in this domain was from the very beginning very hard to accomplish. The actual problem that this discipline confronts with its regarding the high rate of specialized medical services that faces and has faced over the last half of century an event higher rate of the specialized medical services costs. "The tight conection between the demographic profile of a country and the health estate of that population is mostly evidentiated by the health indicators of a certain country" (Radulescu, 2002: 195). Although these societies that have pushed forward for the development of the medical sociology have registered lots of progress in the social medicine field and in the health prevention policies still confront the disease growth.

In conclusion, the reform of the health medical system and the orientation towards prevention, are priorities of the modern and contemporary medical systems from all the countries around the world, but especially from the poorest countries of the world, that cannot solve all their issues along and need external resources, great problems that need to be supported as consequences of the costs growth for health. "Paul Lazarsfeld has stressed that since three decades ago, the main reason why the medical school students refused to choose the specialization in this domain in not regarding the financial interest, but mostly the obstacles determined by the degree of difficulty of this domain" (Rădulescu, 2002: 317). Summing up once more the results of the research in accordance with the followed issues, it must be mentioned that more than half of the patients considered that the Emergency County Hospital Craiova is not a modern one regarding its facilities. Further, concerning the medical facilities, as the investigation time followed by treatment, offered to the patients the study has shown that the people were generally, meaning over 50%, satisfied with it. Also, on the consultation and hospitalizing time the patients disagree whether they are satisfied or not with the waiting time.

Important to mention the aspect regarding the corruption phenomena, as we have seen before in the graphs above the patients are influenced by this phenomenon outlining the imagine of an old medical institution, found itself in a partial degradation, filled by patients from various social categories which agree to disagree on different issues, but still united by the desire for a better hospital conditions and treatment. "Straus's old distinction between sociology of, and sociology in, medicine could be joined today by a distinction between sociology of, and sociology in, health policy" (Bradford and Philips, 1995: 179).

A regional hospital as the Emergency County Hospital Craiova it needs better funding to improve the accommodation, treatment and other needs, both of the patients and of the medical staff, it needs to get out of this regional type of hospital from our country, it needs a long term program of improvement and it needs to get to the European

level in order to represent a true and efficient source of public help. "Financing the health system continues to be appropriate and used in an inefficient way. Despite a decrease in the share of total health expenditure in GDP, the financing of the health system in Romania remains low in the European context [...]" (Vlădescu et al., 2008: 10).

Its defining to consider also the international policy making organizations views given our country's participation in various international structures. "Our lives are at risk. The World Health Organization (WHO) says there is a global security threat that requires action across government sectors and society as a whole" (Brian, 2014: 123). Therefore the most important policy strategies could be: "facilitating the sharing of country experience in various types of health financing reforms; sharing of key information required by country policy makers; and the development of tools, norms and standards including those required to assist countries to generate and use information in their own settings" (WHO, 2007: 32).

Ideally these strategies should be implemented after a series of investigations done in advance, and the debates should take place "between representatives of the various stakeholder groups, under the leadership of the ministry of health" (WHO, 2010: 36). As we have stated before, our country has had a different trajectory in the health sociology development and in the medical development in general. But in order for our society to evolve is important the medical security system to past from the XXth century reminiscence and to integrate in the XXIth century "global village".

References:

Bradford, H. G., Philips, R. S. (1995). Medical Sociology and Health Policy: Where are the connections?. *Journal of Health and Social Behavior*, (Extra Issue), 170-181.

Brandt, M. A. (1991). Emerging themes in the history of medicine. *Milbank Quarterly*, 69 (2), 199-214.

Condrau, F. (2007). The Patient's View Meets the Clinical Gaze. *Social History of Medicine*, 20 (3), 525-540.

De Vries, R. (2003). Protecting our Virtue(s): Medical sociology at 50. *Medical Sociology News*, 29 (3), 35-39.

European Social Statistics (2013). *Eurostat Pocketbook.* Retrieved from: http://ec.europa.eu/eurostat/documents/3930297/5968986/KS-FP-13-001-EN.PDF/6952d836-7125-4ff5-a153-6ab1778bd4da.

Felix, I. (1990). *Istoria Igienei în România în secolul al XIX-lea şi starea ei la începutul secolului al XX-lea*, Partea I, Bucharest: Analele Academiei Române Publishing House.

Ford, J. B. (2014). Crisis Point: The Rise and Fall of Penicillin. *The Microscope Journal*, (62): 123-135.

Hardy, A. (2002). Health and Medicine in Britain since 1860. *Journal of the History of Medicine and Allied Sciences*, 57 (4), 484-490.

Howell, A. (2014). The Global Politics of Medice: Beyond global health, against securitisation theory. *Review of International Studies*, (40), 961-987.

May, C. (2003). Definig the field of medical sociology. *Review Article, Medical Sociology News*, 29 (3), 45-49.

Neelakantan, V. (2011). Modern Medicine and International Aid: Khunde Hospital, Nepal 1966-1998). *Medical History in Japan*, (48): 15.

Numbers, L. R. (1982). The history of American Medicine. A Field in Ferment. *American History*, 246-263.

Rădulescu, S. (2002). *Sociologia sănătăţii şi a bolii*, Bucharest: Nemira Publishing.

Riska, E. (2003). Bringing the "mind" back in: The relationship between health and society". *Medical Sociology News*, 29 (3), 33-35.

Sigdel, R. (2012). Role of Medical Sociology and Anthropology in Public Health and Health System Development. *Health Prospect*, (11), 27-28.

Steer-Williams, J. (2015). Performing State Medicine During its 'Frustrating'Years: Epidemiology and Bacteriology at the Local Government Board, 1870-1900. *Social History of Medicine*, 28 (1), 1-2.

Wu C. L., Naqibuddin, M., Fleisher, L. A. (2001). Measurement of patient satisfaction as an outcome of regional anesthesia and analgesia: a systematic review. *Reg Anesth Pain Med*.

Brandt, M. A. (1991). Emerging themes in the history of medicine. *Milbank Quarterly*, 69 (2), 199-214.

Vlădescu, C., Pascu, O., Astărăstoaie, V., Verboncu, I., Anghel, R., Stănescu, A., Molnar, G., Olsavszky, V., Irimia, C. (2008). Un sistem sanitar centrat pe nevoile cetateanului. Raportul Comisiei Prezidenţiale pentru analiza şi elaborarea politicilor din domeniul sănătăţii publice din România, Bucharest. Retrieved from: http://www.presidency.ro/static/ordine/COMISIASANATATE/UN_SISTEM_SANITAR_CENTRAT_PE_NEVOILE_CETATEANULUI.pdf.

World Health Organization (WHO) (2010). Monitoring the building blocks of health systems: a handbook of indicators and their measurement strategies. Retrieved from: http://www.who.int/healthinfo/systems/WHO_MBHSS_2010_full_web.pdf.

World Health Organization (WHO) (2007). Everybody`s business. Strengthening Health Systems to Improve Health Outcomes: WHO's Framework for Action. Retrieved from: http://www.who.int/healthsystems/strategy/everybodys_business.pdf.

Article Info

Received: April 1 2015
Accepted: May 28 2015

RSP • No. 46 • 2015: 274-286

ORIGINAL PAPER

Signalling Child Trafficking and Exploitation by Begging in Romania: on Public Traits, Victims Traffic and Societal Reaction

Veronica Gheorghiţă[*]
Cristina Ileana Vădăstreanu[*,**]

Abstract
Begging is a social phenomenon with important moral, psychological and physical prejudices on its victims. Specialized studies indicate a predominantly child involvement, both girls and boys, in the exploitation and beggary traffic. This article gives an insight on the dimensions of begging among Romanian children, emphasizing aspects regarding the spreading of this phenomenon at a national level, favorable factors and legal regulations. Also it wants to create a profile of the victims of beggary, with the focus on the physical and social characteristics of the victims, the description of the unfolding space and the highlighting of the operational mode. By comparing information on traffic low and exploitation by beggary at an international level, a better understanding of this modern slavery is desired through the identification of both the problems and solutions necessary for the reduction in number of the minor victims of beggary.

Keywords: *beggary, human trafficking, exploitation, children, Romania*

[*]Assistant Professor, PhD, University of Craiova, Faculty of Law and Social Sciences, Sociology Specialization, Phone: 0040740458527, E-mail: veronikaion@yahoo.com.
[**]Assistant Professor, PhD, University of Craiova, Faculty of Law and Social Sciences, Social Work Specialization, Phone: 0040765505393, E-mail: cristinaileana_p@yahoo.com.

Introduction

After the year 1990, "the evolution of the social and economic context in Romania encouraged the emergence of social cleavages, the intensification of the migratory movements and, implicitly, the occurrence of population groups vulnerable to traffic. At the end of the 1990′s and the beginning of the 2000 geographical proximity to areas of conflict in the Former Yugoslavia led to increased incidence of trafficking in Romania" (Anima Nova, 2013: 1). In recent years, the exploitation of begging and trafficking were analyzed and addressed to as different forms. According to Charles P. Kirchofer, begging is of three types: *voluntary begging*, *exploitation through begging* and *trafficking by force into begging*. In general, beggary is described as a hierarchical structure, pyramid: those who beg on street, people who collect money from beggars and "leaders" who receive most of the revenue and organizes those involved in this activity (Kirchofer, 2010).

According to the UN Palermo Protocol, trafficking is defined as the recruitment, transportation, transfer, harboring or hosting of persons by using threat or force or other forms of coercion, of abduction, of fraud, of deception, abuse of power or of a position of vulnerability or of the giving and receiving payments or benefits to achieve the consent of a person who has control over another person, for the purpose of exploitation (United Nations of Human Rights, 2000, article 3). In this respect, a child is considered to be trafficked if he is under 18 and who is recruited or moved from one place to another to be exploited, even though not appealed to coercion or deception. On the other hand, exploiting is the basic definition of trafficking, which brings interpretations as: "a woman or a child cannot be considered to be trafficked until after exploitation". Exploitation of children involves keeping a sum of money from the winnings, without handing the entire amount to the traffickers (UNICEF & Terres des Homes, 2006: 17-18).

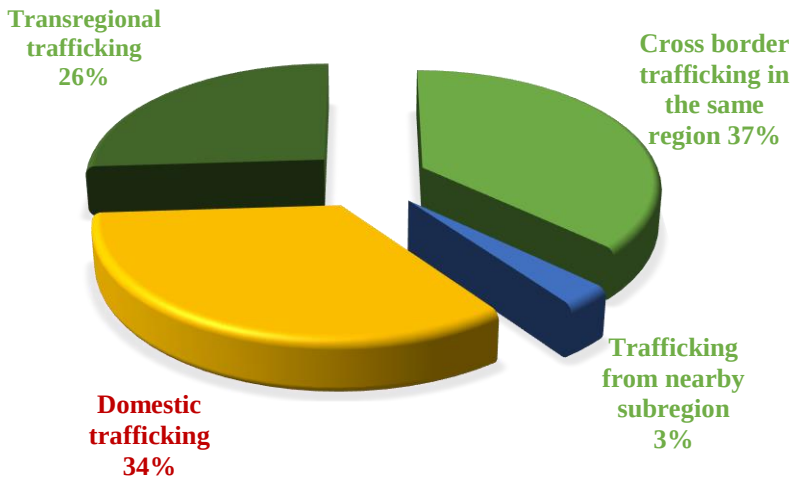
Trafficking size at an international level

Human trafficking is an abusive crime that defies the fundamental human rights and is influenced by socio- economic context of the country of origin of the victims and the "demand" in the destination countries of victims. Victims are "sold "as goods, to obtain a bigger profit. Currently, human trafficking affects over 124 countries worldwide and involves exploitation of children, women and men for any purpose, such as forced labor, forced sexual exploitations, organ trafficking.

Europol studies indicate trafficking among the most profitable organized crime in the EU. Depending on income, it is located, "in the third place in the world, surpassed only by drug trafficking and arms, with illicit profits between 6 and 9 billion dollars. However, according to UNODC, traffickers obtain an annual illicit profit of about 8 billion dollars, comparable to profit from drug trafficking. Increased demand for sexual services, cheap labor, the desire to make profits with minimal investment, are all factors that directly influence the intensification of the network traffic activity" (ANITP, 2013: 5). Human trafficking is strongly influenced by the level of economic development of the countries of destination.

The research in this area indicates an increase in the number of victims in rich countries and a reduced one in the least economically developed ones. Thus, in developed countries, victims of trafficking come from other countries, including other continents, while victims of trafficking from less developed countries come from national or sub regional traffic.

Chart 1. Geographical movements of trafficking (2014)



Source: UNODC, Global Report on Trafficking in Persons (2014)

Most of traffic flows are intra regional and the victims′ movements tend to be limited to same sub region. Therefore, in most cases, the place of departure and destination of the victim fall in the same geographical limit, meaning between neighboring countries. The human traffic trend is from poor countries to neighboring countries but with a high economic level.

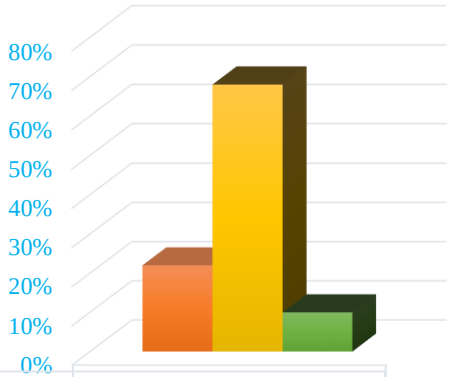
The victims of "global south" as Sub-Saharan Africa and Southeast Asia are trafficked by the richest countries in the Middle East, Western Europe and North America (United Nations Office on Drugs and Crimes [UNODC], 2014: 7).

Also domestic traffic is in constant growth.

In a quarter of the identified cases, the exploitation takes place in the country of origin of the victim their exploiters being most of the time citizens of the same country.

In the period between 2010-1012, there were identified approximately 21 million people subjected to forced labor (human trafficking is performed through labor and sexual exploitation or living in poor conditions like a form of slavery), 90% of them (meaning 18.7 million) being exploited in the private sector (International Labor Office, 2014: 7). According to the results provided by the International Labor Office (ILO), people exploited through forced labor imposed by the private agents are distributed as follows: 4.5 million forced or fraud to maintain sexual activities, including pornographic; 2.2 million people find themselves in a forced labor imposed by the state (prisons, forms of work imposed by the government, military or paramilitary); 14.2 million exploited into forced labor: forced labor at home, forced labor for immigrants in various economic sectors, including forced illicit activities such as begging.

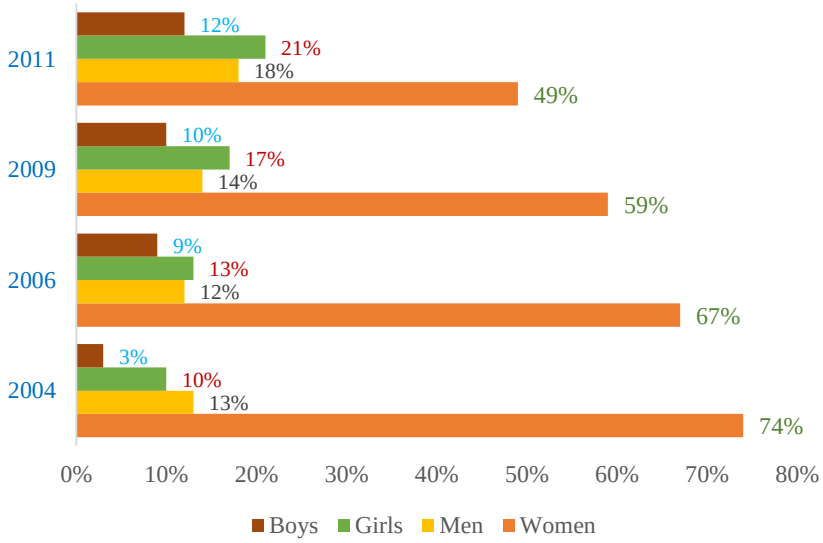
Chart 2. Distribution of persons exploited in the private economy (2014)



sexual exploitation	0,22
forced labour exploitation	0,68
state imposed forms of forced labour	0,1

According to United Office on Drugs and Crimes (UNODC) studies, in 2011, worldwide, 49% of trafficking victims are adult women. Although during the period 2004-2011 their number decreased significantly it still accounts for half of the victims. This indicates a change in the profile of detected victims, a growth in the number of casualties among adult men, girls and minor boys. The share of adult men from the total of victims is increasing globally, reaching 18% in 2011. Minors represent 30% of the total number of victims detected. The report shows an increasing trend in the number of victims among children which entails a decrease in the average age among them.

Chart 3. Evolution of trafficked persons by gender and age



Source: UNODC, Global Report on Trafficking in Persons (2014)

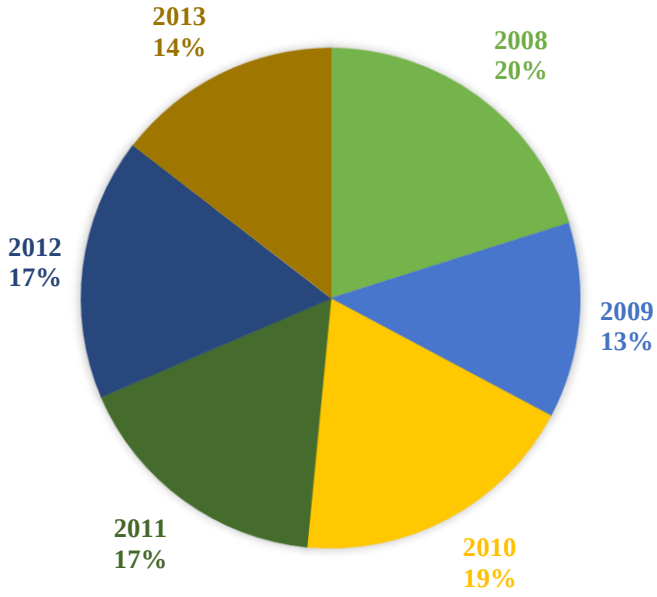
"Other" forms of exploitation traffic (trafficking children for fights, for petty crimes or forced begging) is increasing, reaching in 2011, at 7% of all victims of trafficking. There is a notable regional difference regarding "other forms of exploitation". In Europe and Central Asia dominates begging and human traffic to commit different delinquent acts, in Sub-Saharan Africa dominates child-soldier traffic, and the Asian continent stands for forced marriages (UNODC, 2014).

Regarding Europe, the exploited victims in "other" forms of trafficking represent 9% of the victims in Central and Western Europe. In 2014, among persons trafficked for purposes other than sexual exploitation or forced labor, 1.5% of the victims detected were trafficked for begging (UNODC, 2014). In contrast, in Western Europe and Central Asia, only 2% of the victims are included in other forms of exploitation.

Dynamics of trafficking forced into begging in Romania

In this context, Romania is considered "an area of origin or transit, being identified a number of factors that favored the emergence and development of traffic: geographic location, presence of a large number of social groups at risk or poor standard of living for a considerate part of population" (Arpinte, Crețu, 2007: 6). In 2013, in Romania, were identified 898 victims of trafficking. It appears that their number decreased by 14% compared to 2012 and increased by 13% compared to 2009. In terms of gender distribution, in 2013, 77% of the victims are female and 33% are male (National Agency against Human Trafficking [ANITP], 2014a).

Chart 4. Number of victims of human traffic in Romania

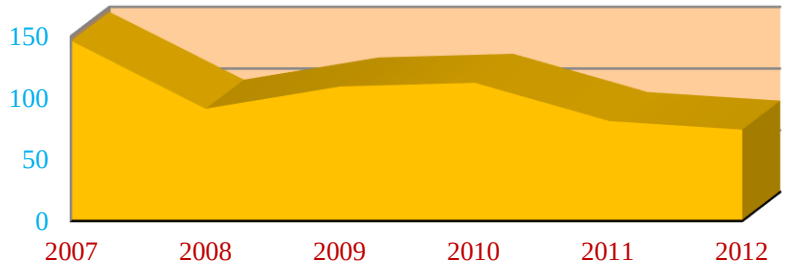


Source: National Agency against Human Trafficking, Report on the situation of human traffic in 2012 and 2013

Most of the victims (66%) were recruited to be sexually exploited, 24% were exploited through labor in different economic sectors, while the rest were recorded as victims exploited through forced begging, pornographic representations or forced to commit thefts (ANITP, 2014a). In Romania, annually, 10% of trafficking victims are used in begging. Therefore, after forced labor and sexual exploitation, forced into begging becomes one of the main ways of exploitation. Authorities' mechanisms of intervention and the directives issued to combat criminal tendencies, reduced, during 2007-2014, the number of people trafficked for begging. Between 2007-1012 there was a decrease in the number of people trafficked for begging by about 51%.

The most significant difference was noted between the years 2007-2011, the number of identified victims of trafficking being less than 65% (Ungureanu, Tamaş, Moise, Preduţ and Medvichi, 2013). Instead, in 2012, 7.1% of all victims of trafficking were forced into begging (ANITP, 2013: 14).

Chart 5. Dynamics regarding exploitation through begging in Romania



In 2013, there were registered 896 victims of trafficking, with 145 fewer cases than those mentioned in the previous year (ANITP, 2014a). Also, we observed a decrease in the number of victims exploited into forced begging or committing theft (or other irregularities such as extortion) or pornographic representations, from 10.5% in 2012 to 6% in 2012 (ANITP, 2014b).

In the first half of 2014 a number of 448 victims were identified, of which 64% adult victims and 36% underage victims. Of these 4% were identified as victims of begging. Thus, in addition to the 19 persons forced to beg, 281 victims were reported to be exploited into sex industry and pornography, 141 victims were exploited through labor and 3 victims were exploited by requiring thefts (ANITP, 2014).

Theoretical perspectives on begging

Tackling begging can be explained from various theoretical perspectives: interactionist perspective, functionalist perspective, social labeling perspective, role theory and the theory of seduction. The *interactionist perspective*, whose foundations were laid by George Hebert Mead in his "Mind, Self and Society", is a sociological approach that focuses on the social behavior of individuals interacting with those around him (Constantinescu, Ungureanu, 1985).

This perspective focuses on how social structures impact on people and on the interaction between them, the mutual impact between individuals and the way people perceive and define the elements that affect their lives. Thus, the perception of them as poor beggars strengthens their existence in poverty. At the level of those who beg the interaction develops in two directions: within groups, referring to the interaction between beggars, within their group, and interaction with people outside their group. For beggars, the main point of reference is the environment full of symbols with which they can come in contact and can influence the way they choose to build their lives. For example, if you live in an environment characterized by unemployment, alcohol and drug abuse, violence, there are few positive role models for you to relate to.

The environment of action and interaction of beggars is defined symbolically. They use symbols found in their interactions and use these symbols to communicate. Regarding interaction of beggars with people outside the group, with passers or potential benefactors, most often they come into contact with them in order to ask them for help or to satisfy certain needs. Everything passers perceive about beggars is part of a range of transmitted symbols which acquires a certain signification for the passer.

Functionalist perspective. The one that puts the foundation of the sociological functionalism is the anthropologist of Polish origin settled in England, Bronislav Malinowski (1884-1942). To understand the institutions of a society and the behavior of its members, one must study the culture as a whole, analysis which allows explaining the way in which an institution exists in relation to other institutions. He defined culture through its functions to satisfy human needs (Mihu, 1992).

The functionalist perspective does not understand social phenomena as social problems, but rather as some parts needed in a society. In view of begging we analyze a particular type of begging that involves an activity that is not necessarily required by the society, as the act of begging.

This type of action has the role to ensure a material comfort to the person who undertakes such an activity, for example washing windshields. This perspective emphasizes the importance of beggary at a macro-social level because the society needs highly valued work but also less valued and less rewarded work. Their existence leads to the functioning of the whole social system, "bottom" works, in which individuals earn less money, have to be performed also by a person.

The theory of social labeling may occur at all levels in society, labeling others being performed voluntarily or involuntarily by individuals, depending on many factors including social norms which project the behavior in a certain context. According to the law of W.I. Thomas, a situation is real in its description consequences as being real, also having important consequences in the individuals life.

The role theory is applied involuntarily in everyday life, emphasizing the roles taken by individuals in different situations. The role of beggar is very important for the act of begging, its pursuit assuming the interaction between a beggar and a potential donor.

Seduction theory is based on a typology of signs, which in most cases can be deceiving. Seduction is a phenomenon which operates in all areas and at all levels of society. In begging, individuals who beg appeal clearly to the "seduction" of people using a particular system of signs. They can adopt different ways to pursue passers to help them. They can seduce through mere presence or by interacting with them.

The label assigned to a person can alter its feeling of identity, the individual reaching to have a negative image of him and to accept the description required by others. Therefore deviant behaviors are formed as compensatory elements as begging,

alcoholism, violence, etc. For example, by labeling a beggar as being poor, the society contributes to the perpetuation of poverty, and if beggars are seen as lazy, apathetic, immoral and incompetent people they tend to believe that these are real attributes, and adopt specific behaviors and attitudes of their label.

Profile and characteristics of victims exploited and trafficked into begging

We can identify several categories of beggars depending on the motivation of the act of begging: 1. people who practice begging "for fun"-those who have the ability to work though prefer to beg because it is an easier way to get money; 2. people who practice begging because they believe that this is the only way to survive; 3. people who are forced by other people to beg-for example trafficked persons or children obliged by their parents to beg; 4. In general begging involves using a wide range of methods to attract attention and eventually the public's "generosity": using a strong emotional message to influence others to be generous.

For example cards that are written messages such as "Help me, I'm blind!", "I'm hungry" are used; extend of hand when approaching a person; exposing their own physical disabilities or suggesting them; providing services in exchange of financial gain. For example cleaning the windscreen at traffic lights or in various public places, reserving a parking space in locations where parking is free, playing a musical instrument, selling flowers or various objects in public spaces, inappropriate activities; use of children as a way to impress passers.

The typical profile of a beggar is shaped by the image of a person who wears damaged and broken clothes and shoes, with a general uncared appearance. In terms of how to approach passersby, most beggars adopt a direct attitude that allows them to interact with passers by sending an oral message.

Transmitted messages can be diverse, so there are beggars who limit themselves to the request itself, but most of them adopt a strategy to sensitize passers, by justifying its request using reasons as poverty, excuse raising a child, old age, health or religion. The action of begging takes place in public, crowded spaces, where there is heavy foot traffic. This phenomenon depends directly on the mercy of passers and the generosity of the civil society.

Most children who beg come from bi-parental families with a higher number of members (from 3 to 16 persons). Most of the time, children came from families where minors live with one of their parents and with one of his concubine. In this type of family accentuated failures are found: increased aggression, strained relations, high alcohol consumption, violent behavior, lack of affective support and a parental model, negligence, criminal history, etc. On the other hand children who beg come also from specialized institutions or were abandoned and actually live on streets. For minors begging becomes a lifestyle, influenced entirely by parents. Depending on local or regional particularities most of the children belong to a ethnical minority, especially Roma (gypsy).

In itself, ethnicity is not considered vulnerability but it becomes a cause by association with economic and social shortcomings (Ungureanu et al., 2013). Recruitment of minors, in some cases, may be mediated by the child's parents, traffickers addressing those from disadvantaged backgrounds who face economic shortcomings and a low level of education. Because parents are not able to evaluate the potential hazards, persuading them takes a short period of time and thus the involvement of children in begging activity occurs within days of receiving the offer.

Legislative references relevant to compelling children into begging

Under the law "trafficked person obliged to beg is entitled and receives the same forms of assistance as all victims of trafficking. Moreover, through national mechanisms for the protection and applicable steps to protect children, Romania recognizes and falls all situations of child begging in systems of care and protection, including in situation where children are forced to beg by their own parents" (Ungureanu et al., 2013: 9). The current Penal Code regulates trafficking and the exploitation of vulnerable persons, incrimination offence of begging in the case of minor use.

The person who causes a minor or a person with physical or mental disabilities to call "the public charity for help or benefit from material heritage from this activity shall be punished with imprisonment from 6 months to 3 years or a fine. If the offence is committed by a parent, guardian, trustee, or the person who has in care the person which begs, and by coercion, punishment is imprisonment from 1 to 5 years" (The New Penal Code, Law 286/2009, article 214, Begging Exploitation. Trafficking and exploitation of vulnerable persons).

The current legislation introduces two regulations which correspond to the new social context. Article 326 of the Old Penal Code which sanctioned the action of begging itself and accused human trafficking into forced begging, is renounced at. Therefore it is punished by law any person who causes a minor or an adult with physical or mental disabilities to beg or facilitates begging throughout the two vulnerable groups.

Also, "the adult with the ability to work, which constantly seeks money to survive by using in this purpose the presence of a minor, shall be punished with imprisonment from 3 months to 2 years or a fine" (The New Penal Code, Law 286/2009, article 215, Using a minor for begging. Trafficking and exploitation of vulnerable persons).

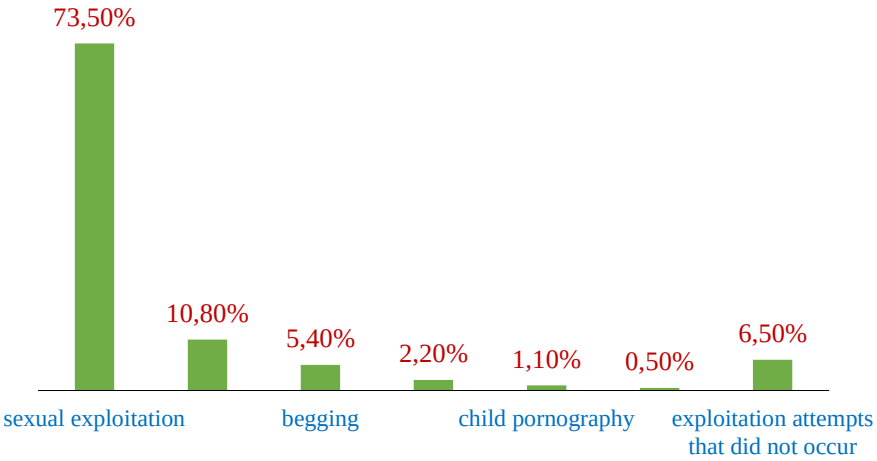
Thus, according to the New Penal Code the financial gain, by exploiting minors through begging, by healthy adults able to perform paid work becomes a crime. For example "a woman who goes begging, and to inspire publics charity keeps a child sometimes under the age of one in her arms- presents an obvious danger, not only because she seriously violates human dignity, the child being used as an object, but endangers the health or even life of the minor given the conditions in which he is held during begging (low or high temperature, rain, snow etc.)" (Organization "Save the Children Romania", 2014: 24).

Also, "the act of using services specified in article 182, provided by a person whom the beneficiary knows that it is a victim of trafficking or minor trafficking shall be punished with imprisonment from 6 months to 3 years or a fine is the act is not a more serious offense" (The Penal Code, Law 286/2009. Article 216, Use of services of an exploited person). Article 182 also states forced begging as a form of human exploitation (The Penal Code, Law 286/2009, article 182, Exploiting a person)

Beggary among children: evolution, causes, sources of income

In 2008 children represented 15% of the total number of human traffic. Of the 186 identified children, 51% were victims of internal trafficking while 49% were exploited abroad. The main form of exploitation was the sexual one here fitting 73% of the victims. Children as victims of begging were 5.4% from the total number of victims (Gavril, Tamaş, 2009: 43-44).

Chart 6. Minor victims" arrangements of exploitation in 2008

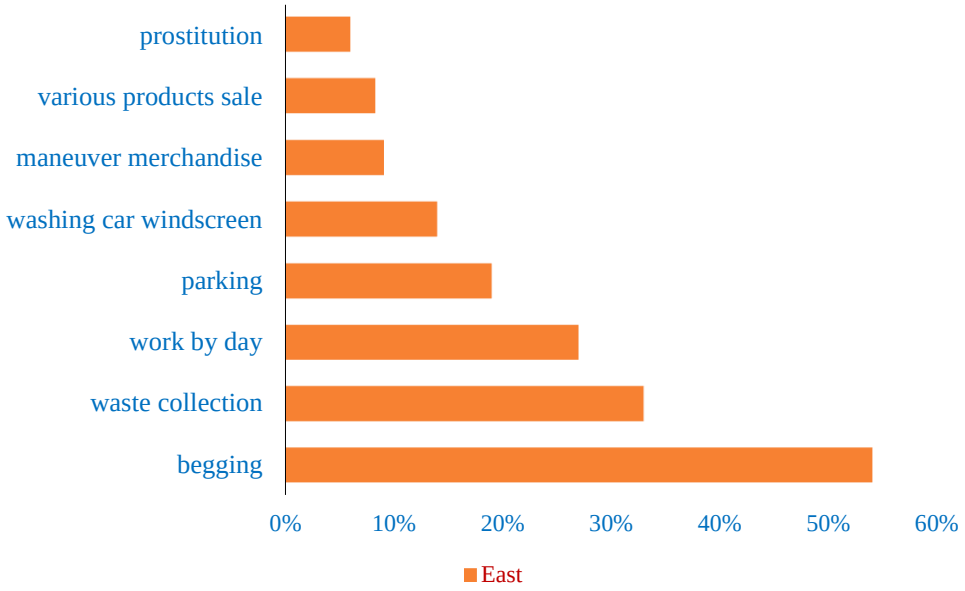


In 2009 the percentage of child victims was 176 persons, meaning 18.2% boys (32 minors) and 81.8% girls (144 minor). Most children exploited through begging were male and of early age. Instead, minor girls were forced into sexual exploitation, especially group age of 14-17 years old (General Inspectorate of Romanian Police & National Agency against Human Trafficking, 2010). At a national level, the project "Where begging starts, childhood ends" sought to identify the main causes of begging and also to raise the awareness about the negative effects associated with such practices among children. French Embassy in collaboration with Child Helpline Association, National Agency against Human Traffic, Ministry of Internal Affairs, Institute for Crime Prevention, General Inspector of Romanian Police, Romtelecom and Cosmote have applied a questionnaire to a sample composed of 110 representatives of institutions and local communities and 600 students aged between 8 and 12 years old (Child Helpline-Archive, 2015). The study results indicate poverty as a determinant of begging, 85.4% of respondents claiming that precarious economic situation underlies the decision of begging. The negative influence of the family, their lack of supervision or that minors adopt a behavior showed in the family or even do this at the request of the family have been reported as reasons from 52.1% of the respondents. Over 28% of opinions stressed the idea that the minors beg because it is an easy way to gain profit, while the last places were placed responses as "lack of local authorities (18.8%) or school (14.6%) involvement". Over half of the respondents believe that the main beneficiaries of the money earned in this way are the parents and 38.7% believe that the beneficiaries are foreign persons that control the minors and force them to beg. Only 17.7% of the respondents believe that children choose themselves to offer various services to get some money (Alexa, 2013).

Indeed, studies show that in most cases, the money earned by begging are not used by those who call the mercy of people nor are their families, but other people who coordinates and profit from beggars networks (Anghel, Alexe, 2013). The study *Evaluation of "street children and youth" phenomenon. The quantitative social research*, conducted by the Organization "Save the Children", in Bucharest, wanted to capture the evolution of the phenomenon both in terms of population volume and from the point of view of the social profile of these persons. The investigation was based on a questionnaire on a sample consisting of 701 children and youth people who: live only in the street and

have no connection with the family or institutions of protection; are temporarily in the street returning, in most cases, every day into their family; live in the street; live with parents/extended family in the street or in improvised shelters. It was found that the main sources of income for street children are: begging, collecting waste and daily work. Begging, with its various associated activities, was chosen by 54% of the respondents as the main way to earn money.

Chart 7. The main sources of income providing daily living (Multiple question)



Begging becomes the main activity generating money for 61% of the population living permanent on the streets. In contrast only 44% of those who live temporary on the streets resort to begging in order to survive. It was also found that with the decreasing age of the respondent increases the probability to be used at begging. Although the number of young people that beg reduces after they become adults (turn 18), this practice remains a gainful way also for about half of the adults.

Ways to prevent and combat begging among children

Providing specialized support for children and young people that cross times of crisis, such as traffic into begging or labor exploitation, and development of specific mechanisms to restore their capacity for recovery and normal reintegration, becomes a difficult process which is very hard to be achieved spontaneous (Zamfir, 2009). Main areas of concern for young integration can be grouped into several categories: school attendance (school dropout and motivation for training), labor market integration in the occupational system, youth participation in community life, juvenile delinquency (Zamfir, 2009). Given these problems one can draw some priority directions of action, such as: increasing the level of education for persons of disadvantaged backgrounds; inclusion on the labor market of persons belonging to vulnerable groups; economic support for families facing

poverty; developing a system of social assistance services with a focus on access to education, employment, housing; development of specialized social assistance services to families who do not exercise their responsibility towards children and young people; implementation of information and prevention campaigns by instructing people in order to avoid dangerous situations, also offering guidance for when trafficking and exploitation have already taken place; prevention of juvenile delinquency and recovery offenders through special programs; strengthening the capacity of local authorities in diagnosing and solving community problems; implementing programs which lead to increased quality of life. As an illegal activity that threatens the security and social order, it becomes imperative in involving all national structures in combating the begging among children. Their primarily goal is to identify the victims, help them and provide support for their reintegration. Therefore, at a national level, the intervention measures and the prevention of child traffic into begging are provided by different institutions such as: National Agency against Human Trafficking (ANITP), Directorate for Combating Organized Crime (DCCO), Ministry of Internal Affairs (MAI) General Directorate of Social Services and Child Protection (DGASPC), School Inspectorate (ISJ), Child Protection Division (DPC) and various Non-Governmental organizations (NGO′s).

Conclusions

Begging is defined as the action of a person to repeatedly call to mercy, asking for financial help. Today, nationally, there is insufficient information on the scale of the phenomenon of begging, especially among children. The latest report of institutions that prevent begging and assist its victims identify many factors that lead to the practice of begging by children: poverty, failure among family entourage, affiliation to a specific ethnic minority, traumatic experiences or low level of education. Minors (persons under 18) are more prone to social exclusion, that is the inability of people to participate in various aspects of social life, such as labor market activation and discrimination in various forms, up to physical isolation for one another (Zamfir, Stănescu, Briciu, 2010).

Therefore, they are the most common trafficked category of victims forced into begging because are fragile both physically and mentally, have reduced ability to anticipate the aggressors actions, immaturity in assessing people and situations, are suggestive etc. (Ungureanu et al., 2013: 32). In fact the vulnerability results from the interaction of personal, familiar and social-economic factors.

References:

Alexa, A. (2013). Survey: What are the main causes of begging among juveniles? Mediafax. Retrieved from http://www.mediafax.ro.

Anghel, V., Alexe, R. (2013). Anti-begging campaign in sector 6. A 3 years old child rescued from the streets by social workers. Retrieved from: http://www.mediafax.ro.

Arpinte, D., Creţu, M. (2007). *Evaluare rapidă privind traficul de persoane în zonele Bucureşti, Constanţa, Iaşi şi Ialomiţa*, Bucharest: World Vision.

Anima Nova. (2013). *Traficul de persoane. Privire generală asupra situaţiei din Romania*. Retrieved from: http://www.animanova.ro.

Child Helpline (2015). *Archive*. Retrieved from http://www.telefonulcopilului.ro.

Constantinescu, V., Ungureanu, I. (1985). *Teorii sociologice contemporane*, Bucharest: Didactică şi Pedagogică Publishing.

Gavril, I. G., Tamaş, A. M. (2009). *Traficul de copii în România. Studiu asupra procesului de recrutare*, Bucharest: Alpha Media Print.

General Inspectorate of Romanian Police and National Agency against Trafficking in Persons. (2010). Assessment of the human trafficking in Romania in 2009, Bucharest.

International Labour Office (2014). *Profits and Poverty : The Economics of Forced Labour*. Retrieved from: http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_243391.pdf.

Kirchofer, C. (2010). *Organized Begging in Vienna, Austria: Right-Wing Propaganda, Benevolent Necessity, Illicit Business, Human Smuggling, or Human Trafficking?* Retrieved from: http://webs.schule.at/website/Texte_online/Organized_Begging.pdf.

Mihu, A. (1992). *Introducere în sociologie*, Cluj-Napoca: Dacia Publishing.

National Agency against Trafficking in Persons. (2013). Report on the situation of human trafficking in 2012, Bucharest.

National Agency against Trafficking in Persons. (2014a). Statistic Situation of Human Trafficking Victims in 2013 (Part I). Retrieved from: http://www.anitp.mai.gov.ro.

National Agency against Trafficking in Persons. (2014b). Statistic Situation of Human Trafficking Victims in 2013 (Part II). Retrieved from: http://www.anitp.mai.gov.ro.

Organization "Save the children Romania". (2014). *Evaluation of "street children and youth" phenomenon. The quantitative social research*, Bucharest: Speed Promotion.

The Penal Code (2014). Law 286/2009, article 182, Exploiting a person. Retrieved from: http://www.codpenal.ro.

The Penal Code (2014). Law 286/2009. Article 216, Use of services of an exploited person.

The New Penal Code (2014). Law 286/2009. Article 214, Begging Exploitation. Trafficking and exploitation of vulnerable persons.

The New Penal Code (2014). Law 286/2009. Article 215, Using a minor for begging. Trafficking and exploitation of vulnerable persons.

Ungureanu, R.N., Tamaş, A., Moise, A., Preduț, C., Medvichi, N. (2013). *Study on the exploitation by begging in relation to human trafficking*. Retrieved from: http://anitp.mai.gov.ro

UNICEF, Terres des Hommes. (2006). To prevent Child Trafficking in South Eastern Europe: A Preliminary Assesment United Nations of Human Rights. (2000). Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime. Retrieved from: http://www.ohchr.org.

United Nations Office on Drugs and Crimes [UNDOC]. (2014). Global Report on Trafficking in Persons, New York: United Nations Publication.

Zamfir, E. (2009). *Asistență socială în România - Teorie și acțiune socială*, Craiova: Mitropolia Olteniei Publishing.

Zamfir, C., Stănescu, S., Briciu, C. (2010). *Politici de incluziune socială în perioada de criză economică*, Bucharest: Expert Publishing.

Article Info

Received: April 1 2015
Accepted: May 24 2015

RSP • No. 46 • 2015: 287-296

ORIGINAL PAPER

Investigating the New Legal Concepts on the Real Protection for the Child at Risk: Shifts in Family Relations and Caregiving

Răducu Răzvan Dobre*

Abstract

The plan of social relations developed in the family has experienced a major transformation in recent years. Legislative changes have occurred in two ways: once in the enactment of a special nature that govern the protection and promotion of children's rights (law no. 272/2004 modify with law no. 257/2013) and in the second plan following the adoption of the new Civil Code in 2011. The motivation by reconfiguration the provisions of law no. 272/2004 content is represented by findings made in practice. Those generated many controversies about what exactly authorities must intervene in certain limited circumstances where there is a minor. The Civil Code was elaborated because was wanted an approximation to the exprimation used and the principles learned due to the new legal reality determined by the current political system and by the Romania's E.U. accession. In this new conception family relations are embedded in the new Civil Code, repealeded with the old Civil Code and Family Code. A number of issues such as determining the contact with the minor, establish the living place of the minor, exercise of parental authority, forfeiture of parental rights, establishing an order of preference at the time of disposition of the juvenile special protection measures were contained in both intertwined mentions regulations that have been made above speech. The ratio between the two categories of rules, namely general - particular is not observed in its entirety when are analyzed these texts. The support to children considered the main beneficiary of this provision will become effective with the revision of these inconsistencies.

Keywords: *family, special protection mesures, minor, parental rights, Civil Code*

* Lecturer, Phd, University of Pitești, Faculty of Orthodox Theology, Social Work Department, Phone: 0040723309495, E-mail: raducu.dobre@upit.ro.

The development of the individual occurs usually within the family, but there are exceptions when the community or the state bodies must intervene and regulate certain malfunctions. In addition, or in some cases even as an alternative to family appears the social worker, the specialist which intervenes in the framework of the national system of social assistance. Youth development is the natural process of growing up and developing one s capabilities, which is too important to be left to chance. Positive youth development occurs from an intentional process that promotes positive outcomes for youth by providing support, relationships and opportunities. Youth development takes place in families, peer groups, schools, in neighborhoods and communities, and prepares youth to meet the challenges of adolescence and adulthood through coordinated, progressive research-based experiences that help them to become socially, morally, emotionally, physically and intellectually competent. Although law no. 272/2004 refers to promotion and protection of the rights of the child, practice has shown that in many cases the minor is vulnerable due to shortcomings of this normative act itself. As a result, they adopted in the year 2013 the law no. 257 in order to eliminate a number of inaccuracies of the special law on the issue. Worth to see now is that a special rule regulates a substantive institution: personal connections between the minor and the parent from whom he left-whose place was supposed to be in the Civil Code and common law. Entry into force of the new Civil Code has determined also implementation of the family relationships in this new regulatory action, which up to that point were contained in the former Family Code (Dobre, 2011: 45).

As such the current provisions of the Civil Code do not clarify the personal connections between the child and the parent that he or she does not live with, although reference is made to this article: sequentially 262 paragraph 2: "the child who does not live with his parents has the right to have personal connections with him. The exercise of this right may not be restricted except in the conditions stipulated by law, for serious reasons, taking into account the best interests of the child". Article 401 specifies that the parent or, if necessary, the parents separated from their children have the right to have personal connections with them. In case of disagreement between the parents, the guardianship court shall decide on the procedures for the exercise of this right. The social worker can be the bridge thru witch the divorced family members can solve their problems related to education and child care (Spânu, 1998: 44). Investing the Court with the settlement of the set up a programme under which personal relations to take place between the minor and the parent who does not have established the house guides now after a series of legal criteria. If the standard situation family composed of married parents and the children resulting from this legal union determined a number of stable relations is normal that exceptional situations including in these interactions should be recognized by law. The role of the father and mother must be preserved: "the most important function of the contemporary family is to assure the integration of their children in social life. Time spent with children has three functions: maintenance and repair function (domestic activity); comfort function (game, tenderness); development function (specific educational goals). If mother is able to provide all three functions independent of the presence/absence of the father, this is "specialized" exclusively in the comfort function. However, the difference between women and men refers especially how they relate and degree of involvement (Constantinescu, 2004: 113-115).

According to article 14 paragraph 4 of the special law constitutes circumstantial elements depending on which it evaluates the content of the parent-child relationship following minor: age of the minor, the specificity of the needs a child has in relation to

the care and development of further education, the degree of emotional dependency between the child and parent to the jurisdiction, not the way in which the parent who require these personal connections with your own child is viewed in the community. As a result of the texts that speech was made personal connections between the child and the parent who does not live with the minor constitute a right with two facets: both subjects may require the exercise of this statutory prerogatives. Regarding the content of this right the article 15 of law no. 257/2013 brings the necessary conclusions.

The usual meaning of the notion of personal relationships with the minor was until the adoption of the current civil legislation that of "right to visit". Moreover, "dilemmas of child protection are based on contradictions between the rights and obligations of parents and children's rights, including the right to privacy of families and obligation (not only the right) of profesionals to intervene in interests of the children" (Roth, 1999:18). From now on the coverage of the notion is extended because it covers three categories of elements. A first set of rights including rights to which the minor parent has no established residence: right to visit the child, the right to host him on it's own at a certain limited period of time, the right to correspond with the child in different forms, more or less classics: letter, landline phone, mobile phone, electronic mail, internet virtual discussion, etc. In the new regulation is established judiciously that the minor has the same type of rights in relation to the parent who does not have the property: the right to meet with the parent who does not live with, in the steadfast way, either directly or under a specific surveillance-in some places called neutral (except the residence of the minor and the residence of the parent does not live with the minor-already analysed situations).

The last form that express the relation between the minor and the parent who does not live with consists of information that a third part-the parent of the child where he has established permanent address-is required to transmit information. It is the parent's right to receive information regarding the minor's physical, psychological, and educational evolution and children's right to receive information of activity and life of the parent with whom he has established personal relationships through court order or as a result of a family transaction. Monitoring of such personal connections between the minor and the one of the parent (or other person to whom the minor has developed a specific attachment-situation assimilable) is transferred to the competent social worker within the specialized public service. Furthermorem, the protection of the child in need of Romania, recognizing the role to ensure that the risks which may negatively affect childhood, have to approach increasingly more the child welfare system (Zamfir, 2002: 44). The inability to effectively protect the principle of the best interests of the minor because there were people who had prearranged to intervene in situations limited hypothesis has generated this new provision. The nomination of a social worker as a decision-maker in an organism such time enhances the importance of the profession again. On the other hand interest of the child principle content is questionable. Moreover, it was supported even before the advent of this legislative changes regarding the content of the notion that the lack of interest of the child is not a legislative lacuna but voluntary omission of the legislature indigent to anticipate complex and varied situations in which the child can learn (Drăghici, 2014: 29). Information mediation between the minor and the parent the child does not live with is realized through the establishment of a genuine obligation of the parent where the child lives. Distorting the truth by the subject of this obligation in such a way that the minor to build an image far from reality on the other parent may lead to consequences in legal form. Must be underlined in the probation plan the value of documents made by the social worker named in such a case. The report monitoring issues related to the moment took

over the juvenile from the parent where he has established residence, return the minor at the end of the time spent together with the other parent, also including interviews with the two parents, and also with the minor concerned.

The establishment of the minor in the house of one of the parents is not a definitive measure because it is based on factual data interpreted by the Court of guardianship at that moment. Therefore, on the basis of the monitoring report filed by the social worker on the case and other related means of proof the Court may be required to change the minor's domicile to the other parent. It is not necessary to extrapolate this position of social worker as a guardian of the interpersonal relationships between the parent and the minor considering its classic status: "the support who can be offered by social workers from social institution to young people who leave the protection institutions at 18 years old is represented by multiples roles that they can actually take it, namely the social worker, a facilitator, teacher, mediator and lawyer (Neamțu, 2003: 336-337). Using the same legislative drafting technique have defined legal criteria in the special law (although it would have been natural for them to be included in the common law of the Civil Code) which can be considered by the Court when it establishes the juvenile home at one of the two parents. Although it is not mentioned explicitly as such legal criteria would meet a certain ranking, in listing them in a certain order, give us such a conclusion. Interesting is the fact that the first two criteria related to the personality of the individual, the ability of the parent (which will live together with the minor chose) to accept the idea according to which the other parent feels the need to relate with his own child and last but not least the best interest of the minor determine categorically its access unconditionally to affectivity of the parent he does not live with. So the main criteria are the availability of parent to the other parent involved in the taking of important decisions related to the future of the minor and parent's willingness to respect the personal links between the minor and the other parent.

According to the Civil Code-general law in family relations: a family home may not be subject to a discretionary right of one of the spouses (inability to alienate the property, prohibition of making even administration acts to obtain an income such as rent) even when it is the sole owner of the property (article 322). After the dissolution of marriage through divorce are provisions that ensure for example that the benefit in terms of a lease (when the titular is only one of the former spouses) to return to the parent which is not contracting party (article 324). Here's one of the reasons to which reference is made is the best interest of the child (in the idea that it would have established home to parent that although was not part of the contract of rent will be the future user of the property). In reverse logic, a special law indicate now as criteria of preference when the housing situation of the real estate of the minor's two parents for the last 3 years from the time of the request in question. If you would take into account this principle would mean that the parent who has his own real estate or patrimony which has higher income than the other parent will have an advantage in winning at Court "child custody" (article 16, paragraph 2, point c). Even if "permeability social barriers in a given society is the most important feature of social stratification system" (Bădescu, 1994: 21) this does not necessarily lead to a preference right in favor of a parent with such status "acquired".

There is a problem of interpretation: what the rule will be applied: the general or special-although at the theoretical level the answer would be clear: the special one which is derogatory from the general. "Translation" of the child's best interest behave here two meanings: one that refers to the potentiation of affective element (represented in the Civil Code where the parent may benefit from the family home after the divorce although does

not have a pre-existing right of dwelling) and another one that covers the idea of comfort, the higher standard of living for that the child might enjoy (according to law no. 257/2013 where reference is made to the housing situation of the history of the parent). It's hard to choose between the two versions so the practice Court will be called to indicate that a certain guideline. Hierarchy of legal criteria which must be taken into account in determining the principal residence of the minor is wrong whereas violence coming from the minor's parents or other persons is located toward the base of the pyramid, being among the last issues to which reference is made.

Incidentally this positioning between the other criteria may be the only argument, based on which we would not be in the presence of a hierarchy but it would be just the sum of the elements on which the Court can evaluate them in the light of the arrangement of free will. May not be talking about ensuring harmonious development and growth of the child abuse or violence while abuse, regardless of what nature would be (especially the physical and mental) is a behavioural habit of the parent in question. According to an earlier study in witch the research aimed the educational methods used by parents is found that there is "an increased risk of ill-treatment in rural areas than in urban areas" (Rotaru, 1996: 114). Statistical data show that recent physical abuse (beating, hitting, burns, injury) is 68% (of those intervievate - 110 professionals in the field), 16% reprisals and 16% deliberate action (Brătianu, Roşca, 2005: 176).

The last legal criteria are the distance between the home of each parent and formative-educative unit where the minor learns a specific type of skills and/or knowledge school.Heated discussion can occur here when determining the principal residence of one of the parents would accomplish in a building that it owns no property but under a rental contract. Even if the period for which ended the lease is a long one (5 years), kindergarten/ school of the juvenile is an excellent one and convenience is one high Court must compare with "offer" other parent. If the latter is the proprietor (or the user) of the building in which the minor has grown up to the moment of separation of the parents the priority of fixing the residence of the child should be understood on its own.

Accommodating the juvenile with a particular lifestyle (certain daily habits closely related to the house where he lives) could lead to a significant change in it emotionally at the time at which it would intervene in the issue of changing its residence. Changing the child's home may take place even when the parent who lives with the minor (due to the decision stablished by the Court of guardianship) decides to move with child at another location. Furthermore, it is argued that the prior consent of the parent who does not live with the child is mandatory, since it has the legal right to maintain personal relations with the child. Fortuity change of residence of the parent who lives with the child can be interpreted in this situation as an obstruction of the right to private and family life of the other parent. It is not less true that, in certain situations, the right to maintain personal relations with the minor can be used as element of blackmailing, unduly the best interest of the child. In this situation the Court is all that you need to establish a balance between the interests of those involved (Drăghici, 2013: 205).

An interesting evolution has known the adoption of law no. 257/2013 and approach the concept of the exercise of parental authority. In the light of the old regulations in terms of family (formerly Family Code) according to art. 98-99 act as the exercise parental rights is done by mutual agreement and in case of disagreement, it will appeal to tutelary authority who will decide. The exercise of these prerogatives exclusively by one parent take place only when the impossibility of objective cases appeared in the other parent to express his point of view. However, the importance of the right conferred

by the law equally to the two parents do not have a specific transposition and rule of civil procedure at dissolution of marriage through divorce. What is imperative to decide in Court for a divorce trial (as long as was in effect the old Code of Civil Procedure) when the minor was in order to advance his education and by one of the parents (article 613 index 1 paragraph 4). There is nowhere in the old speech about provisions to establish the way in which they exercise parental authority after the divorce moment.

Also home of the minor shall be considered a default that is set to the parent to whom it had been entrusted. According to the article 930 paragraphs 2 from new Code of Civil Procedure the Court must pronounce about the form in which it will exercise parental authority by both parents, after the dissolution of marriage.The special law on the protection of children's rights detailed in what consist parental authority: "important decisions, such as those relating to the choice of the way of the learning or professional training, advanced medical treatments or surgery, the residence of the child or the administration of its property" (article 31, paragraphs 2, point 1 of the law no. 257/2013). They keep the old principle according to which regulatory exercise "parental power" in making a decision on the future of the juvenile capitals is carried out exclusively in common and only about exceptional parent with whom the child lives will decide alone only when the other parent does not express his views.

There is still a difference of nuance here: in the Family Code are different cases in which the expression of the will of the parent does not take place because it was dependent on other external factors (the parent was deceased, the parent lost his parental rights etc.), while in law no. 257/2013 includes the assumptions and independent of any external compulsion means one of the parents does not express either approval or disapproval of the proposal coming from the other parent. The last mention is different with total available found in article 507 of the new Civil Code that retrieves the same expression mentioned above, in the old Family Code. You will need a clarification in the future in terms of how misinterpretation of these texts. Because the authority has a special significance that in the new philosophy of the rights of the child, the parents will not be able to trade the disclaiming of them relating to this right (article 31, paragraphs 2, point 4 of the law no. 257/2013). The imposition of such limitations is a consequence of the fact that only when one or both parents do not provide moral and material warranties for their growth and education of the child may dispose of the sanctions Court. You have also edited the following very interesting issue: establishment of exercising parental authority by a single parent by way of sanction for the other parent is equivalent to losing of parental rights? This is based on the article 31provisions, paragraph 2 point 5 of law 257/2013 and that articles 508-512 of the civil code. The special rules are catalogued as grounds to determine the exercise of parental authority solely by the other parent as a result of the decision of the Court: "alcoholism, mental illness, drug addiction, violence towards the child or another parent, convictions for offences of trafficking in human beings, drug trafficking, offences relating to the sexual life, crimes of violence, and any other reason related to the risks for the child ...". According to the common law losing the parental rights occurs when "the father puts the life, health or development of the child through ill-treatment applied by consumption of alcohol or narcotic drugs, by wearing improper behaviour, through serious negligence in fulfilling parental obligations, or by tapping the serious interest of the child". We believe that there are not two identical notions in terms of coverage. According to the legal definition (article 483 of the Civil Code) parental authority "is the set of rights and duties which relate to both the person and property of the child" while as seen from telling the other notion is used only "parental rights". The

same ideas are pointed out that in article 510 of the new Civil Code stipulates that the parent is not relieved from the obligation to perform to give maintenance even though it's fallen out of the parental rights.

In this direction, this solution was outlined in the doctrinal and jurisprudential before entry into force of the civil code, showing that the losing of parental rights is termination of parent rights, but not of the rights of the child to the parent or, meaning that they maintain parental rights correlative obligations (Tițian, Constantin, Cîrstea, 2007: 353).

The same conclusion can be drawn if we analyse the distribution of the two concepts that are distinct in chapter III of the Civil Code entitled exercise of parental authority and chapter IV of the same regulatory action in the corruption of "parental rights" exercise. However, in article 507 of the new Civil Code hereinafter referred to as "the exercise of parental authority by a single parent" are not found none of the causes of the sanction the removal of one of the parents from exercising parental authority (which are listed in the sample article 31 paragraph 2 point 5 of law no. 257/2013). The family is about to become a construction where the child is in centre of family. Some consequences are not devoid of a certain oddness: the parental rights and duties will be performed, as a rule, shared by parents, including during the marriage of the mother, or by the latter with a third party-father; changing home by father, including divorced, at which the child is placed, requires the prior consent of the other parent if the change of housing affects the exercise of authority or parental rights by the latter (article 497 new Civil Code). In our opinion, an obsessive suspicion towards any differentiation as bearing the germs sprout unequal implausible generalizations of status, role, etc., losing sight a crucial fact: the family itself is the symbol of complementarity of differences: between the married and the unmarried, between genders, between generations (Emese, 2011: 12).

A fundamental change is recorded about the special protection measures which is taken in case the minor is in a situation of risk: family reintegration, integration into the extended family (in both cases the placement measure), placement in a professional placement from another family or person, the guardianship, placement in a residential facility and adoption. It follows from the interpretation of the Civil Code in conjunction with the special law in the matter. After the General Directorate of Social Assistance and Child Protection has been notified of the existence of a case that requires a special protection measures, or after it has already been taken the measure of placement in a matter of urgency, by the Director of the institution in question, it will begin operation of individualized protection plan (P. I. P.) This plan aims to reintegrate the minor within the natural family, and only exceptionally within the extended family (composed of child, parents and relatives up to the fourth degree inclusive). When the exceptional measure of placement outside the family requires costs for maintenance of (note in a specialized centre) the parents will have the monthly payment of an amount under that title. Because not every time parents receive income (it is well known that investment in residential centres usually takes place when a family living conditions, food, hygiene, access to education, etc. are harmed just because of the financial situation of the parents) they will be able to perform community service work.

Such an approach was possible because on the basis of old legal provisions "the parents transfer the full responsability of taking care of children to these institutions, or in other words, *the state*". They meet often argue about the state's role in caring for children. *The state is obliged to raise my child* or *I want to give the child to the state* are phrases that social worker often hears from parents who want to abandon their children (Miftode,

2002: 263). We are in the presence of an unique legal obligations of maintenance, without denying the existence of peculiarities arising from the nature of the persons among which is born. Background of this obligation is unique and results from the aim of fulfilling (providing the means of sustenance of a people in need because of inability to work) (Drăghici, Duminică, 2014: 85). Among the special protection measures of the minor are specialized supervision. It consists of maintaining the child in the family but with the obligation of parents to pay special attention to the way he has learnt, to cultural knowledge, but also to civic knowledge as well in an attempt to explain to the minor the adverse consequences he has produced to community through his delinquent act. The dialogue that the family must wear in these cases with the minor often relies on specific therapeutic techniques. There are some families that made a negative socialization of young people, inducing them in discordant patterns of conduct are desirable social norms and values, thus favoring the propensity for delinquency (Rădulescu, Banciu, 1990: 21). That the family should dialogue wear it in these cases with the juvenile often realy on specific therapeutic techniques to be acquired by them. In this sense, in the special law has been introduced in article 80 paragraph 3 which provides that: "the child's parents who commits criminal offences and are not criminally responsible are obliged to participate in counselling sessions conducted by the General Directorate of Social Assistance and Child Protection, based on a customized program of psychological counselling".

Under these conditions, we assist to an instrumentalisation of human relations, to a rift between generations and we are in the presence of a generation that has lost its common places to speak, to meet, to live together. There's an identity crisis, because there was a rift between adolescent's culture and adult culture... Family problems are those related to the functions of the family: the family arrangement, the couple's life, the issue of education, parental system. Parents consider much farther young people, particularly adolescents as too libertine, lacking respect for traditions, moral values of society, etc. Negotiation occurs as a tool in a kind of modern enterprises specific to interpersonal communication report, not in a family life only, but also of the school where it works the same law of supply and demand (Voinea, Bulzan, 2003: 71). That support is given to the child who is not criminally responsible by adapting interfamilial reactions that the parents should have. Since in many cases the children were exposed to the public "mercy" in order parents can obtain various materials advantages quickly and without any sort of physical or intellectual effort they felt the need to add to the law (article 91 index 1 law no. 257/2013): "parents or legal representatives are obliged to supervise the child and to take all measures in order to prevent the practice of begging". As such, besides the criminal responsibility of legal representatives is put in question in another light concept of the parental authority which so enriches content by adding a new obligation. Another phenomenon with implications on growth and education of children which knew a major development is the exodus of the parents who go to work abroad. The intention of those who are trying to win more is a good one meaning that the excedent will be directed in most of times in the future of children.

However, increased volume migrations can be a growth factor divorce, especially when migration is accompanied by decreasing social control over social behaviors and produce imbalances (Mihăilescu, 1999: 108). In other news, positive or negative effect of money sent to Romania by those who left to work abroad "depends on patterns of spending this money over a long period of time and the state's ability to influence their origin" (Constantinescu, 2006: 297). This attempt to change the living standards must be put in the balance with the negative effects they generate those adults

which leave their own children in Romania. The effort of family members to perform the duties of the left ones is often felt negative (Șerban, Grigoraş, 2000: 52).

Lack of supervision of the minor's educational evolution, emotional deficiencies that we felt at these children due to receipt of parental affection only "from away" have prompted the intervention of the legislature. In statistical terms "two out of three children whose parents work abroad feel the lack of their love. Those children, psychologists and sociologists say that develop disharmonious personality and therefore it is possible that, once matured, to form a generation of adults with social integration problems" (Constantinescu, 2008: 215).

In conclusion, in order not to create the risk of losing the parental rights, the adults who go to work abroad will have to notify the public of social service person they delegate those responsibilities (article 97 index1 of the law no. 257/2013). The designation of the person who will substitute the parent left to work abroad is not done in discretionary manner but will be censured by the Court of guardianship. The Court will have competence to verify fulfilment of the minimum conditions in respect thereof: to be part of the extended family, to have the ability to exercise and meet the material and moral guarantees required. It may deem this procedure of verification of these conditions with the procedure of certification of persons wishing to adopt. The persons designated to replace the parent for the period in which he works abroad will have to express their consent directly in front of the Court. And here we find similarities with the principles applicable to the procedure of adoption (consent expressed by adopting article 15 of law no. 273/2004 republished in 2012).

In conclusion, it is preferable that the legislative changes in the field of protection of children's rights were a faithful reflection of the facts carried out in practice. Equally true is that there are certain inaccuracies or subsist in certain cases even contradictions between the texts of special legislation and common right - new Civil Code. The future harmonisation of legislation in this area of activity will lead to a better correlation of administrative measures clause which are unconditionally and subordinate to the principle of the best interests of the minor.

References:

Bădescu, I. (1994). *Istoria sociologiei*, Buzău: Porto Franco Publishing.

Brătianu, I., Roşca, C. (2005). *Copilul institutionalizat între protecție și abuz*, Iași: Lumen Publishing.

Constantinescu, M. (2004). *Sociologia familiei*, Pitești: Universitatea din Pitești Publishing.

Constantinescu, M. (2006). Efecte ale migrației internaționale asupra dezvoltării sociale. Cazul României. In Zamfir, C., Stoica, L., *O nouă provocare: dezvoltarea socială*, Iași: Polirom, pp. 39-43.

Constantinescu, M. (2008). *Familia românească între tradiție și modernitate*, Pitești: Universitatea din Pitești Publishing.

Dobre, R. R. (2011). *Drept în asistență socială,* Pitești: Universitatea din Pitești Publishing.

Drăghici, A. (2013). *Protecția juridică a drepturilor omului*, Bucharest: Universul Juridic Publishing.

Drăghici, A., Duminica, R. (2014*). Obligatia legala de intreținere*, Bucharest: Universul Juridic Publishing.

Drăghici, A. (2014). Modificări aduse principiului interesului superior al copilului prin legea 257/2013. *Révue europeene du droit social*, (4), 28-32.

Emese, F. (2011). Evoluția reglementărilor privind relațiile de familie de la familia autoritară la familia asociativă. *Studia Jurisprudentia*, (4), 3-12.
Miftode, V. (2002). *Populații vulnerabile și fenomene de auto-marginalizare- Strategii de intervenție și efecte perverse,* Iași: Lumen Publishing.
Mihăilescu, I. (1999). *Familia în societățile europene*, Bucharest: Universitatea din București Publising.
Neamțu, G. (2003). *Tratat de asistență socială*, Iași: Polirom.
Rădulescu, S., M., Banciu, D. (1990). *Introducere în sociologia delincvenței juvenile*, Bucharest: Medical Publishing.
Rotaru, T. (1996). *Expunerea minorilor la abuz și neglijare în județul Cluj,* Cluj-Napoca: Contrax Publishing.
Roth-Szamoskozi, M. (1999). *Protecția copilului. Dileme, concepții și metode*, Cluj-Napoca: Presa Universitară Clujeană Publishing.
Șerban, M., Grigoraș, V. (2000). Dogenii din Teleorman în țară și în străinătate. Un studiu asupra migrației circulatorii în Spania. *Sociologie Românească*, (2), 87-91.
Spânu, M., (1998). *Introducere în asistența socială a familiei și protecția copilului,* Chișinău: Tehnica Publishing.
Tițian, D., Constantin, A., Cîrstea, M. (2007). *Codul familiei adnotat*, Bucharest: Hamangiu Publishing.
Voinea, M, Bulzan, C. (2003). *Sociologia drepturilor omului*, Bucharest: Universitatea din București Publishing.
Zamfir, E. (2002). Direcții ale reformei sistemului de protecție pentru copil și familia. *Revista de asistență socială*, (2), 3-8.

Article Info

Received: April 23 2015
Accepted: May 29 2015

RSP • No. 46 • 2015: 297-304

ORIGINAL PAPER

Full Legal Capacity Acquired before the Age of Majority

Sevastian Cercel [*]
Ștefan Scurtu [**]

Abstract
The legal capacity to exercise rights concerns one's aptitude to conclude civil legal acts by oneself. The existence and the quality of mental capacity are taken into account in this field, therefore it is considered that the "life experience" which is necessary for "one's own legal life" is acquired gradually, with age. Civil law regulates three distinct situations: a. the lack of legal capacity of minors up to 14 years of age; b. limited legal capacity of minors between 14 and 18 years of age; c. full legal capacity, starting when a person has turned 18. There are two exceptions to the rule of acquiring full legal capacity to exercise rights when attaining the age of majority. First, the minor acquires full legal capacity by marriage. On the other hand, on serious grounds, the guardianship court may recognize the full legal capacity of the minor who has turned 16. This latter exception, regulated in the 1864 Romanian Civil Code, was abandoned during the communist regime and is now "rediscovered".

Keywords: *full legal capacity to exercise rights, civil age of majority, married minor, guardianship court, serious grounds*

[*] Professor, PhD, University of Craiova, Faculty of Law and Social Sciences, Law Specialization, Centre for Private Law Studies and Research, Phone: 040351177100, Email: sevastiancercel@yahoo.com.
[**] Professor, PhD, University of Craiova, Faculty of Law and Social Sciences, Law Specialization, Centre for Private Law Studies and Research, Phone: 040351177100, Email: stefan_scurtu@yahoo.com.

Preliminaries

The civil capacity of the natural person is regulated in the new Romanian Civil Code i.e. in Book I – On persons, Title II – The natural person, Chapter I - Civil capacity of the natural person (Boroi, Stancu, 2011). The former section of this chapter, namely articles 34-36 New Civil Code (hereinafter NCC) focuses on the natural person's capacity to have rights, while the latter section, namely article 37-48 NCC concerns the natural person's capacity to exercise rights (Ungureanu, 2011; Vasilescu, 2012; Ungureanu, Munteanu, 2011; Nicolae, 2013; Chelaru, 2014; Stănescu, Bîrsan, 1995). Civil capacity is recognized to all persons (article 28 paragraph 1 NCC), and its structure consists of two elements: the capacity to have rights and the capacity to exercise rights. Under article 34 NCC, the capacity to have rights is a person's aptitude to have civil rights and obligations. It begins at birth and ends upon death. Exceptionally, the children's rights are recognized from conception, but only if a child is born alive (*infans conceptus pro nato habetur, quoties de commodis ejus agitur*). The capacity to exercise rights is the person's aptitude to conclude civil legal acts by oneself (article 37 NCC) so that he will acquire and exercise civil rights, also assuming and performing civil obligations. The existence of the natural person's capacity to have rights and the mental capacity constitute the premises of the natural person's capacity to exercise rights. The first premise does not raise any questions, since in modern law the legal nature of man's capacity to have rights is its *universality*, in the sense that it belongs to all persons. The second premise concerns the human faculty to discern, to distinguish between things, to think right and in depth, and to appreciate the real value of things. In civil law, the mental capacity includes human power to properly understand the civil legal consequences of his willful acts. The physical, biological existence of a person determines his legal existence, but it is not enough in order to support "one's own legal life". The legal capacity to exercise rights is regulated in such a way that the absence of the mental capacity or its existence to a lesser extent does not affect the interests of the person participating in the legal life. The law intervenes in the sense that the recognition of a person's legal capacity depends on his power to understand and assess correctly the significance of his taking part in the legal life.

In this context, the mental capacity expresses the human ability to correctly appreciate the significance of his conduct acts, and the conclusion of any civil legal act necessarily involves such an ability. The existence of the mental capacity depends on the attainment of a certain stage of development of human mental life, which is reached only at a certain age, as well as on the normal development of human thought processes. Essentially, the mental capacity depends on the *age* and *health of the human mind*, elements that the civil law considers while regulating the legal capacity to exercise rights.

Classification of natural persons according to the existence of the capacity to exercise rights

Based on the existence and quality of mental capacity, seeing that the "life experience" necessary for "one's own legal life" is acquired gradually, with age, the civil law regulates within the scope of the legal capacity to exercise rights, *three* distinct situations and, accordingly, classifies natural persons into three categories, according to the existence of the capacity to exercise rights.

The first category comprises persons *lacking legal capacity to exercise rights*, thus including minors up to 14 years of age, on the one hand, and mentally ill persons laid under interdiction, on the other hand. It is considered that their legal situation corresponds to the total lack of mental capacity. For those who do not have the legal capacity to exercise rights, legal acts are concluded on their behalf by their legal representatives, i.e. parents or guardians. Nevertheless, the person lacking legal capacity may conclude or perform, by himself, certain acts expressly provided by law, preservation acts, as well as current disposal acts of little value, performed at the time of their conclusion (article 43 NCC).

Secondly, a minor who has turned 14 has *limited legal capacity to exercise rights.* The period between 14 and 18 years of age corresponds to a developing mental capacity, a transition situation between the lack of mental capacity and the full mental capacity. The legal acts of the minor with limited legal capacity are concluded by himself, with the consent of his parents or, where applicable, of the guardian, and in such cases provided by law, with the authorization of the guardianship court. The consent or authorization may be given, at the latest, at the time of concluding the act. A minor who has turned 14, therefore with limited legal capacity to exercise rights, may perform acts of preservation, acts of administration which do not prejudice him, and current disposal acts of little value, performed at the time of their conclusion (article 41 NCC). He cannot enter into contracts of donation or legal documents that guarantee the obligations of another person, even if he had the guardian's consent. Likewise, he cannot conclude legal acts with his guardian, the spouse of the guardian, relatives in a straight line or with the latter's siblings (article 147 NCC). The third category includes natural persons who have *full* legal capacity to exercise rights. Under article 38 NCC, full legal capacity begins when a person comes of age, i.e. at the age of 18. At this age a person is mature enough to have a legal life of his own. In this case, the presumption of mental capacity is *relative*, therefore it can be reversed if the lack of mental capacity is proved.

It has been argued that it is not right that maturity, on which the legal capacity to exercise rights is based, should be appreciated according to criteria depending on each individual. It would not be possible in practical terms to ascertain the existence of each person's mental capacity and it would not be in compliance with the interests of legal life security, to determine legal capacity at the individual level, based on the development of each person. Therefore, the only possible and rational solution adopted by law is to establish a certain age, from which a person can participate alone in the conclusion of all his civil legal acts. Historically, we can mention the controversy in Roman law between the two schools of Roman legal thought regarding the age at which boys reach puberty. On the one hand, the Sabinians established it on an individual basis, after bodily examination, in relation to the physical development of the young, and, on the other hand, the Proculians established it at the age of 14. The latter opinion prevailed in Justinian's law, hence we can find it in modern legislations.

Capacity to exercise rights and capacity in tort

The capacity to exercise rights cannot be confused with the natural person's capacity in tort, which resides in his aptitude to be liable for the tort committed. The rules on acquiring full or limited legal capacity solely refer to a person's aptitude to conclude civil legal acts. These rules do not concern liability in tort. The only requirement for the existence of capacity in tort is the effective existence of mental capacity, not of a certain age. The capacity in tort, also called discernment capacity is regulated as a condition for the existence of the tortfeasor's guilt in the context of the regulations on the condition of guilt for entailing liability in tort for one's own actions. As a matter of principle, in order to be liable in tort, the natural person must be aware of his actions. The intellectual factor of guilt refers to the person's mental ability to understand the meaning of his actions, to discern between what is allowed and disallowed, licit and illicit.

In this field, article 1366 NCC provides: (1) "a minor who has not turned 14 years of age or a person laid under judicial interdiction shall not be liable for the damage caused, unless his mental capacity is proved at the time of committing the act; (2) a minor who has turned 14 years of age shall be liable for the damage caused, unless he proves that he lacked mental capacity at the time of committing the act". Regarding the mental capacity, the text establishes two contrary presumptions. The former, a presumption of lack of mental capacity in the case of minors under the age of 14 and the persons laid under interdiction. The latter, a presumption of the existence of mental capacity for the person who has turned 14 years of age. Both are

relative legal presumptions that may be rebutted by evidence to the contrary. As for the lack of mental capacity necessary to entail liability in tort, article 1367(1) NCC provides that the one that caused damage is not liable if at the time of committing the act he was in a state, even temporary, of mental disorder that made it impossible for him to realize the consequences of his act. The state of mental disorder must be accidental, because if "it was caused by himself, through intoxication produced by alcohol, drugs or other substances" the doer is guilty and shall remedy the damage caused to the victim (article 1367 paragraph 2 NCC). One can notice that, while the capacity to exercise rights is defined only in relation to legal acts, the capacity in tort concerns only illicit and guilty acts attributable to the tortfeasor. The very existence of mental capacity is deemed according to different landmarks in the two fields. In the case of illicit acts, mental capacity involves the person's aptitude to distinguish between right and wrong, between what is generally permitted and forbidden in society. In the case of legal acts, mental capacity implies the person's aptitude to distinguish between what is useful or harmful at the personal level, appropriate or inappropriate for oneself.

First exception: the status of the minor who gets married

Pursuant to article 39 NCC, a minor acquires, by marriage, full legal capacity to exercise rights. In case the marriage is annulled, the minor who was in good faith at the time of marriage retains full legal capacity.

The first exception to the rule according to which full legal capacity is acquired at the age of majority is the situation of the minor who gets married. He acquires full legal capacity to exercise rights as an effect of marriage. Under article 259 paragraph 2 NCC, it is considered that the purpose of marriage is to start a family, therefore it cannot be admitted that the spouses, who are able to become the guardians of the children who will be born of their marriage, should be themselves under the protection of their own parents. On the other hand, the principle of equality of spouses requires the solution of full legal capacity of the minor who gets married. Otherwise, it would be difficult to support equality if one spouse has full legal capacity and the other spouse has limited capacity to exercise rights (Chelaru, 2012: 53).

On serious grounds, a minor who has turned 16 can get married on the basis of a medical opinion, with the consent of his parents or, accordingly, of the guardian, and the authorization of the guardianship court within the jurisdiction of which the minor lives (article 272 paragraph 2 NCC). If a parent refuses to consent to the marriage, the guardianship court rules on this issue, for the interest of the child prevails. As a rule, the marriage may be concluded if the future spouses have turned 18, the age at which they acquire matrimonial capacity. The age waiver may be granted on condition that several cumulative requirements provided by law are met. First, it has been considered that in this field there are "serious grounds" where, *exempli gratia*, the young woman is pregnant or a child has already been born. On the other hand, the medical opinion is essential and prior to parental consent and court authorization. In the absence of a favorable medical opinion, the marriage cannot be concluded. This medical document must prove a level of physical, physiological and mental maturity enabling the minor to assume duties specific to marriage. The paper also certifies the existence of serious medical reasons, if any. As for the consent of the parents or guardian, it can be given before the guardianship court, while deciding on the application for the authorization of the minor's marriage. It is considered that the minor is under the protection of these persons. The consent is a unilateral act given in consideration of the minor's marriage to a particular person. The purpose of the guardianship court's authorization is to ensure the seriousness and solidity of the grounds. It appears as an opportunity filter in the interest of the minor, which is prevalent, as assessed from the perspective of the circumstances of the case, taking into account the medical opinion and the position of the parents or guardian in relation to the minor's marriage project. (Emese, 2012: 276). From a historical perspective, in the 1954 Family Code, now repealed, only the woman could marry before the age of 18 and could

thereby acquire full legal capacity when she turned 15. The difference in legal treatment between men and women in matters of marriage, was traditional in Romanian law, and could be found in the old Romanian law, in the system of the 1864 Romanian Civil Code, also maintained in the 1954 Family Code (Dogaru, Cercel, 2007: 102). The new Romanian Civil Code admits, by exception, that marriage may be concluded at the age of 16, without distinguishing between male and female.

Second exception: anticipated legal capacity to exercise rights

Article 40 NCC establishes a second exception to the rule that full legal capacity is acquired at the age of majority and provides the minor who has turned 16 with the possibility of acquiring full legal capacity to exercise rights. This solution is part of the general concern of modern society to grant more rights to the persons under 18 years of age, from the perspective of the well-known debates regarding their political rights, even the reduction of the age of civil majority. Historically, one can mention the fact that the 1864 Romanian Civil Code regulated the *emancipation* of minors in Chapter III, Title X – "On minority, on guardianship and on emancipation" of Book I, article 421-433. Emancipation *enhanced* the content of the minor's capacity to exercise rights, the minor acquiring important rights as a person and, in particular, the administration and use of his goods. Moreover, the 1817 Calimach Code, applicable until the entry into force of the 1864 Romanian Civil Code, regulated "the privilege of age" (articles 230-231, articles 333-336), an institution originating in Roman law, in the institution of *venia ætatis*, according to which the *sui juris* minor, that is a woman who was 18 and a man who was 20 years of age, could obtain the right to alienate or mortgage her/his real estate.

The Romanian Civil Code of 1864, which established civil majority at the age of 21, regulated implied or legal emancipation, on the one hand, and express emancipation (articles 422-433 Civil Code 1864), on the other hand. First, the minor was automatically emancipated by law, *ipso jure*, by marriage. Secondly, the unmarried minor could be emancipated by his father, and in his absence, by his mother at the age of 18. This express emancipation arose from a declaration of the person vested by law with the right to emancipate the minor before the civil court and it was recorded in a special register. For enforceability against third parties the declaration of emancipation was published in the Official Gazette (Alexandresco, 1907: 829). The emancipated minor had a "guardian until the age of majority, appointed by the family council" in accordance with article 425 of the 1864 Civil Code. Under the provisions of article 40 NCC, "on serious grounds, the guardianship court may recognize the full legal capacity of the minor who has turned 16. For this purpose the court shall also hear the parents or the guardian of the minor, and shall require, whenever necessary, the opinion of the family council".

Under these circumstances, a minor who has turned 16 is entitled to lodge an application with the guardianship court, requiring the recognition of anticipated legal capacity to exercise rights. Hypothetically, he has limited legal capacity and can start legal proceedings *by himself*, without any prior permission or authorization. The minor's application must state the "serious grounds" for requiring anticipated legal capacity, as well as the evidence supporting his request. These grounds must essentially relate to the importance and real interest of the minor to access full legal capacity. Such a request may be made only in the *interest of the minor*, and its seriousness is solely appreciated by the guardianship court. In comparative law, it was considered that the following were not serious grounds: the intent of the parents or guardian to cease fulfilling the tasks of parental authority or guardianship; the fact that the minor wanted to require alimony or welfare benefits. One should take into account that pursuant to article 42 NCC, a minor may conclude legal acts concerning his work, artistic and sporting pursuits or profession, with the consent of his parents or guardian and with the

observance of the special law, if applicable. In this case, the minor *alone* exercises the rights and performs the obligations arising out of these acts and may dispose of the income received.

In accordance with the Labor Code, which can be the special law that article 42 NCC refers to, the natural person acquires the capacity to work at the age of 16, so that the minor at this age may conclude an employment contract by himself without anyone's consent. A minor may also enter into an employment contract at the age of 15, but only with the consent of his parents or legal representative. This contract may be concluded only for activities suitable for the physical development, skills and knowledge of the minor who has turned 15, if this does not jeopardize his health, development and professional training. Finally, it is prohibited to employ minors under the age of 15.

Under such circumstances, the minor who claims full legal capacity cannot lodge an application only on the basis of his wish to conclude certain "legal acts concerning his work, artistic and sporting pursuits or profession". If the parents supported these pursuits of the minor or consented or were to consent to these legal acts, it does not seem to be a request based on article 40 NCC. These acts can be concluded under article 42 NCC without any need to obtain anticipated legal capacity. On the other hand, the fact that the minor takes care of himself, as an employee or employer, while living separately from his parents, corroborated with the fact that his parents, due to their age and lack of education, cannot consent to his legal acts appropriately, may constitute a situation enabling the application of article 40 NCC. Likewise, the fact that the minor is precocious, having the physical, intellectual and mental development of an adult, in the absence of other elements, is not enough in this matter.

To decide on such an application, the guardianship court must hear the parents or guardian of the minor, and in the case of guardianship, the opinion of the family council is also necessary. The opinions expressed by the parents or guardian and that of the family council have *advisory status* in this matter. As a consequence, the court may also rule against their will expressed within this procedure. The legal proceedings are not contentious (articles 527-537 Civil Procedure Code), since in the case there is no defendant against whom the minor has a claim (Reghini, Diaconescu, Vasilescu, 2013: 141).

Similarities and differences between the two exceptions

The situation of the minor requiring the guardianship court to recognize his full capacity to exercise rights cannot be confused with the situation of the minor who gets married, even if in both cases the minor acquires full legal capacity for the future.

First of all, both exceptions are accessible to the minor who has turned 16 (article 272 paragraph 2 NCC for the matrimonial age, and article 40 NCC accordingly). Under this age, it is impossible to conclude a marriage or admit a request for anticipated full legal capacity. Secondly, in the case of marriage, acquiring full legal capacity is a consequence of marriage, so it legally arises out of the marriage act. On the other hand, in the case of the application lodged by the minor to obtain full legal capacity, the solution is pronounced by the court. Thirdly, although in both cases the law imposes the need for "serious grounds", the content of this notion is different. In the case of marriage the grounds concern the conclusion of marriage, so they are also accompanied by an appropriate medical document. In the case of the minor's request, the grounds concern directly the acquisition of legal capacity. The law does not require a medical opinion here, but it is possible that the court may seek the opinion of an expert to see the state of physical and mental development of the minor requiring anticipated capacity to exercise rights. Finally, one can mention the role of the parents or guardian, in both cases, but with significant differences. First, the minor's marriage requires parental consent or, where appropriate, the consent of the guardian, person or authority empowered to exercise parental rights. In the event that a parent refuses to consent to the minor's marriage, the guardianship court decides on this divergence in the best interest of the child. On the other hand, under article 40 NCC, the parents or guardian of the child, as applicable, are only listened to. But, at

least for the situation in which the minor's parents, present before the guardianship court, oppose vehemently, the admission of the minor's request will be difficult to motivate. Only under article 40 NCC is the consent of the family council required.

In the doctrine there is a dispute on the situation of the person who obtained anticipated full legal capacity under article 40 NCC and who wants to marry. The question arises whether under these circumstances the special conditions required by article 272(2) NCC must be met, concerning serious grounds, medical opinion, consent and authorization of marriage. It is important to note that in French law, although the emancipated minor is fully capable, similarly to a major, in case of marriage and adoption the same rules are applicable as to the non-emancipated minor, under article 413-6 of the French Civil Code. With regard to the consent of the parents, given the rationale and effect of emancipation in the sense of ceasing parental authority, it is acceptable that it is no longer required at the time of concluding the marriage by the emancipated minor. By judicial emancipation, the minor is no longer under his parents' authority, therefore he no longer needs their consent.

But the problem remains for other special conditions and one can bring arguments in the sense of maintaining them in the analyzed hypothesis. For example, one can invoke the rationale of the medical opinion in relation to the purpose of marriage, that the guardianship court is not compelled to verify when ordering the emancipation of the minor. We believe that, if we consider that the exception regulated by article 40 NCC is part of a wider concern of modern society to give more rights to people before the age of 18, we can admit that the emancipated minor can conclude the marriage by himself, without further consent or authorization (Avram, 2013: 45-46).

Conclusions

In Romanian law, the natural person has full legal capacity to exercise rights, namely the aptitude to conclude civil legal acts by oneself when the person comes of age, i.e. at the age of 18. There are two express exceptions to this rule, when the natural person acquires full legal capacity before the age of majority, but not prior to reaching the age of 16. In case the minor acquires full legal capacity through marriage, the provisions of the New Civil Code removes the traditional distinction in this matter, between male and female. For the future this possibility is admitted regardless of sex. The doctrine and case law have clarified the problems in this matter in time, in the interpretation and application of the provisions of the Family Code and the 1864 Romanian Civil Code. This experience is also useful in the interpretation and application of article 39 and article 272 NCC which regulate the possibility of the minor who has reached the age of 16 of getting married and the legal consequences of this act. In case the minor lodges an application with the guardianship court for the recognition of full legal capacity, the application of article 40 NCC may encounter in practice, at least in the beginning, some difficulties. Given the novelty of this solution, it was expected that the notion of "serious grounds" should be clarified by the legislature. The enumeration of several examples that might constitute serious grounds in this matter can be supported by *de lege ferenda*. On the other hand, the 1864 Romanian Civil Code expressly regulated the revocation of emancipation (article 431-432), a situation in which "the minor shall have a guardian again – or be subject to parental authority – and this situation shall last until he reaches the age of majority". The new Civil Code does not contain provisions on this possibility, so one can argue that, once acquired, full legal capacity is irrevocable. One can notice that the age from which, in accordance with the provisions of the 1864 Civil Code, the minor could be emancipated by his father or mother, the age of 18 respectively, became the age of majority in time. It is possible that, under the new Civil Code, the age at which one can obtain anticipated full legal capacity, i.e. the age of 16, might become the age of majority in the future.

Last, but not least, the law provides certain exceptions in the sense of acquiring full legal capacity *before* the age of 18, but not in the sense of acquiring it after the age of majority.

Theoretically, one can mention the hypothesis of the minor between 14-18 years of age who is laid under judicial interdiction in accordance with article 169(2) NCC. As long as the interdiction is banned, pursuant to article 177 NCC, after reaching the age of 18, it is an exceptional situation in the sense of acquiring full legal capacity after the age of majority.

References:

Alexandresco, D. (1907). *Dreptul civil român în comparaţiune cu legile vechi şi cu principalele legislaţii străine*, vol. II, 2nd edition, Bucharest: Leon Alcalay.

Avram, M. (2013). *Drept civil. Familia*, Bucharest: Hamangiu Publishing House.

Chelaru, E. (2014). *Teoria generală a dreptului civil în reglementarea NCC*, Bucharest: C. H. Beck Publishing House.

Dogaru, I., Cercel, S. (2007). *Drept civil. Persoanele*, Bucharest: C. H. Beck Publishing House.

Chelaru, E. (2012). In Baias, F. A., Chelaru, E., Constantinovici, R., Macovei I. (coord.), *Noul Cod civil. Comentariu pe articole article 1*- 2664, Bucharest: C. H. Beck Publishing.

Emese F. (2012). In Baias, F. A., Chelaru, E., Constantinovici, R., Macovei I. (coord.), *Noul Cod civil. Comentariu pe articole article 1- 2664*, Bucharest: C. H. Beck Publishing.

Nicolae, M. (2013). *Contribuţii la studiul conflictului de legi în timp în materie civilă*, Bucharest: Universul Juridic Publishing House.

Reghini, I., Diaconescu, Ş., Vasilescu, P. (2013). *Introducere în dreptul civil*, Bucharest: Hamangiu Publishing House.

Stănescu, Corneliu Bîrsan, *Drept civil. Teoria generală a obligaţiilor*, Bucharest: All Publishing House.

Ungureanu, C. T. (2011). *Manual de drept civil. Partea generală. Persoanele*, Bucharest: Hamangiu Publishing.

Ungureanu, O., Munteanu, C. (2011). *Drept civil. Persoanele (în reglementarea noului Cod civil)*, Bucharest: Hamangiu Publishing.

Vasilescu P. (2012). *Drept civil. Obligaţii*, Bucharest: Hamangiu Publishing House.

Article Info

Received: April 19 2015
Accepted: May 29 2015

RSP • No. 46 • 2015: 305-313

ORIGINAL PAPER

Child Abduction by a Parent or Exercising Parental Authority: Balancing European and National Regulations

Oana Ghiţă[*]

Abstract
The study aims to achieve normative distinction between the kidnapping of a child and exercise parental authority through the legal conditions in which such an act requires state intervention. This also led to the creation of an international instrument which must be applicable when the situation goes beyond the borders of a state. The 1980 Hague Convention is applicable legislative act in case one of the parents resorts to the taking away or refusing to return the child to the child's habitual residence when it involves a move from one contracting state to another. Nonetheless, we should keep in mind the fact that the perpetrator, in this case, is one of the child's parents, and restoring the legal situation is done through civil law, without involving the criminal law if there is a complaint in this regard. Established jurisprudence shows us the real applicability of the Convention, the conditions for determining the classification of the deed make it necessary to analyze it from one case to another. This main focus of this paper is an analysis of the conditions that the removal or refusal to return the child must meet in order to fall under the text of the Convention. The exceptions to the obligation to return the child to his/her habitual residence immediately leads to some discussions that we want to emphasize through the analysis of several decisions in this regard.

Keywords: *international abduction, travel, the best interests of the child, parents, parental authority*

[*] Associate Professor, PhD, University of Craiova, Faculty of Law and Social Sciences, Law Specialization, Phone: 0040729930099, E-mail: ghita.oana@gmail.com.

Introductory notions

Civil aspects of international child abduction find their international legal framework in the Hague International Convention of October 25, 1980, completed by provisions from the Explanatory Report on the Convention by Pérez-Vera (Perez-Vera, 1980: 426), and in the Council Regulation (EC) no. 2201/2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial and parental responsibility matters, repealing the Regulation (EC) no. 1347/2000. In our country the arrangements described above have been transposed by Law no. 100/1992 (Official Gazette, 1992: 243), with the implementation of the Convention at a national level being achieved through Law no. 63/2014 (Official Gazette, 2014: 352) on the application of the Convention on the Civil Aspects of International Child Abduction.

It was often found in practice (Briţa, 2006: 118-127) that the Convention text was incorrectly interpreted. Thus, there have been many discussions about the impossibility of perpetrating an international kidnapping of minors by one parent, given the parent's right to the underage child. For this reason, many people are confused, using such means - travel, refusing to return the child to the habitual residence – in order to have their own children close to them and whose residence was decided by the other parent, respectively, most often, by the former spouse. However, the Hague Convention finds its application precisely in the abusive exercise of parental rights by one parent, with the main objective being the best interests of the child. This provision primarily seeks to combat the idea that, despite a natural right, parents can "appropriate" the children wherever and in however way they want, regardless of the consequences such actions have on the minor, thus troubled. Provisions of the Convention must be completed by the national law, it is quite difficult to have a uniform language in all contracting countries. Thus, we find discrepancies between certain expressions used in the Convention, namely the Regulations and legal texts at national level. Just from this point of view we consider it important to make some terminological clarifications before actually develop the analysis that we have proposed.

Even in the title of the Convention we find the term "abduction" (Dexonline), which is then played back in it by one of the actions: displacement or retention (non-return). This discrepancy between the title and the text act is considered as intentional given the limited and acknowledged applicability of the Convention due to the type of relationship it standardizes, as regards the civil aspects of international child abduction and what in common terms we could understand by "abduction" (known in different legislations by the terms: "răpire" (Ro.), "enlèvement" (Fr.) or "secuestro" (Sp.)).

Also, through the new Civil Code coming into force, the notion of "custody" of the child loses the "power" that we used to and one of the parents was sworn in as he was concerned about the rights and duties towards the underage child in care. Under article 496 New Civil Code (Official Gazette, 2011: 505) the residence of the minor is set at the home of one of the parents in case of divorce, parental authority is recognized, in accordance with article 483 of the New Civil Code equally to both parents. However, we find the terms "custody of the minor" or "child custody" (Lupaşcu, 2005: 180) both in the Convention and in the EC Regulation 2201/2003 which we will understand to mean what the new Civil Code describes, namely the parent in whose home the child lives. We must emphasize that for the parent in whose house the juvenile's home (Avram, 2013: 321) has been established, there are a series of correlative rights and duties towards the child that result from this coexistence.

Mechanism for Restoring the Legal Situation in the case of International Child Abduction

In outlining the objective of the Convention we should consider those situations where, in order to obtain custody of a child (Tomescu, 2005: 227) (or establishing the child's home, to use the terms sanctioned in the New Civil Code) force was used in establishing certain artificial relationships at an international level between a parent and a child. From the variety of situations we can extract some elements that characterize the object of the international abduction of minors: the child is taken from the social environment in which he/she had lived and developed, with this detachment from his/her family occurring by displacement from his/her ordinary living environment of the child, or by refusing to return the child to the natural person or legal entity in whose care the child is. Moreover, the persons unlawfully moving or retaining the child want, most often, the authorities in the country where the child was taken to establish the legal domicile. In most cases, the situation places one of the child's parents as the illegal displacer or detainer of the child, but we consider that we should examine the conditions in which this movement changes from an absolutely normal one, as in the exercise of a right and obligation that parents have towards their children to an abusive, unlawful one.

According to article 1, the main objectives of the Convention are to "to secure the prompt return of children wrongfully removed to or retained in any Contracting State; and to ensure that rights of custody and of access under the law of one Contracting State are effectively respected in the other Contracting States". We distinguish a temporary measure for the return of the juvenile as ordered by court of the state on whose territory the child can be found at the time of judgment (Dobozi, 2011: 318). Often, civil aspects relating to international child abduction provided by the Hague Convention and transposed into national legislations of the Contracting States (as we have seen and concerning our legislation) are confused with criminal aspects regulated by the domestic laws in each State. In the case of our legal system, from a criminal point of view, article 379 from the New Criminal Code regulates child custody measures, a legal text that is placed in the Special Part of the Criminal Code, Title VIII, Chapter II - Offences against the family (articles 367-375). Nonetheless, most often when a parent abuses their legal rights towards the child, the other parent commits an error and not knowing which the competent authorities in solving such a particular case are and the law applicable, use the solution provided by the Criminal Code but this carries no effect at a civil level.

The parent whose rights have been breached by unfair measures notifies the police filing a complaint (Toader, Michinici, Crişu-Ciocîntă, Raducanu, Dunea, 2014: 202) under article 379 paragraph (3) of the New Criminal Code. This text provides in paragraph (1) that "detention by a parent to the underage child without the consent of the other parent or legal guardian, shall be punished with imprisonment from one to three months or with a fine" and in paragraph (2) provides that the parent will receive the same punishment, "a person entrusted with the child by court order in order to be cared for and educated to prevent repeatedly either parent from having personal contact with a minor, under the terms established by the parties or by the competent body".

From the legal text we can observe the penalties that are applied to the parent exhibiting such an attitude towards the child, but not criminal law may stipulate the legal situation for the purposes of returning the child to the child's habitual residence. It is in fact the object of the Hague Convention.

The Unlawful Nature of Removal or Retention

Considering the provisions of the Hague Convention, in each particular case, the court must examine the elements exceeding the normal exercise of parental rights over establishing the child's residence. According to article 2 point 7 of the EC Regulation no. 2201/2003 "parental responsibility" is determined by all rights and obligations conferred upon a natural person or a legal entity based on a court ruling, by full right, and includes the right of custody, namely and currently, to establish the home of juvenile (according to point 9 of the Regulation). In a decision (Brița, 2006: 118-127) by the Court of Bucharest, it granted the request made by the Ministry of Justice and ordered the return of the minor, BD to the child's habitual residence in the Republic of Hungary, within 2 weeks of the judgment under penalty paying a civil fine by the lady defendant in the amount of 10 million ROL to the Romanian state. In fact, the common-law marriage between the plaintiff, BG, and the defendant, LCS, produced one child, BD, born on 03.08.1999, who in June 2001 lived with his father in Hungary. On December 24, 2003, the paternal grandmother came to Romania with the minor that was entrusted to the defendant was left for a day, but she did not return the child. The Ministry of Justice as Central Authority requested the emergency return of the minor to the habitual residence in the Republic of Hungary. In her defense, the lady defendant argued that because of the violent behavior of the plaintiff she had to return to Romania, leaving the child in the care of the plaintiff, a situation which lasted until December 2003, when the paternal grandmother entrusted minor to the mother.

To pronounce judgment, the court remained within the legal provisions of the Romanian and Hungarian state on the promotion and safeguarding of children's rights through this point of view exercising parental rights by both parents, the existence of an agreement in this regard and the unlawful nature of the movement. Based on the evidences, the court found the detention of the child in Romania was unlawful, according to article 3 of the 1980 Hague Convention, which determines the father's deprivation of the right to have contact with the child and exercising his rights and duties towards the child.

According to article 2 point 9 of Council Regulation (EC) no. 2201/2003, the exercise of parental authority shall be made jointly by both parents and regarding the place where the child live his/her everyday life (Albăstroiu, 2014: 292). Thus, the rights and duties whereby the parental authority is determined primarily include the right to decide on the place of the child's habitual residence. However, pertaining the authority, according to article 2 point 11 letter b of the Brussels Regulation II bis (2201/2003) "*will be considered to be exercised jointly when, following a court order or operation of law, one holder of parental responsibility cannot decide the child's place of residence without the consent of the other holder of parental responsibility*".

In the case we have just analyzed, parents have joint rights and obligations towards their child minor, which means that the defendant is not entitled to decide on the child's residence, so retaining the child in Romania without the agreement of the father is unlawful under article 3 of the Hague Convention. According to article 3 paragraph 1 of the Convention, the removal or retention of a child is considered unlawful when it is in breach of rights of custody attributed to a person, an institution or any other body either separately or together, by virtue of the law of the State in which the child was habitually a resident, immediately before the removal or retention, and at the time of removal or retention those rights were actually exercised, either jointly or alone taking action or they

would have been exercised thus, if such circumstances would not have occurred (Ghiţă O., 2014: 54-64; Ghiță D., 2014: 148-160).

The court found, in relation to the facts presented, they met the requirements of the Hague Convention of 1980, being an unlawful refusal to return of the child's habitual residence in Hungary, the child was legally moved by the paternal grandmother to Romania for the minor to have personal contact with his mother, who subsequently detained him in Romania without the father's *agreement*, thus violating the mother's right effectively exercise the duties relating to the child including rights relating to the care *required by the child* and in particular, the right to determine the place of residence. Given the child's *habitual residence* prior to the movement to Hungary, and given that until the present the father's consent on changing the child's residence was not involved and not more than *one year* elapsed without father having initiated the return of the child to their habitually resident immediately before the removal and retention, which was in Hungary.

It should be noted that, according to article 12 of the Convention, the authority has notified the immediate return of the child after an elapsed period of less than one year with effect from the moment of non-return travel or when the application was made before the judicial or administrative authority of the Contracting State where the child is. Even after the expiration of the one-year period, the judicial or administrative authority, is also expected to order the return of the child, unless it is determined that the child was integrated wholly in his/her new environment (Gavrilescu, 2011: 69). In this sense, the Sector 1 Court of Bucharest (Civil sentence no. 4604/21 June 2006) also upheld in its ruling the mother's (VIC) request, and the father (VM) was forced to return the minor to his mother, in order to the fulfill the conditions stipulated by article 3 of the Convention. In fact, the parents V.M. and V.I.C. were married on 23.9.1992 in Austria and minor VAM was born on 06.08.2001, in Bucharest.

In April 2004, the defendant took the child, with the consent of the mother, who was on vacation in Romania for about 6 weeks, provided the father returned the child to Baden, an obligation which did not respect. The evidence showed that the parents held, in accordance with Austrian law, joint custody, since their divorce. According to its decision of 19.11.2003 issued by it, the District Court of Baden was willing to grant exclusive parental care to the mother, withdrawing the defendant's right to custody on a provisional basis pending finalization of the divorce.

The Court of Bucharest rejected the appeal as unfounded on the ground that the purpose of regulating article 3 of the Convention is to protect relationships already protected by the law of the State where they were previously going on prior to refusal to return, and the best interests of children aged 3½ years, is to live together with the mother, all the more since there is no evidence showing danger or intolerable situations that does not allow the parent to properly exercise his/her parental rights. It should be emphasized that article 1 paragraph. (2) of Law no. 369/2004 (which came into force on December 29, 2004), the higher Court became the competent authority to resolve requests on the application of the Hague Convention. According to article 12 paragraph. (2) thereof the judgment is subject to appeal before the Court of Appeal, Section for juveniles and family, within 10 days from notice. Thus, from 29 December 2004 the means of appeal were eliminated. The emergency return of the child in the country where the child has his habitual residence is motivated by the need for the child no longer to be considered the property of the parents and thus transformed into an instrument of chicanery and blackmail between the two. The real victim of abduction is the child who risks suddenly losing the balance in his/her life and suffer the trauma at being separated from the parent to whom

he was always felt uncertainty and frustration related to adaptation to a foreign language, cultural and conditions which are not familiar to him/her, such as unknown teachers and family (Recommandation, 1979: 874).

In line with the purpose of the Convention, as explained in the Pérez-Vera report, when it is found that the removal from a Contracting State was made illegal, the court must give way to a return procedure as governed by the Hague Convention of 1980, which does not question the custody rights of the child by a parent or another person, but in the reintegration to their ordinary life environment, from which he has been moved and it is in his interest not to be removed or retained under certain more or less questionable rights to the person (Perez-Vera, 1980: 426).

Exceptions to the Immediate Non-return of the Child

Most often in practice, discussions about exceptions are raised out of an obligation to return the child under the stipulations of the Convention, precisely in order to circumvent its objective and abusive exercise of the right to establish the child's home with one of the parents. From this perspective, we consider it necessary to bring those exceptions into question without attempting an analysis of them, but to present them in terms of deriving principles, and especially in the way in which they can be perceived by the application in these cases.

Failure to fulfill obligations resulting from establishing of the child's home with one of the parents/the existence of an agreement to move or retain the child

Article 13 of the Convention provides that the judicial or administrative authorities of the requested State are not bound to order the return of the child if the person requesting the return does not actually hold the right to custody, before the allegedly illegal removal of the child, namely that person *does not exercise the rights and obligations arising from the establishment the minor's home* - in countries where the term "child custody" is no longer used for as in our legislation - which the person now seeks to invoke, or *if subsequently that person had consented to the act that now they are trying to attack*. Therefore, the situations referred to in this paragraph shall apply on the one hand to damage the child's best interest arising from not exercising the rights and obligations pertaining to the establishing custody/home with one of the parents, and, on the other hand they concern the consent of the parent that took care of the child, about the removal of the minor, consent which may be given before or after the journey. In this respect, the decision (Raban vs Romania) of the European Court of Human Rights on the basis of which the Court reiterates that "the principle that the interests of the child should be fundamental in proceedings started under the Hague Convention". In this case, the evidence presented it was recorded that the children had left Israel and remained in Romania, with their mother with the father's consent, motivated by his worsening financial situation. According to the parents' agreement, the children were to stay in Romania until the financial situation of the applicant, the father of the children, would improve – thus, even the fact that they bought roundtrip tickets, which were cheaper than one way tickets emphasized the financial difficulties facing the family; however, with time, the evidence showed that this situation has continued to deteriorate since the applicant sold the house in which the family had been living after the departure of his former wife with children, and he went to live with his mother (Otovescu-Frăsie, 2007: 297).

Also, the applicant has provided no evidence to support his statement that he sent money to his children. In addition, the court decided that the plaintiff has not shown that he kept contact with his children; in the case file there is one single record of a visit made

by the applicant to his children on 3 October 2007; telephone conversations which he claimed that he had with his children in Romania were made from his mother's house, being interpreted as conversations between children and paternal grandmother. Therefore, the agreement between spouses concerning keeping the children in Romania proved to be real, and such an agreement cannot be construed as a violation of article 3 of the Hague Convention.

Moreover, the evidence in the file showed that the two children have integrated very well in the Romanian community – had good results in kindergarten and positive psychological assessments – arguments that led to dismissing the applicant's action. The court also ruled that "the assessment of the children's situation conducted by the Directorate General of Social Assistance and Child Protection in the presence of legal counsel stated that an assessment of the potential effects of separation from their father could not be made, to the extent that there was insufficient information on the relationship between father and children".

Given the evidence on record the Court considered that *the plaintiff had consented to the removal and retention of his children in Romania* until such time as his financial situation improved, which renders article 3 of the Hague Convention is moot in this case. The European Court held that there is no reason to disregard the decisions of national courts which were able to analyze and resolve the particular case *in concreto*.

The Serious Risk that the Child Is Exposed to Physical or Psychological Harm due to the Return to his/her Usual Home

Point b and paragraph (2) of the same article 13 of the Convention provides exceptions that are based on the principle of the child's best interests, but refers to the situation where there is a grave risk that the return exposes the child to physical or psychological harm. The best interests of the child (Drăghici, 2013: 97) to be moved from the habitual residence or not to return to it, must be supported by the existence of sufficient evidence that ensure his/her stability in the new environment, the interests of the parents to exercise their rights and obligations arising from parental authority being subsumed to the interest of the child. In this respect the text of Recommendation 874 of 1979 of the Parliamentary Assembly of the Council of Europe, whose main general principle states that "children should not be regarded as their parents' property, but must be recognized as individuals with their own rights and needs" (HCCH).

In the case Raban vs. Romania, not applying article 3 of the Hague Convention was not the only argument which led the national court to refuse the order to return of children. The other arguments presented before the national courts, based on the children's interests and evidence brought by the mother and the domestic social institutions in accordance with which *the children have integrated well into the new environment,* contrasted with existing evidence that they would be at serious risk or psychological danger if they return to Israel, a fact which resulted in applying the exception provided for in article 13 paragraph (1) of the Hague Convention.

Returning the child "would not be permitted by the fundamental principles of the petitioned State relating to the protection of human rights and fundamental freedoms"

According to article 20 of the Convention, the return of the child *"would not be permitted by the fundamental principles of the requested State relating to the protection of human rights and fundamental freedoms"*. This provision seems extremely restrictive and is becoming, by its nature, unusual to the content that can normally be found in international treaties (Dănișor, 2014: 12-27). It is the result of a compromise between those delegations that have admitted and that have opposed the inclusion of a clause in the

agreement of "public policy". Divergence started from excessive limitations and traditional cultural events that characterize the creation and existence of families in different countries. Initially, the reservation stipulated was formulated as follows: "The Contracting States may reserve the right not to proceed with the return of the child when the return would be manifestly incompatible with the fundamental principles of law relating to families and minors from the requested State" (Special Commission, 1979). The adoption of this text has caused a quite important gap in the context governing the procedures of the Convention up to that point.

In this situation, the adoption by a majority of states (the text was adopted by a majority of 14 votes, 6 opposed and 4 abstentions) of the provision in the version found in article 20 of the Convention represents a commendable attempt to reach a compromise between opposing points of view, so that the role entrusted to the domestic law of the state providing refuge was diminished considerably. On the one hand, the reference to the fundamental principles relating to the protection of fundamental human rights and liberties linked to a field of law in which there are numerous international agreements.

On the other hand, the provision contained in article 20 covers a wider area in comparison to the traditional formulation of rules of "public policy" in the degree of incompatibility between the claimed right and expected actions. In fact, for the authority to be able to refuse the order to return the child by based on the fundamental right which is reflected in that provision, it must demonstrate not only that such a contradiction exists, but that the principles protecting human rights prohibit the return required.

Conclusions

The importance of knowing the instruments guaranteeing the rights and obligations of the child even against those who ordinarily should provide the child with protection is as high as the very existence of the legal stipulations. The text of the Hague Convention, as it was designed in order to ensure the best interests of the child must be understood in the sense of its application against the parent who abuses the exercise of the rights conferred upon him/her by law. The analysis of provisions in the Convention is important to be made in order to honor the child's interest, providing in this regard emergency exceptions as well to the return the minor to the established home, where the actual situation requires it.

References:

Avram, M. (2013). *Drept civil. Familia*, Bucharest: Hamangiu Publishing.

Albăstroiu, R. G. (2014). Council Regulation (EC) No 2201/2003 – Mechanism of Modernisation for National Legislations in the Field of Family Relationships. In *Transdisciplinarity and communicative action*, Iași: Lumen Publishing House, pp. 287-296.

Bacaci, Al., Dumitrache, V., Hageanu, C. (2002). *Dreptul familiei (III)*, Bucharest: All Beck Publishing House.

Brița, D. (2006). *Jurisprudența Convenței de la Haga din 1980. Aspecte civile ale răpirilor internaționale de copii*, pp. 118-127. Retrieved from: www.inm-lex.ro/arhiva/fisiere/pag_34/det_415/1389.doc.

Dănișor, D. C. (2014). Debating Revolution and After: Notes on Institutions Establishment and Cleavage Transition. *Revista de Științe Politice. Revue des Sciences Politiques*, (44), 12-27.

Decision 1081/2005, Bucharest Court of Appeal.
Decision no. 670/2005, 3rd Section, Higher Court of Bucharest, Briţa D., *Aplicarea Convenţiei de la Haga din 1980*, pp. 118-127. Retrieved from: www.inm-lex.ro/arhiva/fisiere/pag_34/det_415/1389.doc.
Dobozi, V. (2011). Aplicarea dispoziţiilor Convenţiei de la Haga privind aspectele civile ale răpirilor internaţionale de copii. *Curierul Judiciar*, (6), 318-326.
Drăghici, A. (2013). *Protecția juridică a drepturilor copilului*, Bucharest: Universul Juridic Publishing.
Gavrilescu, A. G. (2011). Aspecte teoretice și de practică judiciară privind înapoierea copilului deplasat sau reținut prin violarea unui drept privind încredințarea. *Analele Universității Constantin Brancusi"*, (1), 67-82.
Ghiţă, D. (2014). Reforming the Trials' Procedure in the New Civil Procedure Code. *Revista de Științe Politice. Revue des Sciences Politiques*, (44), 148-160.
Ghiţă, O. (2014). Transpunerea în legislaţia internă a răpirii internaţionale de copii reglementată în Convenţia de la Haga. *Revista de Stiinţe Juridice*, (2), 54-64.
Lupașcu, D. (2005). *Dreptul familiei*, Bucharest: Rosetti Publishing House.
Otovescu-Frăsie, C. M. (2007). The Right to Respect for Private and Family Life. In *Knowledge Based Organisation Juridical Science*, Sibiu: Land Forces Academy Publishing, pp. 296-301.
Perez-Vera, E. (1980). *Explanatory Report by E. Perez-Vera*, Hague Conference on Private International Law (Ill). Retrieved from: http://www.hcch.net/upload/expl28.pdf.
Raban vs Romania, 26 October 2010, request no. *25437/08*, European Court of Human Rights, Strasbourg. Retrieved from: www.juridice.ro/.../2010/.../CASE-OF-RABAN.
Recommandation 874 (1979) of the Parliamentary Assembly of the Council of Europe and the Explanatory Report by Pérez-Vera on the Hague Convention. The Parliamentary Assembly of the Council of Europe. Retrieved from: https://www.consilium.europa.eu/uedocs/cmsUpload/16031.ro07.pdf.
The Special Commission (1979). *Conclusions resulting after the discussions of the Special Commission convened in March 1978 with regards to illegal abduction*. Retrieved from: http://www.scribd.com/doc/39839643/Despre-Conventia-de-La-Haga-lucrare
Toader, T., Michinici, M-I., Crișu-Ciocîntă, A., Răducanu, R., Răduleţu, S., Dunea, M. (2014). *Noul Cod penal - Comentarii pe articole*, Bucharest: Hamangiu Publishing.
Tomescu, M. (2005). *Dreptul familiei. Protecția copilului*, Bucharest: All Beck Publishing.

Article Info

Received: March 1 2015
Accepted: May 20 2015

RSP • No. 46 • 2015: 314-323

ORIGINAL PAPER

Procedure Institutions Reformed through the New Romanian Civil Procedure Code: Legal Bases and Prospects

Daniel Ghiţă*

Abstract
Adopted in 2010 and enforced in 2013, the new Civil Procedure Code does represent not just the *successor* of the ancient Code which was issued in 1865, but as well the final achievement of a reforming tendency exerted upon the civil procedure. This mutation was continuously carried on during the 20th century and was increasingly deepened during the first decade of the 21st. The procedure of the system which was instituted through the ancient Code, in spite of undoubtedly having proved its intrinsic value and apart from the many changes it had gone through due to successive enforcements within the current legislation of the 20th century, had come to see itself, during the recent couple of decades, challenged through the argument that it had lacked to provide an appropriate answer to the requirements of a civil justice that ought to have been modern. This incriminating adjective means the cumulated existence of the following assets as *desiderata*: efficiency, celerity, predictability and a strict consequentiality for its uttered solutions. In respect to these demands, the actually enforced regulation does institute a lot of procedural forms and mechanisms which are innovative and do obey to, simultaneously, two inspiring commandments: the first one is, for the justice of system, to increase the promptitude of uttered answers; the second one is to ensure, for the jurisdictional action, the highest quality. In the accurate performing of the civil lawsuit, some institutions of procedure bear a high importance. To reform them consisted either in integrating some solutions that were longtime since agreed upon by doctrine and jurisprudence (a fact which looks like a natural evolution) or, on the contrary, in inserting some absolute innovations which, even since they were simple drafts, might have been the occasions for intense contradictory arguments. This latter case is, precisely, the reason why, should we dedicate a study to the norms that are parts of these recently aggregated institutions, we ought to less insist upon what was crystallized as achieved constants in the law's theory and in judicial practice. Instead, we should aim to correctly outline the functioning mechanisms of the new procedure's instruments.

Keywords: *civil lawsuit, reform, New Civil Procedure Code, institutions, legislation*

* Associate Professor, PhD, University of Craiova, Faculty of Law and Social Sciences, Law specialization, Phone: 040351177100, E-mail: daniel.ghita74@yahoo.com.

Preliminary issues

The need to reform the fundamental institutions of civil procedure was determined by a series of requirements imposed by the case law of European courts, then established by doctrine and incorporated, in time, into legal rules dictating principles. With the new Code of Civil Procedure, which entered into force in 2013, several fundamental principles of the civil trial, such as the free access to justice and the right to a fair trial within optimal and predictable time, which were not mentioned in the previous code, lay at the basis of reform. Naturally, the use of these principles and, in particular, jurisprudential arguments generated by the former, imposed the reconfiguration of major procedural institutions. The effective application of such principles designed to have the effect of deciding cases with celerity, a reasonable duration of trials and a unitary case law, as well as predictable judicial practice, led first of all to an intervention of the legislature on two fundamental institutions – the jurisdiction of courts and appeals. Equally, however, this reconfiguration of the civil trial, determined by the substantial intervention of the legislature on the two major institutions would not have led to the attainment of the goals if it had not been accompanied by the establishment of adequate procedural mechanisms meant to ensure effective, optimal development of legal proceedings and to prevent, before the end of the trial, the emergence of non-unitary practices in the same matter.

Thus, new regulations were introduced in the new code regarding the legal regime of procedural exceptions, the rules on the prorogation of jurisdiction, while other regulations aimed at the possibility of introducing, ex officio, a third party in the trial, the reconfiguration of the civil trial stages and the focus on the written preparatory stage of the trial. New procedural means were introduced in order to ensure the celerity of legal proceedings, such as the estimation of the duration of trials and the contestation regarding the delay of the trial. The new code also includes provisions to ensure unitary practices while establishing effective mechanisms in this matter. They concern the appeal on points of law – an institution existing in our civil procedure - and the possibility of referral to the High Court of Cassation and Justice for a preliminary ruling on points of law – a new procedural institution. These interventions of the legislature on important procedural institutions are supplemented by better regulations on certain matters, within the same declared aim of the new code drafters, namely the acceleration of trials. The rules on the continuity of the panel, the summons of the parties or the possibility of adjourning the trial by mutual agreement of the parties, enjoy the advantage of a more rigorous drafting.

Aspects relating to the jurisdiction of courts

The Romanian legislature has been constantly concerned with the jurisdiction of courts. In the application of the 1865 Code of Civil Procedure, the legal rules governing the material jurisdiction of courts were subject to constant change, with the aim of ensuring a balance of the distribution of competences between district courts, tribunals, courts of appeal and the High Court of Cassation and Justice. The reconfiguration of jurisdiction began with new judicial system established by Law no. 59/1993 amending the Code of Civil Procedure, continued with substantial changes brought by the Government Emergency Ordinance no. 138/2000 for the amendment and completion of the Code of Civil Procedure, Law no. 219/2005 approving the Government Emergency Ordinance no. 138/2000 and ended with Law no. 202/2010 on measures for the acceleration of trials and Law no. 71/20011 for the enforcement of Law no. 287/2009 on the Civil Code. An uninspired moment of the legislature's intervention was the adoption of the Government

Emergency Ordinance no. 58/2003, approved and amended by Law no. 195/2004, which, while attempting to assign the competence of deciding on first and second appeals to the courts of appeal, and the High Court of Cassation and Justice, severely disrupted the course of the trial by overloading the role of these courts. The Government Emergency Ordinance no. 65/2004, approved with amendments by Law no. 493/2004, fosters the way back to the regulation prior to the Government Emergency Ordinance no. 58/2003.

All these legislative interventions attempted to adapt the procedural system to the new requirements of deciding cases with celerity and even anticipated a series of solutions of the legislature that may be found in the new code. The material jurisdiction of courts has been completely restructured by the new code, in order to ensure the flowability of judicial proceedings and the prerequisites for achieving a unitary practice. While observing the goals set by the legislature, the solution was that district courts should decide on small claims, less complex cases, which are common in practice, and tribunals should become courts with unlimited jurisdiction as original jurisdiction courts. The way of regulating jurisdiction in the new code assigns unlimited jurisdiction to tribunals as first instance courts and district courts become exceptional courts in civil matters (Belegante, Ghinoiu, 2010: 18; Leş, 2010: 243-245).

This redistribution of functional jurisdiction of courts would have been ineffective, even harmful in achieving the goals of the reform process, if it had not been linked to the restructuring of appeals. Moving original jurisdiction from district courts to tribunals impliedly led to the assignment of competence to decide on the first appeal to courts of appeal, since the first appeal is the common appeal. Likewise, by relating the provisions governing the original jurisdiction of tribunals to those regarding the object of the second appeal, one achieves the possibility for the supreme court to decide on appeals in the most important matters, considered as such by the very nature of the cases or value of the object. By regulating the grounds for cassation, which cover only issues of illegality, and by its exclusive assignment within the jurisdiction of the Supreme Court, the second appeal became the extraordinary appeal ensuring the exercise of a control of legality and the interpretation and unitary enforcement of the law. This change of jurisdiction is undoubtedly useful, given the criticism of the previous code that favoured the emergence of a non-unitary practice.

Similarly to the previous code, the first appeal is qualified as the only ordinary and devolutive appeal, and under the new code it becomes the main reformation appeal. Thus, the first appeal is lodged against the judgments of district courts and tribunals as courts of original jurisdiction, and is decided by the next higher court. Unlike the previous regulation, the law rarely suppresses the first appeal. Basically, the cases where the judgments of the first court are exempt from the first appeal and only the second appeal may be lodged against them, are limited and usually address procedural incidents. On the other hand, in accordance with article 459(1) and article 466(1) Code of Civ. Proc., the first appeal prevails over extraordinary legal remedies. These provisions consecrate the character of common legal remedy of the first appeal, and the rule of lodging the first appeal against the judgment of the first instance court, which ensures the principle of the double degree of jurisdiction.

Another novelty is the impossibility of lodging the second appeal subsequent to the first appeal. Thus, in many cases, for reasons depending on the reduction of the duration of the trial and the effectiveness of justice, the new code suppressed the legal remedy of the second appeal, not the first appeal, thus ensuring a double trial on the merits of cases.

In line with the opinions expressed in specialist literature, we consider that this latter solution is justified only if it concerned a series of minor disputes, without raising important legal issues, since, as we have said, the most important effect of the change of jurisdiction is the assignment of the common jurisdiction in the matter of the second appeal to the High Court of Cassation and Justice, which thus naturally fulfils its function of practice unification of the whole country by deciding on the second appeals (Ciobanu, 2009: 79-80). But the new code refers to several categories of cases in which the first appeal is the only remedy, without the possibility of lodging the second appeal against the judgment given on the first appeal. The category of these disputes was considerably enlarged by the provisions of Law no. 2/2013 on measures to reduce the workload of courts, and to prepare the implementation of the Code of Civil Procedure, a normative act that intervened a few days before the entry into force of the new Code of Civil Procedure. By this normative act, one could not lodge the second appeal against a number of judgments of tribunals as original jurisdiction courts, and of courts of appeal, as appellate courts, second appeals that were to be decided by the High Court of Cassation and Justice.

If the exclusion of the remedy of the second appeal in the matters originally envisaged in the draft of the new code was considered reasonable in relation to the purpose of relieving the workload of the supreme court, the tendency of the legislature, expressed even before the entry into force of the new code, to except from the control of legality, by way of the second appeal (and therefore, the control achieved by the supreme court), a series of disputes, was pertinently criticized (Ciobanu, 2013: 1036). Thus, the criticism addressed to the previous regulation and aiming at the completion of the trial before the courts of appeal, subsists in the new regulation by numerous exceptions established by the legislature on the exercise of the second appeal against the decisions of the courts of appeal. While examining the legal provisions in force, one can notice that, in a series of litigations, the judgment is given either by a tribunal, as an appellate court, or by a court of appeal, deciding on the first appeal without the possibility of bringing the second appeal before the supreme court. This solution, although it has the advantage of proximity of justice to the citizen, will be a source of non-unitary practice (Zidaru, 2013: 284), and the mechanisms for the unification of practice, even improved by the new code, will have to prove their effectiveness in a much more consistent way than they have done so far.

The new Code of Civil Procedure alters the legal regime of raising the exception of lack of jurisdiction, taking over the changes already brought to the previous code by Law no. 202/2010 on measures for the acceleration of trials. In the regulation prior to Law no. 202/2010 the legal regime of the exception of lack of jurisdiction differed in relation to the character of the violated jurisdictional norm, according to the type of lack of jurisdiction: absolute or relative, of public order or of private order (Ciobanu, 1996: 442-443). The legal regime of the exception of lack of jurisdiction of public order, namely the exception of lack of material and territorial jurisdiction of public order (exclusive and territorial) was altered. Thus, if the general lack of jurisdiction of courts may still be raised by the parties or by the court at any stage of the case, the lack of material and territorial jurisdiction of public order may be raised by the parties or by the judge at the first hearing at which the parties are legally summoned before the first instance court (article 130 Code of Civ. Proc.). Under the previous code, it was widely accepted that the lack of material and territorial jurisdiction of public order, being absolute, could be raised at any time during the trial.

The change of the regime for raising the exception of lack of exclusive material and territorial jurisdiction in the new Code of Civil Procedure was imposed by the need to

decide cases with celerity and within a reasonable time. Thus, as deemed, the possibility in the old code of raising the exception of lack of material jurisdiction at any stage of the trial, even directly in the first or second appeal caused the instability of the procedural relations and delayed, sometimes without any justification, the trial in the event that it was admitted for the first time, directly, in an appeal (Zidaru, 2010: 254).

However, from the moment they were inserted into the draft of the new code, the changes brought to absolute jurisdiction were subject to doctrinal criticism, since it was considered that the changes affected the whole view on the regime of the jurisdiction of public order, with consequences on the rules governing such competence and on access to a degree of jurisdiction. It was also noted that the solution could lead to the substitution of some courts with regard to the powers of others and that was not in compliance with the principles governing the matter of absolute jurisdiction. Basically, the difference given by their nature disappears, the difference between absolute and relative lack of jurisdiction (Deleanu, 2009: 54). It was also pointed out that, although the wish of the "reforming" legislator was to ensure the celerity of judicial proceedings, the new regime of the absolute lack of material and territorial jurisdiction, leads to the sacrifice of traditional and essential principles of judicial proceedings (Leş, 2011: 17; Chiriazi, 2011: 79-80).

The new code includes a practical solution regarding the legal regime of raising the exception of lack of material, even territorial jurisdiction of public order, determining the court and the parties to examine the question of jurisdiction at an early stage of the trial, as even its specificity requires. In this way it ensures the full application of the rule of the prevalent examination of procedural exceptions and of those that render unnecessary the investigation of the case on the merits.

For the examination of competence, the law establishes the obligation for the judge to verify at the first hearing and to determine whether the court has general, material and territorial jurisdiction, while recording in the interim judgment the legal grounds on which he ascertains the competence. Thus, in addition to the new regime of the lack of jurisdiction and correlated with the need to raise the lack of jurisdiction on the first day of hearings, the jurisdiction must be expressly found at an early stage of the trial in the first instance. The novelty is given by the mentioning in the interim judgment of the ascertainment of one's own jurisdiction, the judge being motivated to undertake a careful examination.

The consequence of the new code would be that the absolute lack of jurisdiction, except the general one, is covered if it was not raised within the statutory period. It was yet considered that the time limit within which one could raise the exception could not be, in practice, a decision given at a single hearing, and the only requirement was to raise it at the first hearing at which the parties are legally summoned, the settlement may occur after the clarification of the aspects that determine the jurisdiction (Zidaru, 2010: 261).

After the entry into force of the new code, the exception of lack of jurisdiction of the first court, even of public order, cannot be raised directly in the appeal, since, according to the legal text, the exception of lack of material and territorial jurisdiction of public order must be raised only before the court of first instance (Deleanu, 2009: 57; Chiriazi, 2011: 80; Zidaru, 2010: 265-268). The lack of jurisdiction of the court, either of public or private order, may be raised as a criticism in appeals, but only if it was previously raised as provided by law. Only the lack of exclusive material and territorial jurisdiction may provide grounds for the second appeal if it was raised as provided by law, not the relative lack of territorial jurisdiction, since the law provides as a cassation ground only the violation of the jurisdiction of public order of another court. Under the rules of the

new code, the possibility of raising the exception of lack of material and territorial jurisdiction in appeals, if the lack of jurisdiction of the first instance court is raised (Deleanu, 2009: 57; Chiriazi, 2011: 80), cannot be supported by text arguments (Zidaru, 2010: 265-268). In matters of prorogation of jurisdiction, the novelty of the regulation is contained in the second thesis of paragraph 1 of article 123 Code of Civ. Proc. which stipulates that the prorogation operates even if the accessories, additional and incidental claims were under the material or territorial jurisdiction of another court, except insolvency claims. The problem to which the drafters of the new code find this solution is not new in our doctrinal and jurisprudential writings. Under the rules of the previous code ("accessory and incidental claims come within the jurisdiction of the court deciding on the main claim") there have been debates on whether the prorogation also operates in cases where accessory and incidental claims were under the absolute jurisdiction of other courts or, more than that, other bodies with jurisdictional powers, and the response of most doctrine and jurisprudence was in the sense of accepting the prorogation of jurisdiction (Ciobanu, 1996: 434; Leş, 2010: 287). The solution proposed by the new code is justified by reasons regarding the proper administration of justice and the need of a unitary settlement of certain related legal relations.

Another express provision, new in nature, that we will also find in the matters of conflicts of jurisdiction points out that the prorogation intervenes for incidental and accessory claims when the competence to decide on the main claim is established by law in favour of a specialized section or a specialized panel.The new Code of Civil Procedure expressly regulates the possibility of a conflict of jurisdiction between the specialized sections of the same court, thus ending some controversies in the legal literature (Deleanu, 2007: 95-98; Coandă, 2008: 118-129; Sas, 2008: 152-163; Pîrvu, Istrate, 2008: 165-170), and a conflict between the specialized panels of the same court. Thus the conflict between the specialized sections of the same court is settled by the section of the higher court, corresponding to the section before which the conflict arose. The conflict between two sections of the High Court of Cassation and Justice is settled by a Panel of five judges. The same applies to the specialized panels.

Trial-related aspects

The forced introduction in the case, ex officio, of other persons constitutes a new form of intervention in the civil trial and, at the same time, in a procedural situation derogating from the principle of availability, in that the introduction of a third party in the trial is not performed on the initiative of the parties, but the initiative of the court.

Thus, pursuant to article 78 Code of Civ. Proc., in addition to the situations expressly provided by law where the judge must order ex officio the introduction of other persons in the case, even if the parties do not consent, when the legal relation brought before the court requires the introduction of a third party, the judge will submit this issue for debate between the parties. The new aspect is not this contradictory discussion of the parties, but the penalty imposed if the parties do not agree with this initiative of the court. If none of the parties requires the introduction of a third party and the judge considers that the dispute cannot be settled without the participation of the third party, he will reject the request without ruling on the merits.

The judgments of first instance and appellate courts enjoyed the major intervention of the legislature in terms of the written preparatory stage. The changes to civil procedure by GEO no. 138/2000 highlighted the written stage of the civil trial, so that, by submitting the main procedural applications, the full outlining of the procedural

framework was ensured from the very beginning of this stage of the civil trial. The new code has brought changes in this respect by establishing a separate procedure for verifying and regulating the claim form, followed by its communication to the defendant so that he can formulate the defence, the communication of the defence to the claimant so that the latter can formulate a response to the defence, all before the first hearing is established. The same applies to the first or second appeal, even if the penalty is not equally effective.

As compared to the previous code the novelty is that, on the one hand, the written stage integrates the verification of the claim form for the purpose of remedying its shortcomings and, on the other hand, the written stage takes place entirely before the first hearing in an administrative procedure which does not involve the presence of the parties before the court. Another new aspect for this stage concerns a possible sanction that may be administered by a judge. The sanction for non-compliance of the claimant with the requirements of the judge in the regularization procedure is the annulment of the claim form by an interim judgment given in the council chamber. The verification and regularization procedure for the claim form is made by the judge who hears the case.

The stages of civil proceedings were resystematized for greater coherence and effectiveness. The new code formally divides the stages of the trial into two sub-stages, the investigation and the debate on the merits of the case. The novelty is that the investigation is conducted, from January 1, 2016, in the council chamber, under conditions of restricted publicity, the parties participating in the hearing only with their representatives, defenders of the parties, witnesses, experts or other such persons whose participation in the trial is allowed by the court.

Another novelty is the preparation of the first appeal file or, where appropriate, of the second appeal file by the court the judgment of which is challenged, a provision established with a view to relieving the courts of judicial review of this procedure, thus ensuring the celerity of appeals. But, as has been done with respect to the investigation stage in the council chamber, Law no. 2/2013 postponed the application of the provisions on the preparation of the file by the court the judgment of which is challenged, until 1 January 2016, and until then the provisions of the law substituting the provisions of the Code shall be applied. The provisional procedure established by the law reducing the workload of courts is different given that the regularization of the first or second appeal request is made by the court which is to rule on it. Likewise, the specific elements of the regularization procedure on appeal, versus the regularization of the introductory claim, are given by the annulment of the request at the first hearing, a solution imposed by the conception of the code with regard to the court preparing the file.

Duration of trials and unitary judicial practice

A constant concern of the legislator of the new code, as results from the reconfiguration of the previously presented procedural institutions, was to ensure an optimal and predictable duration of trials. A new mechanism working for this purpose is established under article 238 Code of Civ. Proc., according to which "at the first hearing when the parties are legally summoned, the judge, after hearing the parties, shall estimate the time needed in the trial-related investigation, based on the circumstances of the case, so that the case may be decided within an optimal and predictable time". The estimated duration of the trial is recorded in the interim judgment and may be reconsidered only on serious grounds.

In order to ensure celerity, the adjournment of trial dates for lack of defence is exceptional and may be ordered at the request of the party concerned, on serious grounds

which are not attributable to the party or his representative. Delay by mutual agreement of the parties can only be approved once during the trial, and the lack of diligence of the parties after such a delay is sanctioned by suspending the trial. Celerity is also ensured by express provisions such as those under art.icle 241 Code of Civ. Proc. During the investigation stage, the judge may set short time limits, even from one day to another, and there are new ways to announce the parties, i.e. alternatives to the classic summons procedure: telephone, telegraph, fax, electronic mail or any other communication means ensuring, where appropriate, transmission of notification and acknowledgment of receipt.

To ensure an adequate act of justice, the principle of continuity, stipulated under article 19 Code of Civ. Proc., - the judge can only be replaced during the trial on serious grounds - is emphasized by article 214 which provides that if the replacement takes place after the parties were heard, the case is reopened and the debates resumed. Deciding the case within an optimal time, requirement of a fair trial, needs, in addition to the formal estimation of the duration of the trial and the regulation of flexible procedural mechanisms, the establishment of an instrument meant to remedy the excessive duration of the proceedings. In this respect, the new code has established a preventive mechanism (Deleanu, 2013: 511) of verification by regulating the contestation regarding the delay of the trial. Through it, any interested party may invoke the violation of the right to a trial within an optimal and predictable time and may require legal measures so that this situation will not occur. In accordance with article 522, the contestation may be filed when the court disregarded the obligation to decide the case within an optimal and predictable time by failing to take measures established by law or by failing to perform, ex officio, where the law requires, a procedural act necessary in the case, although the time elapsed since the latest procedural act would have been sufficient for taking the measure or performing the act. If such a contestation is admitted, an interim judgment is pronounced, which is not subject to appeal, ordering the necessary measures to remove the situation which caused the delay of the trial.

Another goal of reform in procedural matters was the need of unitary interpretation and application of the law by all courts. As a result of what has been said above, the distribution of competences between the courts and the configuration of appeals can ensure the premises of a unitary case law, but for the remedy of non-unitary solutions in the same matter, it is necessary to establish separate instruments capable to intervene effectively and available to the supreme court, the only court with a declared role in the unification of judicial practice. The appeal on points of law preserves its previous physiognomy in the new code and continues to represent the main mechanism for regularizing non-unitary practice materialized in legal issues that have been addressed differently by the courts. At the same time, an appeal on a point of law is a mechanism with a fairly high inertia with regard to its commencement, also lacking *ex tunc* effects, on cases that were differently decided by the courts, cases that constituted the very reason of its initiative.

This was the reason for introducing in the new code the possibility of referral to the High Court of Cassation and Justice for a preliminary ruling on points of law. Through this new instrument the intervention of the Supreme Court is ensured with regard to the unitary interpretation and application of the law in a precautionary manner, in a *pending* case, not definitively decided as happens in the appeal on points of law (Spineanu Matei, 2013: 1007). Unlike the appeal on points of law, which has no effect on the decisions generating it, the ruling on the point of law in the preliminary ruling procedure is binding on the court which started the procedure, and the latter applies it in deciding the case.

The source of inspiration for the Romanian legislature was the model of the request for a preliminary ruling referred to the Court of Justice of the European Union and provided for by the Treaty on the Functioning of the European Union, although the plans where the two mechanisms operate are different, as well as the new French Code of Civil Procedure and the new French Code of Judicial Organization, with the specific mention that in French law the Court of Cassation gives an opinion that is not binding on the court which required it (Deleanu, 2013: 385; Leş, 2013: 770-772). In the preliminary ruling procedure our supreme court gives a decision which solves the point of law, which is binding on the court that required it, from the date of the decision, and on other courts from the date of the publication of the decision in the Official Gazette of Romania. As in the case of the appeal on points of law, the decision has the role of ensuring the unitary, consistent application of the law, and is binding on all courts, the difference residing in the effect produced in the litigation in relation to which it was pronounced.

While analyzing some of the procedural institutions that were subject to reform through the new Code of Civil Procedure - perhaps the most important in the general reconfiguration of civil proceedings - we have tried to capture the innovations designed to justify the amendments, as well as some criticism of the solutions proposed by the new code, that should not be found in the case law generated by the new regulations. The latter (the actual practice of courts) will eventually validate the new solutions proposed, and if, by these solutions, the purposes stated while drafting the new code are achieved, the reform process can be considered a success.

References:

Belegante, V., Ghinoiu, D. A. (2010). Succintă prezentare a sistemului și soluțiilor legislative preconizate de proiectul noului Cod de procedură civilă. *Dreptul*, (2), 17-25.

Ciobanu, V. M. (1996). *Tratat teoretic și practic de procedură civilă*, vol. I, Bucharest: Național Publishing.

Ciobanu, V. M. (2009). Aspecte noi privind recursul în procesul civil în lumina Proiectului Codului de procedură civilă. *Revista română de drept privat*, (1), 71-83.

Ciobanu, V. M. (2013). In Ciobanu, V. M., Nicolae M., *Noul Cod de procedură comentat şi adnotat. vol. I - art. 1-526*, Bucharest: Universul Juridic Publishing, pp. 1033-1147.

Chiriazi, L. (2011). Unele incidente procedurale privitoare la competența instanței în noul Cod de procedură civilă și în Legea nr. 202/2010 privind unele măsuri pentru accelerarea soluționării proceselor. *Dreptul*, (5), 75-82.

Coandă, C. (2008). Discuţii în legătură cu interpretarea şi aplicarea unor dispoziţii legale referitoare la incidente procedural în procesul civil. *Dreptul*, (12), 118-129.

Deleanu, I. (2007). Observaţii cu privire la flexiunile argumentului *de lege* lata în procesul civil. *Revista română de drept privat*, (1), 93-99.

Deleanu, I. (2009). Considerații cu privire la excepțiile procesuale în contextul prevederilor Proiectului noului Cod de procedură civilă. *Revista română de drept privat*, (4), 50-61.

Leş, I. (2010). *Tratat de drept procesual civil*, Bucharest: C. H. Beck Publishing House.

Leș, I. (2011). Reflecții – parțial critice – asupra modificărilor și completărilor aduse Codului de procedură civilă prin Legea nr. 202/2010 pentru accelerarea soluționării proceselor, *Dreptul*, (1), 12-20.

Leş, I. (2013). *Noul Cod de procedură civilă. Comentariu pe articole*, Bucharest: C.H.Beck Publishing.

Pîrvu, L. N., Istrate, A. M. (2008). Discuţii referitoare la aşa-zisul „conflict de competenţă" între secţiile sau completele specializate ale aceleiaşi instanţe. *Dreptul*, (1), 165-170.

Sas, R. V. (2008). Argumente privind admiterea soluţiei existenţei conflictului de competenţă în situaţia în care acesta se iveşte între secţii sau complete specializate ale aceleiaşi instanţe judecătoreşti. *Dreptul*, (7), 152-163.

Spineanu Matei, O. (2013). In Boroi, G., *Noul Cod de procedură civilă. Comentariu pe articole*, vol. I, articles 1-526, Bucharest: Hamangiu Publishing, pp. 922-1023.

Zidaru, G.-L. (2013). In Ciobanu, V.M., Nicolae M., *Noul Cod de procedură comentat şi adnotat. vol. I - art. 1-526*, Bucharest: Universul Juridic Publishing, pp. 253-441.

Zidaru, G.-L. (2010). Observaţii cu privire la condiţiile de invocare a excepţiei de necompetenţă în Proiectul noului Cod de procedură civilă. *Revista română de drept privat*, (1), 251-260.

Article Info

Received: April 10 2015
Accepted: May 29 2015

RSP • No. 46 • 2015: 324-333

ORIGINAL PAPER

Leveraging Institutions in Transition: The Role of the College of Physicians in Romania and Other Disciplinary Commissions in the Process of Applying the Law

Alexandra Oanţă (Nacu)*
Marius Cristian Neamţu**

Abstract
In addition to the courts and authorities of central and local government, a significant role in the application of law is played by public and professional autonomous institutions with administrative-judicial attributions: the College of Physicians in Romania, the College of Pharmacists of Romania, the Superior Council of Magistracy, disciplinary committees within the educational establishments, public authorities and institutions etc. Disciplinary boards and committees established within these institutions are competent to investigate and punish disciplinary offenses committed by employees in a particular field or area, working in specialties (functions) of their activity domain (doctors, pharmacists, magistrates, teachers etc). For staff who occupy positions of leadership, guidance and control, special laws and disciplinary statutes may establish the proposal of sanction in the competence of the heads of ministries. Settlement of complaints or appeals against disciplinary sanctions applied to those practising in certain fields of activity also enters in the competence of disciplinary committees and colleges of discipline. These structures are working in the concrete administration of justice having a role in the process of applying the law.

Keywords: *jurisdictional activity, disciplinary offense, appeal, sanction, College, Commission of discipline*

* PhD candidate, University of Craiova, Faculty of Law and Social Sciences, Email: oanta.alexandra@yahoo.com.
** Lecturer PhD, University of Medicine and Pharmacy, Craiova, Faculty of Midwifes and Medical Nurses, Email: oanacristi_neamtu@yahoo.com.

Introductory remarks

After the 1989 revolution, Romania's efforts have focused on reforming the state apparatus, particularly involving "the acquisition and consolidation of a modern and efficient administration capable of providing the necessary coherence and coordination in cooperation with the ministries and institutions involved" (Avram, Popescu, Radu, 2006: 18). Institutional reform aimed at all public institutions, the central and local public administration, as well as autonomous administrative authorities.

Being an instrument of social control, sanctions, as means of implementing the law, prevent disruption, ensure the cohesion of communities, define the general framework of social processes and penalise deviant behaviours. The sanctions constitute a particularly important component in any legal system and a means of intervention in regulating social relations mechanisms. They are one of the essential ways of achieving the right, ensuring strict observance of the laws by all subjects of law and, thereby, the very effectiveness of law as general system of developing social processes and sanctioning deviant behaviors. In addition to the courts and authorities of central and local public administration, an important role in the work of applying the law is played by the professional bodies with regulatory and judicial powers in their field of activity. Such bodies are: the College of Physicians in Romania, the College of Pharmacists of Romania, the Superior Council of Magistracy, the disciplinary committees of the educational establishments, public authorities and institutions etc.

The College of Physicians in Romania

One of the institutions analysed is the College of Physicians in Romania (CMR), a professional, non-political body, without patrimonial purpose, of public law, with responsibilities delegated by the State authority, within the scope of authorization, control and supervision of the medical profession as a liberal profession. In the exercise of its powers as laid down by Law no. 95/2006 on the healthcare reform, the College of Physicians in Romania has institutional autonomy within its sphere of competence and shall exercise its powers without any interference. In its activity, the regulatory powers of CMR consist in drafting and adopting the Statute of the College of Physicians in Romania and the code of medical ethics, as well as in the regulation of advertising of medical activities. It also has an advisory role in the development of guidelines and protocols of medical practice by specialized commissions of the Ministry of Health and in the development of the framework contract of health insurance by the National House of Health Insurance (Radu, 2009: 46, 61-62). CMR maintains collaboration relationships with the Ministry of Public Health in the preparation of rules on the exercise of the profession of physician on the Romanian territory, in drafting the Nomenclature of medical, dental and pharmaceutical specialties in healthcare network, in drafting the topics and methodologies for competitions and examinations for doctors, as well as the medical criteria for the selection of patients for some types of treatment available in limited number.

As a profesional body with judicial competence, CMR shall prosecute deviations from the norms of professional ethics, deontology and medical rules for good professional practice. The doctor is disciplinarily liable for the infringement of the laws and regulations of the medical profession, of the code of medical ethics, of the rules for good professional practice, and of the status of the College of Physicians in Romania, for failure to comply with binding decisions adopted by the governing bodies of the CMR, as well as for any

acts committed in connection with the profession, which are likely to damage the honor and prestige of the profession or of the CMR.

CMR is organized and operates on territorial criteria, at the national and county level, and also at the municipality of Bucharest level. Between the College of Physicians in Romania and territorial colleges there are relations of functional, financial and organizational autonomy. Pursuant to article 444 of Law no. 95/2006 on healthcare reform, a disciplinary committee is organized within each territorial college, independent of the leadership of the College, which judges disciplinary breaches committed by doctors enrolled in the College. The High Commission for Discipline is organized and operates in the College of Physicians in Romania, independently of the college leadership, which sits in panels of five members and judges appeals against decisions of territorial disciplinary commissions. Trial procedure is stipulated in the Statute of the College of Physicians in Romania.

The College of Pharmacists of Romania

Another representative body with legislative and jurisdictional activity is the College of Pharmacists of Romania (CFR). According to article 576 of Law no. 95/2006 on healthcare reform, the College of Pharmacists of Romania is a professional body, apolitical, non-profit, of public law, with responsibilities delegated by the state in the domain of the authorization, control and supervision of the pharmacist profession as a liberal profession. The College of Pharmacists of Romania has institutional autonomy in its field of competence. At the county level territorial colleges are organized who are in a relation of functional, organizational and financial autonomy with CFR.

By its duties CFR fulfills an important role in the Romanian legal system, even if its powers of regulation, supervision, control and punishment are strictly limited to the professional field. It contributes to the defence of the general interests of society and of the rule of law by ensuring the enforcement of rules and regulations that organize and regulate the exercise of the profession of pharmacist, regardless of the form of exercise and of the pharmaceutical unit in which this profession is carried out. CFR also defends the dignity and promotes the rights and interests of its members in all spheres of activity; defends the honor, freedom and professional independence of the pharmacist and his right to take decisions in the exercise of his professional act; ensures compliance by pharmacists of their obligations toward the patient and the public health; attests the good repute and professional morality of its members (article 579 of Law no. 95/2006 on healthcare reform).

The main tasks of the CFR are jurisdictional and regulatory. Thus, the CFR will draw up and adopt the Statute of organization and functioning of the College of Pharmacists of Romania and the ethics code of the pharmacist; sets the system of continuing education credits, which evaluates the activity of professional training of pharmacists. It also has an advisory role in the development of the framework contract of health insurance by the National House of Health Insurance, as well as in the elaboration of the methodological norms for the application of the framework contract (Radu, 2009: 61, 62). Decisions of the National Council of the CFR are binding for territorial colleges and for all pharmacists practicing pharmacist profession in Romania.

CFR works in its field of competence together with the Ministry of Public Health in the development of regulations on pharmacist profession; in drafting the Nomenclature of medical, dental and pharmaceutical specialties in healthcare network; in the development of topics, methodologies, competitions and exams for pharmacists; in

developing procedures for the exercise of the pharmacist profession in Romania; and also with the Ministry of Education in making the strategy and education programs for the development of pharmaceutical education. As regards its powers of control and supervision, the representatives of CFR, specially appointed, have the right to carry out control and supervision activities on how to practice the pharmacist profession in all pharmaceutical units in Romania. Jurisdictional powers of the CFR are to hold trials in cases of violation of the rules on professional conduct or on the exercise of the profession or of the professional act.

The Superior Council of Magistracy

One of the main objectives pursued by Romania for the purpose of admission as a member of the European Union was the reform of the justice system by "strengthening the justice prestige, improving the functioning of the judiciary system, guaranteeing the independence of the judiciary power, eliminating corruption" (Avram, Pîrvu, Radu, Gruescu, 2007: 163). This reform was achieved through a series of laws such as the Law no. 303/2004 regarding the status of judges and prosecutors, Law no. 304/2004 on judicial organization, Law no. 317/2004 on the Superior Council of Magistracy. Law no. 24/2012 on amending and supplementing Law no. 303/2004 regarding the status of judges and prosecutors and Law no. 317/2004 on the Superior Council of Magistracy made a number of substantial changes regarding disciplinary responsibility of magistrates through strengthening the Judicial Inspection and establishing the role of the President of the High Court of Cassation and Justice, of the Attorney General of the Prosecutor's Office attached to the High Court of Cassation and Justice and of the Minister of Justice as holders of disciplinary action (Radu, Voicu, 2014a: 124-125). The Superior Council of Magistracy (CSM) acts as a disciplinary council for judges and prosecutors, being able to suspend them from office and apply disciplinary sanctions provided by article 100 of Law no. 303/2004 on the status of judges and prosecutors. Dismissal of judges and prosecutors is decided by decree of Romania's President, at the proposal of the Superior Council of Magistracy, while trainees judges and prosecutors are dismissed by the CSM.

The main objective of the creation of this body is to ensure the independence, effectiveness and responsibility with which the act of justice is being carried out (Avram et al., 2007: 165). In this capacity, CSM shall have the right and the obligation to notify *ex officio* in order to defend judges and prosecutors against any act that might impair their independence or impartiality or might create suspicions about these. In addition, the Superior Council of Magistracy defends the professional reputation of judges and prosecutors. The judge or the prosecutor who considers that his independence, impartiality and professional reputation has been damaged in any way can address a complaint to CSM, which may dispose, where necessary, the verification of reported issues, the publishing of its results, may refer the matter to the competent organ to decide on any appropriate measures or may order any other appropriate measure, according to the law. CSM shall ensure the observance of the law and of the criteria of competence and professional ethics in the conduct of the professional career of judges and prosecutors.

The complexity of the functions performed by the CSM within the legal system is reflected in the wide variety of tasks fulfilled: of regulating, advising, monitoring, control and sanctioning. CSM has a regulatory power which consist in the adoption by the plenary session of the code of conduct of judges and prosecutors, the rules of organization and functioning of the Superior Council of Magistracy, the rules on the procedure of

electing the members of the CSM, the internal regulation of the courts, as well as other regulations and rulings set out in Law no. 303/2004 and in Law no. 304/2004.

In cases where the law provides for the assent, approval or consent of the Superior Council of Magistracy, the point of view issued by this is binding. When the law requires consultation or opinion of the Superior Council of Magistracy, its point of view is not compulsory. In terms of sanctioning activity, jurisdiction over disciplinary sanctions belongs to the Superior Council of Magistracy sections (article 101 of Law no. 303/2004). The sections of CSM have numerous responsibilities relating to the career of judges and prosecutors, including: dealing with complaints against the rating granted by the committees for the annual assessment of the professional activity of judges and prosecutors, constituted according to the law; taking action for the resolution of complaints received from litigants or from other people regarding the inappropriate conduct of judges and prosecutors; submission of proposals to the President of Romania regarding the appointment and removal from office of the President, the Vice-President and the Chairmen of the departments of the High Court of Cassation and Justice; the suspension from office of judges and prosecutors (article 40 of Law no. 317/2004). Through its judicial powers, CSM plays an important role within the judicial system (Albici, 2010: 200).

Disciplinary committees within the education establishments, public authorities and institutions

Alleged offences committed by the teaching personnel, the management staff of pre-university education units, staff of the guidance and control of school inspectorates and the guidance and control personnel of the Ministry of Education, Research, Youth and Sports, are investigated by disciplinary committees. Disciplinary committees are appointed by the management board of pre-university education unit – for its personnel and senior management; by the Minister of Education, Research, Youth and Sports – for guidance and control functions of the Ministry of Education, Youth and Sports, as well as for management staff of the county school inspectorates (article 280 paragraph 5 of Law no. 188/1999). In the case of civil servants, for reviewing the facts alleged as disciplinary offences and proposal of applicable sanction, discipline committees are established within each authorities and public institutions (article 79 of Law no. 188/1999 and article 3 of Government Decision no. 1210/2003 on the organization and functioning of disciplinary and parity committees within public authorities and institutions). Exceptionally, the Committee of discipline may be set up for more public authorities or institutions where, within the framework of the respective public institutions or authorities, there are less than 12 civil servants. The Discipline Committee for high civil servants is composed of 5 high civil servants, appointed by decision of the Prime Minister, upon the proposal of the Minister of Internal Affairs and Administrative Reform.

Procedural rules

As regards the categories of persons considered (doctors, pharmacists, civil servants, magistrates, teachers) some specific disciplinary regimes operate governed by statutes of personal and/or disciplinary statutes (Ștefănescu, 2007: 474; Gidro, 2013: 274; Popescu, 2013: 260). Disciplinary boards and committees established by law are competent to investigate and punish disciplinary offenses committed by employees in a particular field or area, working in specialties (functions) of their activity domain. Individualization of disciplinary offenses, penalties, their application procedure, the

establishment, organization and functioning of the discipline committee are established, usually through professional or disciplinary statutes. For civil servants, for example, the establishment, organization and functioning of disciplinary committees and their structure, attributions, mode of referral and working procedure are established by Government decision on a proposal from the National Agency of Civil Servants (G.D. no. 1210/2003 on the organization and functioning of disciplinary and parity committees within public authorities and institutions). Statutes, in whatever form – professional or independent disciplinary statutes – have a strict application limited only to those categories of persons referred to expressly (Radu, 2008: 292).

Specific sanctions

Disciplinary sanctions specific to these categories of employees are other than those in the Labour Code. The disciplinary sanctions that may apply to judges and prosecutors in proportion to the seriousness of offences are: a) warning; b) decrease of gross monthly salary by 20% over a period of up to 6 months; c) disciplinary move to another court or another prosecutor's office, located in the jurisdiction of another court of appeal or of another prosecutor's office attached to a court of appeal, for a period of up to one year; d) suspension from office for a period of up to 6 months; e) exclusion from the magistracy (article 100 of Law no. 303/2004).

Disciplinary sanctions applicable to physicians are: a) reprimand; b) warning; c) vote of censure; d) fine from 1,000,000 Ron to 15.000.000 Ron (failure to pay the fine within 30 days from the date of the final disciplinary decision entails suspension of the exercise of the profession, until payment amount); e) prohibition to practise the profession or certain medical activities over a period of one month to one year; f) withdrawal of membership of the College of Physicians in Romania for the duration established by a final decision of the courts with respect to the prohibition of profession exercise (article 447 of Law no. 95/2006). The same sanctions, except the one referred to in letter d), shall apply accordingly to pharmacists (article 618 of Law no. 95/2006 on healthcare reform).

Civil servants committing disciplinary offences can be sanctioned with the following penalties: written reprimand; reduction of the salary rights with 5-20% for a period of up to 3 months; suspension of the right to advancement in the wage ranks or, where appropriate, to promote in the public's function for a period of 1 to 3 years; the demotion in wage ranks or the relegation in public office for a period of up to one year; dismissal from public office (article 77 paragraph 3 of Law no. 188/1999).

Disciplinary penalties that can be applied to teachers are: a) written remark; b) warning; c) reduction of the basic salary, combined, where appropriate, with the allowance of leadership, guidance and control, with up to 15%, over a period of 1-6 months; d) suspension for a period of up to three years, of the right to entry in a competition for a superior teaching functions or for obtaining teacher's degrees or a function of leadership, guidance and control; e) dismissal from management, guidance and control position; f) disciplinary termination of the individual labour contract (article 280 paragraph 2 of Law no. 1/2011).

The existence of specific disciplinary sanctions shall not exclude the application of general sanctions to employees in those fields. For example, a doctor or a pharmacist may be sanctioned with the general penalty of disciplinary termination of individual employment contract (provided by article 248 letter e) of the Labour Code); even if the special law does not expressly provide this sanction, this is possible by the expressly sending to the common law. Even though article 249 of the Labour Code imposes the

principle that a single penalty may be applied for the same misconduct, there are cases in which committing of a wrongful act may result in a double penalty: one provided by the professional Statute, applied by the college/committee of discipline, followed by another sanctioning decision issued by the employer, in accordance with the provisions of labour legislation (Ștefănescu, 2007: 477; Țiclea, 2012: 810; Gidro, 2013: 276; Beligrădeanu, 2005: 78-96). In principle, the application of general disciplinary sanctions in all areas is possible in so far as they do not contradict the specificity of the activity field and do not replace special disciplinary sanctions (Belu, 2001: 183).

Specific disciplinary procedures

The procedure for investigating disciplinary offences, as well as for the application of specific disciplinary sanctions by colleges and committees of discipline is distinct from the one stated in common law, as laid down in the professional and/or disciplinary statutes. In the case of committing certain disciplinary offences, some disciplinary regimes explicitly stipulate rules of disciplinary procedure different from those stipulated by the Labour Code. For example, during the administrative investigation, to avoid the danger of influencing the investigation, the head of the authority or institution is obligated to ban the access of the civil servant who has committed a disciplinary offense to relevant documents which can influence the investigation or, where appropriate, to temporarily move the civil servant in another department or internal structure within the authority or public institution (article 77 paragraph 7 of Law no. 188/1999). Besides the possibility of suspension as a self-reliant sanction, article 49^1 of Law no. 317/2004 on the Superior Council of Magistracy, introduced by Law no. 24/2012 provides that during the disciplinary proceedings, the section of the CSM, *ex officio* or at the suggestion of the judicial inspector, may order the suspension from office of the magistrate, pending final solving of disciplinary action if the exercise of the function could affect the impartial conduct of disciplinary investigation or if the disciplinary proceeding is likely to prejudice seriously the prestige of justice (Radu, Voicu, 2014a: 127-128).

Disciplinary investigation

Disciplinary investigation is entrusted, in professional statutes, to a designated person or to a body specially set up, usually called the Committee of discipline. Thus, investigation of disciplinary offences committed by teaching staff is carried out by the committee of discipline consisting of 3-5 members (one of whom is the representative of the trade union in which the person in question is member or a representative of employees, and the others are teachers that have a function at least equal to the person investigated). In case of civil servants, that power belongs to a disciplinary committee which includes a representative of the trade union or, where appropriate, a representative appointed by a majority vote of civil servants for which the disciplinary commission is constituted, where the union is not representative or civil servants are not organized in trade unions, committee which also proposes the applicable sanction (article 79 paragraph 2 of Law no. 188/1999). In the case of pharmacists disciplinary investigation shall be carried out by the Department of professional jurisdiction, and in the case of physicians by persons appointed for that purpose by the office of the territorial council or, where appropriate, by the Executive Board of the College of Physicians in Romania. In case of irregularities committed by judges and prosecutors, including by members of the Superior Council of Magistracy and by the assistants-magistrates of the High Court of Cassation

and Justice, prior investigation is carried out by judicial inspectors (Radu, Voicu, 2014a: 127-128).

Application of disciplinary sanctions

In general, as we previously stated, the application of disciplinary sanctions for the professional staff analysed is a task of the boards or colleges of discipline. In the case of magistrates, jurisdiction over the application of disciplinary sanctions rests with the sections of CSM (article 101 of Law no. 303/2004). In the matter of civil servants, the disciplinary Committee shall submit the report of proposing disciplinary sanctions applicable or, where appropriate, the report of termination of disciplinary action to the person legally competent for the implementation of disciplinary sanction at the time of submission of this report. According to article 78 paragraph 1 and 2 of Law no. 188/1999, written reprimand can be applied directly by the person who has legal jurisdiction of appointment in public office, while other disciplinary sanctions referred to in article 77 paragraph 3 let. b)-e) shall be applied by the competent person, upon the proposal of the disciplinary committee. If the person who has the legal jurisdiction to apply disciplinary sanction applies another sanction than that proposed by the disciplinary committee has the obligation to motivate such a decision (Radu, Voicu, 2014b).

For teaching staff of pre-university education units, the proposal of sanction is made by the director or at least 2/3 of the total number of management board members. The sanctions approved by the management board are implemented and communicated through the decision of the director of primary education unit. For management staff of the pre-university education units, sanctions proposal is made by the management board of school education unit and communicated by decision of the General School Inspector. For the management personnel of the school inspectorates and of teachers' houses, the proposal of sanction is made by the Minister of Education, Research, Youth and Sport and shall be communicated by order. For the guidance and control personnel of the Ministry of Education, Research, Youth and Sport, the proposal of sanction is carried out, where appropriate, by the Minister of Education, Research, Youth and Sport, respectively by the secretary of state or the hierarchical head of the person concerned and shall be communicated by order.

The sanction shall be determined on the basis of the discipline committee's report, by the authority which appointed this committee and communicated to the person concerned, through a written decision, where appropriate, by the director of the education unit, the General School Inspector or the Minister of Education, Research, Youth and Sport (article 282 of Law no. 1/2011).

The appeal against sanctioning decisions

The competence of solving the complaints or appeals against disciplinary sanctions belongs to, in certain areas of activity, the disciplinary councils and committees of discipline (Belu, Stoicovici, Almăşan, 2001: 103-110). Against the sanctioning decision of the Superior Commission of Discipline, the doctor or pharmacist sanctioned can make a complaint at the division of administrative and tax disputes of the Court of Appeal within 15 days after notice. In the case of magistrates, the appeal against judgements solving disciplinary action may be exercised, within 15 days of the notification, by the judge or the prosecutor punished or, where appropriate, by the Judicial Inspection or by the other holders of disciplinary action. The sanctioned persons employed in educational establishments have the right to make an appeal to the disciplinary college attached to the

School Inspectorate, within 15 days of the notification. Personnel of management, guidance and control within the school inspectorates and the Ministry of Education, Research, Youth and Sport, which has been sanctioned, has the right to appeal the decision within 15 days of the notification, to the Central College of discipline of the Ministry of Education, Research, Youth and Sport.

In certain statutes, the competence of solving the appeal is expressly provided for. For example, article 51 of Law no. 317/2004 on the Superior Council of Magistracy provides that the jurisdiction of the appeal brought by the judge or the prosecutor belongs to a section of 5 judges of the High Court of Cassation and Justice. According to the article 80 of Law no. 188/1999 and article 51 of Government Decision no. 1344/2007 on rules of organization and functioning of discipline committees, a civil servant discontent with the disciplinary sanction imposed may appeal the sanctioning decision, in accordance with the law, to the competent court of administrative disputes, requesting the cancellation or amendment, as applicable, of the order or the sanctioning decision (Barbu, Vasile, 2013: 252).

Conclusion

When we refer to the realization of the law, we do not have in mind only the courts, even if the substance of justice consists of the judgments handed down by courts of varying degrees, but to the whole structure working together to the realization of justice. Beside the courts and the Public Ministry there are other jurisdictional bodies having meant to defend the general interests of the society and its legal order. As it can be seen, colleges and committees of discipline analyzed have a well defined role in carrying out the act of justice, and in the application of law, respectively. Given the specific character of jurisdictional activity, all organs with judicial powers need to be provided with a series of guarantees, the most important being institutional autonomy and independence in decision-making.

References:

Albici, M. (2010). *Despre drept şi ştiinţa dreptului*, Bucharest: Universul Juridic Publishing.

Avram, C., Pîrvu, G., Radu, R., Gruescu, R. (2007). *România şi exigenţele integrării europene*, vol. II, Craiova: Alma Publishing.

Avram, C., Popescu, P., Radu, R. (2006). *Politici sociale*, vol. I, Craiova: Alma Publishing.

Barbu, V., Vasile, C. (2013). Soluționarea contestațiilor la deciziile de sancționare ale funcționarilor publici de către instanțele de judecată. In Ţichindelean, M., Gheorghe, M. (editors). *Aspecte controversate în interpretarea şi aplicarea prevederilor Codului muncii şi ale Legii dialogului social*, Bucharest: Universul Juridic Publishing, pp. 252-261.

Beligrădeanu, Ş. (2015). Probleme și efecte specifice ale răspunderii disciplinare specifice și ale jurisdicției acesteia în cazul salariaților care, în temeiul unor legi speciale, exercită anumite profesii organizate în corpuri profesionale. *Dreptul*, (9), 78-96.

Belu, C., Stoicovici, R., Almăşan, N. (2001). *Jurisdicţia muncii*, Bucharest: All Beck Publishing.

Belu Magdo, M.-L. (2001). *Conflictele colective şi individuale de muncă*, Bucharest: All Beck Publishing.

Gidro, R. (2013). *Dreptul muncii. Curs universitar*, Bucharest: Universul Juridic Publishing.

Popescu, R. R. (2013). *Dreptul muncii*, third edition, Bucharest: Universul Juridic Publishing.

Radu, R. (2008). *Dreptul muncii*, Bucharest: C.H. Beck Publishing.
Radu, R. (2009). *Elemente de dreptul securităţii sociale*, Craiova: Aius Publishing.
Radu, R., Voicu, E. (2014a). Răspunderea disciplinară a magistraţilor. In Radu, R., Bărbieru, M. (editors). *Instituţiile juridice româneşti la 150 de ani de la reforma legislativă a lui A. I. Cuza / Romanian juridical institutions at 150 years of the legislative reform of A.I. Cuza. Simpozion internaţional, Craiova, 12 iunie 2014*, Craiova: Aius Publishing, pp. 124-134.
Radu, R., Voicu, E. (2014b). Regimul disciplinar specific funcţionarilor publici. *Arhivele Olteniei, Serie Nouă*, (28), 368-379.
Ștefănescu, I. T. (2007). *Tratat de dreptul muncii*, Bucharest: Wolters Kluwer Publishing.
Țiclea, A. (2012). *Tratat de dreptul muncii – Legislație. Doctrină. Jurisprudență*, Bucharest: Universul Juridic Publishing.

Article Info

Received: March 31 2015
Accepted: May 16 2015

RSP • No. 46 • 2015: 334-344

ORIGINAL PAPER

Municipal Management under Challenge in Macedonia: Bringing Empirical Data on the Public Service Approach to Local Orientation and Instruments

Fadil Memed Zendeli*

Abstract

The signing of the Ohrid Frame Work Agreement (2001) was the turning point in the process of decentralization of power, as the Republic of Macedonia was recognized as a centralized place. One of the prerequisites of decentralization is a clear definition of responsibilities and funding in relation to the municipalities and the central government. From the current process it can be concluded that there has been an increase in public spending and a wider range of public services to citizens. Can we conclude that the process of decentralization has increased the efficiency and quality of public services to citizens and can it be used as recommendation to transfer other powers and responsibilities in municipalities? The managers of institutions should pay attention to politics, leadership and relationships with constituents for their work. Managers together with the employees should form partnerships in the management of their municipalities, they both share responsibility for many aspects of municipal administration, to increase the effectiveness and efficiency and to meet the demands of citizens. Decision makers can assess the responsibilities and achieving results as well as predict the effects of decisions taken. The increase of quality services by municipalities inhibit various factors and in particular the corruption where the citizens and function holders are better known among themselves and it can be misused for private interests. The increase in the quality of services is hindered by insufficient level of involvement of citizens in decision-making processes. The methodology used in this study is designed to provide information on internal evaluations of the situation by relevant institutions addressing and reflecting the facts and elements in the decentralization process comparable to the perception of decentralization by citizens.

Keywords: *management, decentralization, services, efficiency, municipalities, Republic of Macedonia*

* Associate Professor, Phd, South East European University, Tetovo (Macedonia), Faculty of Public Administration and Political Sciences, Phone: 0038976200334, Email: f.zendeli@seeu.edu.mk.

Introduction

The reform of public administration is a high priority for the institutions of Republic of Macedonia. The people of the Republic of Macedonia deserve an efficient and transparent public administration at national and local level. In addition, the government in Skopje has certain commitments concerning de-centralisation of public administration as outlined in the 2001 Ohrid Framework Agreement. The EU – through the Agency-managed CARDS programme – supports the implementation of the public administration reform agenda of the government. In close coordination with other international agencies, the EU focuses its support on decentralisation, public finance, the implementation of the Ohrid Framework Agreement and harmonisation of the administrative structure with the EU acquis communautaire. Improving the quality of services and increasing the engagement and citizen satisfaction with these services is a key priority for municipalities in the Republic of Macedonia. Administration bodies in relation to citizens should ensure the highest standards creating correct, fair and impartial reports. To create right relationships with citizens means to develop procedures within deadlines and with no unreasonable delay in accordance with legal provisions and good ethics of public servants. Public administration can be defined as the practice of public services by government and this implied public service activities in daily processes and policy making.

Special attention should be paid to legal aid, providing clear and precise information, deadlines in administrative procedures, respecti for the feelings of the parties and respecting their privacy. Administration bodies in the process of providing services to citizens and all parties must behave in the right way by respecting the principle of equality and objectivity. The system of efficient services to citizens should be carried out in accordance with the law, should create harmonious relationships in horizontal and vertical lines and, in this context, should create legal mechanisms of administrative control. These control mechanisms will enable more efficient functioning of administrative bodies and provide legal mechanisms to citizens in cases when they are not pleased with administrative decisions.

Public institutions are faced with increasing demands for better quality of public services despite the lower financial resources. Therefore public institutions should work together with citizens and concerned parties to find better solutions and to become more effective in dealing with the complex challenges. For many institutions the greatest challenge is to provide better services to citizens using scarce resources compared to demands. The new challenges of society and democracy require new energy that the public sector should be transformed and modernized. Opening the government, transparency of institutions requires close cooperation of public institutions and citizens which will create a new culture of debate and active participation of citizens in public policy making. Social networks or other social media which enhance communication and cooperation have the potential to impact significantly on the ability of government to coordinate and offer effective public services along with citizens.

Management within local institutions

The public service presents an activity exercised in the general interest, and for its implementation or control engages the public institution subject to special legal regime, i.e. administrative law. The entire state is an entirety of public services (Duguit, 1927: 59). That means that it treats three elements of public service: general interest activities, public institutions which perform activities and special legal regime. Public services are of vital

importance for citizens and they are distinguished by private interests. Maurice Orju, considers the public service as provision of general interest and public power tool, while Lobader defines public service according to purpose, which intends to achieve with it (general interest), but did not consider the means, Duguit "*strength of those who rule, or rule*" and Orju "*public power* (Zendeli, 2014: 61). The Court of Justice of the EU developed the concept of public services for the EU, which in functional terms means service which directly or indirectly affects the exercise of power under public law and the duty of protecting the interests of the state or other public interests. In public services, in industry and commerce, more and more apply the rules of private law and, in that way, they transform into separate legal categories of public enterprises. In addition to special bodies that exercise public service, there are mixed enterprises, respectively mixed, whose shareholders are private capitalists on the one side, while on the other hand, the state, municipalities, or public legal persons.

Public sector reform is influenced by the following critical factors: changing functions of the modern state; structural and institutional conditions of reforms; emerging market environments and decentralization. In transition countries, the creation of elected local governments has been critical for improving service management. Beyond its political significance, decentralization is a major step in reforming public service management. It is a move from sectoral dependence because it destroys bureaucratic control and the centralized allocation of public funds. As a result of this decentralization, local and regional authorities can gradually build capacity and public trust, elements that were missing under the previous centralized systems (Péteri, 2009: 7). After the the dissolution of the former Yugoslav Federation, even in the Republic of Macedonia as well as in other former federal units with the new constitutional system and legislation, reaffirmed public institutions and services in various forms prescribed by the Constitution and law.

According to the legislation in the Republic of Macedonia (Law of Entities, 2005), entities are forms of organization exercising public service activities which are not commercial activities prescribed by law (non-economic activities) and which may be defined by law as activities of public interest. Public entities can be established as: public (Republic of Macedonia, municipalities and the city of Skopje), private (natural persons, country citizens or foreign citizens) and mixed (public bodies along with natural persons with private ownership, country citizens or foreign citizens). Public entity was established to exercise the activity in the field of education, science, culture, health, social protection, child protection, and protection of persons with intellectual disabilities, as well as activities that are legally defined as public services. In several member states of OECD delivery of public services to users is often activity of local or regional authorities instead of the central government. For example, in Nordic States and the United Kingdom, education, health and many other social services are covered by the local authorities. Service standards in these cases can highlight questions about the relationship between national and local authorities and create tensions between longstanding traditions of the unitary authority of a country on the one hand and local autonomy on the other.

Governance at the local level is a system of values, policies and institutions through which the municipality manages its political and social issues within the civil society and the private sector. It is the way how the municipality organizes itself for making and implementing decisions – achieving mutual understanding, agreement and action. It includes mechanisms and procedures for citizens and groups to view their interests, mediates during harmonization of their differences and enforcement of their

legal rights and obligations. Governance, including the social, political and economic dimensions, operates at every level, whether it comes to household, village, municipality, etc. Good governance, among other things, should be participatory, transparent and accountable. At the same time, it should be effective and fair and to promote the rule of law. Good governance ensures that political, social and economic priorities are based on an extensive consensus in society and that the poorest and most vulnerable members of society are heard in decision-making through the allocation of development resources.

The key features of good governance include: required activities, direct participation of citizens, effective administration and services to meet the needs of citizens, participation of citizens and their contribution to the improvement of resources (in economic terms); through transparent governance local authorities increase accountability for their actions and decisions. One of the ways of providing administrative services is the one-stop system administration as a relatively new concept and is now mostly used in research and reform of public administration. The concept refers to the integration and rationalization of public services from the perspective of citizens where all user requirements can be processed with a contact person, whether it is through direct contact, phone, fax, internet or other means. The one-stop system is useful, accessible and personal, in other words, the key idea behind the one-stop system is an amalgamation of all the services in order to reduce the costs of providing and enable people to get all the services in one place.

After independence in 1992 the new government reduced the role of municipalities. Major changes were reduction in local government competencies, greater financial dependence of municipalities upon central authorities, and a reduction in the size of municipalities. Local offices of central government ministries undertook many functions; for instance, the Ministry of Finance collects local taxes and fees on behalf of the local government units (except for the municipal construction land fee). Citizen participation in decision-making was arranged through citizens' initiatives, gatherings and referendums: if at least ten percent of the registered voters supported a particular proposal, it had to be discussed in the council.

Local government is one of the fundamental values of the constitutional order of the Republic of Macedonia (Constitution of 1991). The Constitution contains a set of provisions that define the concept of local government, ensure the independence of the municipalities in the exercise of their powers, as well as the specific status of the City of Skopje as the capital city of the state. The Republic of Macedonia has started a measured process of decentralising competencies to the local government level. It was partly response to the more rigid centralist planning approach adopted after gaining its independence in 1992, and partly to prepare the country to join the European Union.

The process has similarities to that of other former entities in the Yugoslav Republic, but with specific local features; only in 2001 the conflict between segments of the Albanian and Macedonian speaking population was settled by the Ohrid Framework Agreement. The Republic of Macedonia has a single level of local government (Law on territorial organization, 2004). Macedonia is territorially organized in 80 municipalities and the City of Skopje as a separate unit of local government, arising from the character of the City of Skopje as the capital of the Republic of Macedonia. 34 units of local government are based in the city, and the remaining 46 are based in the village. Almost all municipalities are based on the area of more settlements. Municipalities perform their competences through bodies elected directly by the citizens for a period of four years. The bodies of the municipality are the council and the mayor.

The municipality may establish forms of local government, such as: in cities – urban communities; in villages – local communities. According to the the assessment of the population of the State (State Statistical Office in 2013), the total population is 2,064,032 residents. Demographics show significant differences which suggest disparities in the territorial distribution of the population. 57.8% of the population lives in cities, with the largest concentration in the City of Skopje and 13 cities across the country, inhabited by more than 50,000 people. Much of rural settlements have distinctively small population and soon, because of their unfavorable age structure (old age), are likely to remain without a single resident.

The services which should be provided are determined by the existing legal framework that transferred powers from central to local level. According to Article 20 of the Law on Local Self-Government (Official Gazette no. 5/2002), municipalities have general responsibility for all local issues. They have the right to carry out local activities in their own territory, which are not excluded from municipal competences, but, at the same time, do not belong to any state competences. The list of possible municipal competences referred to in Article 22 includes: social protection, children protection, education, healthcare, urban and rural planning, utilities (water, sanitation, public hygiene, waste management, public transportation, construction and maintaining local roads) and sports and recreation.

Municipal services are not provided to the entire population in the Republic of Macedonia. Municipal public utility companies mainly operate in urban areas, not in rural ones. This is due partly to the fact that villages lack a lot of infrastructure facilities (about 40 % of the villages in Macedonia lack water pipes and about 95 % of the villages lack a sewerage system) and partly to unsolved problems about the price of service provision in rural areas (especially in the case of garbage collection). In addition, there are some minor parts of towns that are not covered by water supply services and much larger areas that are not covered by the sewerage system. Some of the areas uncovered by these services are illegal settlements built at the outskirts of cities and towns (Todorovski, 2003a: 81). According to a study by the Economics Institute of Skopje is as follows: a) 65% of the population is provided by water from the public utility companies; b) 45% of the population is provided by sewerage (including water drainage) services; c) the rest of the services (the maintenance of parks and greenery, communal hygiene services, etc.) are provided for 20-30% of the population; d) steam heating is provided in the central area of the City of Skopje, covering about 10% of the population in Macedonia. Communal services (water, waste collection, electricity, maintenance of parks, etc.) can be provided by public companies through concessions and permits. Thus, private individuals or legal entities, as well as public companies can provide communal services. Public enterprises may be established by the state or municipalities as limited liability companies or joint stock companies with other companies or private investors. That is, the government takes the responsibility of providing public functions, but the actual delivery of the service is done by municipality and private organizations.

There are various schemes for how private organizations might participate in public services. The best examples are from the public utility sector, but many communal and human services are also run by private or non-profit organizations. The Government of the Republic of Macedonia has unlimited rights and opportunities to establish public enterprises (or public utility companies) providing all kinds of services. This means that in addition to enterprises that are within the scope of the central competencies, such as energy provision, railroad traffic, air traffic, telecommunications and posts, the

government can establish the same type of enterprises as the municipalities can do, like those dealing with water supply, sewerage (Law on Public Enterprises, 1996).

Local government units (municipalities and the City of Skopje) that are in charge of carrying out public services through municipal enterprises have several rights and duties. The Council (as a representative/legislative body) shall establish public utility companies within the local government competencies, appoint the members of their management boards and adopt and finance programs for their work and financial plans. The Mayor (as an executive body) shall appoint a general manager (director) of the public utility company (Todorovski, 2003b: 81). Most enterprises are traditional budgetary institutions which means that the relationship between them and the municipalities will remain unchanged. There are a few exceptions among the newly established municipalities which hire private enterprises under contracts of work. According to the *Law on local self-government* from 2002 public services including public utility companies and public institutions are non-profit organizations for performance of public services; it means activities of public interest to local relevance. Local government has the right to improve conditions in social areas that currently are jurisdiction of the central government. Thus, in the field of education, local government should provide more funding for kindergartens, primary and secondary schools (which are otherwise financed by the Ministry of Education and its local authorities) so schools can provide training for students, to organize the transport of students from distant villages, to renovate school buildings and conduct what is not included in the annual budget of the Ministry of Education and Science. The same opportunities exist in the field of health care where the municipality can invest in medical equipment and medicines. In the field of sport and culture municipalities may provide additional funding for libraries, sports associations, etc. The process of decentralization has transferred many of the responsibilities for the delivery of public services to local levels, but it has not transferred funds for its development. This will remain one of the biggest problems in the region until local governments manage to find ways to finance their own public service delivery (Briški, 2003: 93). However, in the majority of West Balkans countries, legislation enabling municipalities to undertake these alternative forms of service delivery, along with operational guidelines to support them, is largely absent.

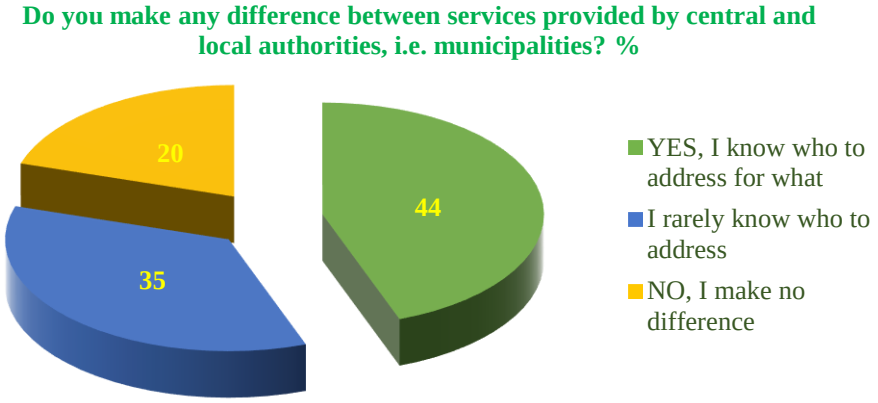
Macedonia is a notable exception where, in 2007, the Government prepared a draft Law on Inter-Municipal Cooperation. Additionally, in Macedonia, the MoUin the Area of Inter-Municipal Cooperation between the Ministry of Local Self-Government and the LGA was signed and a joint Commission for Inter-Municipal Cooperation was established with the purpose of coordinating activities related to inter-municipal cooperation in Macedonia (UNDP Europe and the CIS SNV Netherlands Development Organisation, 2009: 31).

Local sustainable development in function of public services

The results of citizens' satisfaction survey for the services provided by local authorities was conducted in November 2014 (Ministry of Local Self Government and UNDP, 2014). The citizen satisfaction survey regarding local services is an activity conducted by the municipalities and other public institutions. The aim of the survey was to come up with comprehensive information on citizen satisfaction regarding the work of the local self-government system in the country. In general, most of citizens are satisfied with the quality of life in their municipality as a place to live in, to raise their children and an appropriate place for pensioners and vulnerable groups of citizens. Most of the citizens

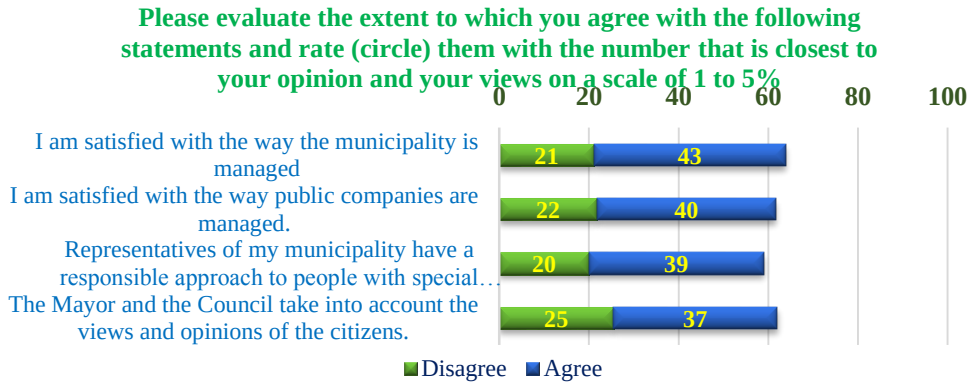
expressed satisfaction with the security in their community. Almost half of the respondents (44%) stated that they knew whom to address, while others either rarely knew whom to address (35%) or did not make any difference (20%) between the services provided by the central and local authorities, i.e. municipalities. This finding is indicative and points to the need to conduct activities to familiarize citizens with the scope of specific municipal competences.

Table 1. Differences between services provided by central and local authorities



According to the results, 43% of respondents are satisfied with the way their municipality is managed, and about 40% with the way public companies are managed. Somewhat lower levels of satisfaction were observed regarding how much the mayor and councilors take into account citizens' views (37%) and as to whether the municipality has a responsible approach to people with special needs (39% of respondents). Overall, citizen satisfaction with the services provided by municipalities, on a scale of 1 to 5, was rated with an average score of 3.34; only services in the area of primary and secondary education, culture, sports and recreation and firefighting are rated with slightly higher average scores – 3.58 and 3.80.

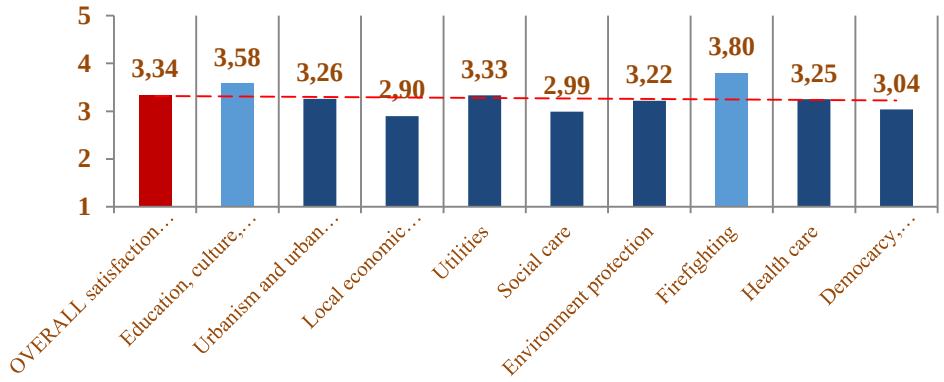
Table 2. Evaluation of citizens' satisfaction



The highest score is given to firefighting (3.80) and the lowest score to local economic development (2.90) and social care (2.99). Slightly lower average level of satisfaction is observed regarding other assessed areas such as: Urbanism and urban Planning (3.26), Local economic development (2.90), Utilities (3.33), Social care (2.99), Environmental Protection (3.22), Health care (3.25), Democracy, transparency and accountability at work (3.04). According to the findings of the survey most of the surveyed units of local government have not adopted integrated programs and action plans for local development, which is a limiting factor for the future development of local government, its connection to the achievement of macroeconomic targets of the country, and the quality and quantity of local services delivered to citizens.

Table 3. Overall staisfaction

Overall satisfaction with the municipal services and satisfaction by competences. Average score



Only strong and credible local public institutions can contribute to the prosperity of the Republic of Macedonia and integration into the European Union. In this regard, of particular importance are the activities that support the transformation to the local administration oriented toward the citizens and the private sector, which is fully enabled to incorporate into the European Administrative Space. Sustainable local development and growth means sustainable use of local resources for economic purposes and development of energetic and transport infrastructure without compromising the quality of the environment and nature. Basically, it aims at achieving the best possible higher degree of synergy between policies for environmental protection and socio-economic development. The scope of responsibilities of local government in the Republic of Macedoia allows municipalities to improve local transport and water and waste management, but also to implement concrete measures to improve energy efficiency and use of renewable energy, contributing in particular way forpreserving the environment and nature.

The program for sustainable local development and decentralization in Repubic of Macedonia is the main planning document for further development of local self-government in the country in the next five years. Through this, it is operationalized the commitment of Macedonia to continue to foster sustainable local development, good local governance and creating the conditions for a more active, more effective and iinovative role of local authorities in achieving the national objectives for growth and development. In the new (Program for the period 2015-2020) the sustainable development of local government continues to be a tool for solving the challenges of the local impacts of

policies relating to the improvement of quality of life, protection and use of natural and cultural heritage, and the strengthening of economic, social and territorial cohesion. The basic idea is that the best vertical and horizontal coordination of national and local policies and implementation of integrated development projects adapted to local needs and conditions will lead to more balanced, targeted local territorial development. Its specific objectives are: to increase the capacity of local public administration, and to strengthen the rule of law at the local level, including reducing corruption, to provide appropriate own revenues of municipalties, together with predictable and adequate grants, consistent with the principles set out in the EU Charter of Local Self-Government, to ensure a high degree of respect for the principle of subsidiarity through clearly defining the scope of authority of the various levels of government taking into account the comparative advantages of the municipalities, to create strong integration links between key actors of local development and growth, to establish vertical and horizontal synergies and ensure unobstructed data exchange and mutual information, in measuring the performance of local service providers to prevail meritocratic criteria and thus to achieve a high degree of professionalism and de-politicization of the local administration, public enterprises and institutions.

The program focuses primarily on support policies of: the development of the local economy based on knowledge, reduce poverty and social exclusion, environmental protection and promoting sustainable local development. In addition it is emphasized the need to further strengthen the capacity of local authorities and institutions, as an important factor in achieving national priorities and objectives and in meeting the standards for EU accession. It will foster and promote the benefits of the implementation of the decentralization process, especially in terms of fostering democratic practices and the maintenance of good relations between communities. In public service delivery institutions that have the authority to provide public services, one must respect the principles that characterize the functioning of public services and are in accordance with the requirements of citizens. In the relationship arising between institutions that provide public services and service users should be maintained neutrality of institutions and any activity or action should not come to doubt the objectivity of the institution and especially neutrality (e.g. neutral political events or personalities regardless of their personal beliefs).

The main question that arises is who determines what users receive and the processes by which it is accomplished. In determining what users should receive, an important role is held by the democratic process that includes Parliament and other elected bodies at lower levels of government. The elected representatives, represent in front of the government the needs and interests of users in order to help balance the interests of consumers and taxpayers. Insignia of the participation of users can vary. A range of five points is proposed for possible participation such as: informing, consulting, partnership, delegation and control. The first one simply provides the user with information for the offering services. The second enables the dialogue between the tenderer and user for decisions and possibilities, even though all the decisions are adopted by the government and the tenderer. The third enables co-decision. The fourth enables decision-making by the user but in agreed framework at least partly determined by the government or the tenderer. The last point allows users making decisions as it happens in real competitive market. Such situations will be discussed below, although there are variations between the different services, most countries operate on the second or third point of the spectrum. The question how really users are consulted will be elaborated in details below.

For municipalities which declare to correspond the needs of citizens, of fundamental importance is to improve the quality of services. Along with other aspects of managing successfully the public enterprises they should actually see the complexity of the installation and use of performance objectives, with particular emphasis on the extent to which and how the users should be consulted. In these efforts must not be neglected the understanding that improving the effectiveness and efficiency, as well as improvement of the standards for the implementation of the services are as important. It is desirable for them to be incorporated in the initiative to improve the effectiveness of services. The real test of the initiatives on quality of services is that they promote standards for the implementation of services. That shows the concrete proof of the improved performance of the quality of services in public enterprises. Although there are present many opinions that improving performance occurred for reasons other than those of the central initiatives, it is known that the reasons are not important, important is the result. Views of users about whether to improve the quality of services may be different, but they respect the impact of budgetary reasons of reducing services. There is missing a comprehensive evaluation or evidence, but it is an area for further work.

One of the negative phenomena that accompany the performance and efficiency of public services is the corruption in separate segments of public service. The survey of the OSCE since October 2012, corruption is spread more in central administration and next to follow are local administration, education, sports, etc. In conclusion we support an increased coherence between the laws regulating certain sectors with systemic local government law; greater fiscal autonomy and financial viability of local authorities for the purpose of providing services to citizens; accountable, depoliticised public administration principle of merit and a transparent and participatory manner provides a more efficient and better public services for citizens and businesses; established model of multilevel governance (multilevel governance) as a prerequisite for integrated programming and planning of local growth and development; strengthening the capacity of the municipal administration for better management decision-making and implementation.

References:

Briški, A. (2003). *Organizing Public Services at the Local Level Reforms of Public Services Experiences of Municipalities and Regions in South-East Europe,* Zagreb: Friedrich Ebert Stiftung.

Edward, F., Minervini, C., Pavlovska D. (2007). *Municipal Administrative Reform and Land Development Issues in the Former Yugoslav Republic of Macedonia*, Papers in Land Management, Anglia Ruskin University, Paper no. 7.

Duguit, D, (1927). *Les transformations du droit public*, Paris: Colin.

Ministry of Local Self Government and UNDP (2014). The citizen satisfaction survey regarding local services, Skopje.

Péteri, G. (2003). Organizing Public Services at the Local Level. In *Reforms of Public Services Experiences of Municipalities and Regions in South-East Europe,* Zagreb: Friedrich Ebert Stiftung.

Todorovski, I. (2003). Public Services at the Local Level in the Republic of Macedonia. In: *Reforms of Public Services Experiences of Municipalities and Regions in South-East Europe,* Zagreb: Friedrich Ebert Stiftung.

Zendeli, F. (2014). *Administrative Law*, Skopje: Interlingua.

UNDP Europe and the CIS SNV Netherlands Development Organisation (2009). *Capacity Development for Quality Public Service Delivery at the Local Level in the Western Balkans*.

Law on Inter-Municipal Cooperation (2009). In *Official Gazette of the Republic of Macedonia*, (79).

Law on Local Self-Government (2002). In *Official Gazette of the Republic of Macedonia*, 5).

Law on the City of Skopje (1996). In *Official Gazette of the Republic of Macedonia*, (9).

Law on Public Enterprises (1996). In *Official Gazette of the Republic of Macedonia*, (38).

Law of Entities (2005). In *Official Gazette of the Republic of Macedonia*, (32).

Law on Communal Activities (1997). In *Official Gazette of the Republic of Macedonia*, (45).

Law on territorial organization of local selfgovernment in the Republic of Macedonia. In *Official Gazette of the Republic of Macedonia*, (55)/2004; (12)/2005; (98)/2008; (106)/2008; (149)/2014.

Article Info

Received: April 2 2015
Accepted: May 30 2015

RSP • No. 46 • 2015: 345-355

ORIGINAL PAPER

Reporting Environmental Pollution: Media and Public Discourse *vs*. Political Discourse in the Republic of Macedonia

Aurora Ndrio Karameti*

Abstract

This paper analyses the news media discourse about the issue of air pollution in the western part of Macedonia caused by *Jugohrom Ferroalloys*, an old communist-epoch factory for chromium products and ferroalloys. It focuses on news reports made by the only bilingual national television *Alsat-M* during the last seven months over this environmental issue which became a salient public discourse topic and was followed by massive protests. They ask the government to take urgent relevant measures concerning this major air polluter which does not meet the ecological standards but benefits from a strong political support. The goal of this paper is to inquire the correlation between media discourse and public discourse *versus* political discourse in an unusual context. The context includes political, ethnic and media freedom aspects. The main objectives of this paper are to provide evidence of the mission of news media to drive public opinion in countries with low media freedom, low level of democracy and an ethnically divided audience, as well as to highlight the low impact that media and public discourse have on policy making in authoritarian political systems implicating ethnicity. The methodology chosen for this deliberation is complex. The *Agenda-setting* and the *Framing* theories coupled with the content analysis and discourse analysis methods, are used to inquire news coverage of this topic by *Alsat-M*. The results of the analysis give clear answers to the research question. They are interpreted by means of a historical approach in order to draw conclusions about the role of the news media in Macedonia. The main conclusion is that news media may act as a social factor for awakening social movements and promoting progressive social change even in inconvenient circumstances such as in ethnically divided countries.

Keywords: *media, public, political discourse, air pollution*

* Assistant Professor, PhD, State University of Tetovo, Faculty of Law, Department of Journalism, E-mail: aurora.ndrio@gmail.com.

Introduction: A complex reality for media to represent

The issue this paper raises is composed by two levels of discussion. The first one concerns the air pollution in a certain area of the country and how the media, public and politicians dealt with it. The second level of discussion goes deeper in this issue and concerns the ethnic and political aspects of the solution of this ecologic problem. The Republic of Macedonia is an ex-communist country, part of the former federation of Yugoslavia. As such, by its independence in 1990, it inherited some industrial capacities which are still working nowadays. The most important entity in the country is a metallurgic combine known as *Jugohrom*, which so far doesn't meet the ecological standards for the heavy industry. Furthermore, it causes a high level of air pollution, which is about six times higher than the allowed norms. All the old factories from the socialist epoch are allowed to continue to work under the condition to reach the ecological standards in order to gain the ecological permission for industrial work, according to the Law for Protection of the Living Environment in the Republic of Macedonia since 2004. From that time, a period of nine years was given to them in order to meet the criteria for getting the ecological permission. 2013 was the year of deadline to fulfil this process. Finally, the combine *Jugohrom* has not respected the deadline of renewing the whole system of air filtering and still continues to work without the ecological permission.

This metallurgic combine is located in the heart of Pollog Valley, the western part of the country, near the city of Tetovo, which is populated mostly by inhabitants of Albanian ethnicity. Macedonia is a multi-ethnic country composed by several ethnic groups and Albanians are the second biggest ethnic group (Ramadani, Abdullai, Tresi, 2014: 217). They are about 35% of the total population, after Macedonian with about 60%. The Albanians are of three religions: most of them are Muslims and less Orthodox and Catholics (Jashari, Raimi, 2013: 32). Tetovo is one of the biggest cities inhabited by Albanians. It is the most polluted city in the Republic of Macedonia. In Tetovo are located the two Albanian speaking universities, one public and one private, which mostly serve the Albanian speaking population in Macedonia. After the breakup of Yugoslavia, Albanians in Macedonia are still asking for more equal rights within the Macedonian state. During this 25 years period of time since then, several governments have been dominated by Macedonians while Albanians are still not able to get any crucial leading positions within the state institutions (Ndrio Karameti: 2011). From 2005 Macedonia is running the process of membership in the European Union (Soin, 2008). The country has to accomplish the standards of the European Community (Meyer, 2014). During the last 7 years (from 2008 until now) a nationalistic and populist way of governing has deepened the gap between the two largest ethnic groups, the Macedonians and the Albanians. More than ever, Albanians are feeling treated bad in all the aspects of the everyday life. One of them is the poisoning caused by the mega factory *Jugohrom* against which they are protesting, asking the government to make it use filters for the gas emissions from its chimneys, or to force close it. During the two last years (from 2013 to 2015) this request has been persistent but it is still facing the persistence of the government. The air pollution in Tetovo has become a complex political issue. Interests of populist policies are clashing between the Macedonian and the Albanian political parties that are in power (Alsat-M, 2014a).

In Macedonia, the biggest Albanian media is the national television channel *Alsat-M*, which broadcasts in both of the most important languages of the country, the Macedonian and the Albanian languages. Actually, *Alsat-M* is basically an Albanian funded medium, created with the aim to bring together both Albanians and Macedonians

for them to better and further know each other and to improve the intercultural exchanges, the harmony and the coexistence of those two most divided ethnic groups in Macedonia (Ndrio Karameti: 2014a). The profile of *Alsat-M* is generalist but the agenda of this television is focused mostly to the improvement of the situation of Albanian ethnic group in Macedonia and all the issues concerning that such as the right to use the mother tongue in public spaces and public institutions, the right to use the national symbols, the right representation in terms of proportion of Albanian employees in all the public sectors etc. (Ndrio Karameti, 2014b).

Theoretical framework and methods

The question this research paper raises is: How may the media and the public discourse influence the policy making in a specific post-communist country such as Macedonia, when the public opinion is divided according to the ethnic lines and when the leadership of the country is conducting a populist and nationalist policy? To answer such a complex question, a complex methodology should be put in action (Laramée, Vallée, 2002). Therefore, the research focuses to the media agenda in both levels: agenda of salience and agenda of attributes. It inquires the correlation between the media coverage and the media framing of the issue of air pollution in western part of Macedonia, as well as the public opinion discourse about it, which may eventually be at the origin of social reactions and social change. The final goal is to understand if all this fusion between media and public discourse may impact the policy discourse and get followed by political actions.

Using the first level of *agenda setting theory*, this paper probes all the evidence of media, public and political voices. McCombs and Shaw confirm that "*the information in the mass media becomes the only contact many have with politics*" (Protess, McCombs, 1991: 17). Yet, mass media serves as the only reliable source for professional information. At the same time, mass media remains the only contact for many who don't use the social media. In this context, this research is made possible through an analysis of all the information published by the television channel *Alsat-M* about this topic, coming from all the parts involved such as civil society, political and government representatives, because "*for nearly all of the concerns on the public agenda, citizens deal with a second-hand reality, a reality that is structured by journalists reports about these events and situations*" and it is exactly this role of the mass media that serves as a bridge between the reality and the pictures we create about it in our heads (McCombs, 2004: 1, 21). For our purposes, the archives of the television channel *Alsat-M* served as a source of material for analysis (published as texts on its official website and as videos on YouTube). In addition, two of the most popular social media in the country, Facebook and YouTube, are exploited as well for all contact to alternative news and eventual group organisations about the issue and can be sources of information.

Furthermore, the second level of the *agenda setting* theory, known as well as the *framing theory,* is used to analyse the discourses made by all the actors involved in the issue of air pollution. This further analysis is necessary for this research because after the first moment when an issue had place in the media as an important one and becomes *salient*, the media effect continues to influence the public opinion. Through the *attributions* that media wares to certain aspects of the issue, it influences the way people should think further about that issue. The media actually "shape our perspectives and our opinion" about it (McCombs, 2004: 125). According to Entman, while repeating certain terms, the media help framing an issue in the news (Entman, 2004: 1). By doing so, the

media "*promote a particular problem definition, causal interpretation, moral evaluation and / or treatment recommendation for the item described*" (McCombs, 2004: 89). So, for the purposes of this research, media discourse is analysed first. After that, the public discourse and political discourse are analysed in order to find any eventual evidence about the correlation between their discourses, which may drive to the answers for our research question.

This theoretical platform is supported by two research methods for collecting the data and for analysing them. The methods of quantitative and qualitative content analysis are used to collect the data from the archives of the news media being examined. Through a careful reading of all news items related to the issue of air pollution in the larger region of Pollog Valley and especially in the city of Tetovo, we could extract all the relevant news items concerning it, available for both qualitative and quantitative content analysis methods. As Klaus Krippendorff concludes, both of them are indispensable for the analysis of written and spoken texts (2004: 87). These methods do allow best to test the hypothesis about the policies or aims of media producers and comparing media content with real-world indicators (Jensen, 2007: 220). All selected news reports on this topic and all quotations from people connected to the issue, reported in the news texts, are the body of material analyzed here. The discourse analysis is used to interpret the data and generate conclusions. A historical approach allows to best deduce from the discourse and the events in the light of their historical and social context. As Guldi and Armitage propose (2014: 15) "by combining the procedures and aspirations of both the humanities and the social sciences, history has a special (if not unique) claim to be a critical human science: not just as a collection of narratives or a source of affirmation for the present, but a tool of reform and a means of shaping alternative futures". Thus, in order to reach the goal of this research paper, the historical approach is used as a tool to best master the analysis of the data in their context as well as their interpretation in respect to the bigger picture of the events.

Reporting air pollution

Our analysis is effectuated in three levels. It starts with the quantitative aspect of the news agenda of *Alsat-M* television. The total quantity of the coverage of the affair *Jugohrom* and the air pollution is shown at the *Table 1*. It is expressed in number of news items produced and broadcasted by *Alsat-M*. In the second place, we analysed the content. The total number of this news production is presented in five columns of *Table 1*, according to the content of each news item. This content is assigned in accordance to the main subject of any news report. After a careful reading of all news items, we classified the news report in five main groups of interest relating to the issue such as: the civil society organisations (NGO) and associations ("Eco guerrilla", "Mothers and Children", "Mothers of Tetovo"), the news report items containing investigations and analysis of the television channel, citizens participating in massive protests, European diplomats representing international institutions and governments of European countries in the Republic in Macedonia, Macedonian government officials responsible or connected to the issue.

In *Table 1*, these five groups are described shortly such as: 1. civil society, 2. investigations, 3. Protests, 4. international reactions and 5. Government reactions. The third level of analyses is the discourse analyses of all news items that every category contains. In this phase the analyses is dedicated to the main discourse lines of each news item under each group. This stage allows us to draw conclusions about the position of all

those groups towards the *Jugohrom* issue. Findings are expressed in the second line of *Table 1*, as short descriptions such as "Against" or "Pro" to the continuity of *Jugohrom* combine. At the same time, this third level of analysis makes possible to expose the correlation between actions of all groups, in terms of the impact that one group's position has to the reaction of the other groups. The most relevant correlation of them, for the purpose of this paper, is the one between media, public opinion (civil society and protesters) and government in order to conclude about the impact that medias may have for promoting social change and improving the democracy (Bennett, Entman, 2001). This analysis is shown as following, describing the discourse made by media (news report items of *Alsat-M* Television), public opinion (civil society and protesters) and international (government and other politicians).

Table 1. The quantity of coverage of the affair *Jugohrom* and the discourse content of the parties involved

News reports	*Civil society*	*Investigations*	*Protests*	*International Reactions*	*Government reactions*
Number of news items	8	8	5	2	7
Pro or Against Jugohrom	**Against**	**Against**	**Against**	**Against**	Pro (5) Against (2)
Total number of news items	**30**				

Source: Author's own compilation

The hottest period of news about *Jugohrom*-air pollution started in October 30. A news item of *Alsat-M* made an extended analysis about the expected event concerning a government decision for the expiration of the deadline of the combine *Jugohrom Ferroalloys* to meet the ecological standards and to gain the integrated ecological permission to work (Alsat-M, 2014b). On October 31, day of the deadline expiration, two news reports were broadcasted by the television about the decision of the government to extend the deadline with two more years (Alsat-M, 2014c). The first news item reports about the compromise made by the government. The second news item reports about the threat of the civil society NGO *Eco Guerrila* etc. for massive protest against any government decision that may allow *Jugohrom* to continue to work without filters and to continue to contaminate the whole region around the city of Tetovo. On November 1, another news report of *Alsat-M* had in focus the threat of the civil society for massive protests. On November 2, another news report as well holds a discourse against the decision of government for extending with two more years the deadline for ecological standards by the biggest polluter in Macedonia. The news about this event was published in all the news media in Albanian language in the country such as the national television *Alsat-M*, some local television channels, daily newspapers *Koha* and *Lajm*, news portals *Portalb* and *Almakos* and other media.

After these news, the first part of November 2014 was marked by massive protests in Tetovo. The social media such as Facebook and YouTube were full of individual and group invitations to participate in those protests. The invitations were in the form of texts

and often coupled with photos and videos from the heavily polluted air in the city of Tetovo. The moto of protest was "Let me breathe". Some thousands of people protested pacifically in the streets of Tetovo asking the government to close the metallurgical mega factory. The Albanian television channel *Alsat-M* fully covered these protests. A main news report program on November 14, 2014 from Tetovo concerning the event, interviewed some of the well-known personalities of the city such as artists and intellectuals who were participating in the protest. The whole discourse concerns the urgent need to stop the activity of this combine which acts as a contaminator for the environment in Tetovo. Its discourse is constructed based on the terminology: "cancer caused from the pollutions", "the government is poisoning the habitants of Tetovo" and "the arrogant government protects the interest of a private business and kills its citizens" (Alsat-M, 2014d). On February 6, another massive protest was held in Tetovo when relevant speakers called the activity of *Jugohrom* like "massive poisoning" and referred to the article 43 of the Constitution and international relevant documents for humans rights about the fundamental right for a healthy environment. On February 8, *Alsat-M* released a news report about the consequences of air pollution in Tetovo, entitled "The number of illnesses caused by the pollution is increasing" (Alsat-M, 2015a). The journalist asked the health professionals about the correlation between air pollution and the deaths caused by malign diseases. The discourse raised the issue of air pollution in general, as the prime factor for the increasing number of cancer cases in Macedonia, especially in the capital Skopje and the city of Tetovo. According to the interviewed professionals, there are several factors causing the air pollution in these parts of the country such as the old heating systems with wood, car gas and most importantly the factories and enterprises.

On February 13, 2015 *Alsat-M* investigated about this issue and reported in a news saying that the mayor of Tetovo is visiting all the factories and enterprises which may cause air pollution in the region, but not the hugest polluter, *Jugohrom* (Alsat-M, 2015b). This visit was supposed to inspect and see if the toxic gases were filtered before they were let out through the chimneys. The discourse alludes that the Mayor of Tetovo, who in the same time is the vice president of the Albanian political party member of the government, was intentionally avoiding to visit Jugohrom. Through the voice of the civil society, the news text calls the political representatives to fairly do its job: "while the municipality of Tetovo continues with visits to enterprises which meet the standards and do not pollute the environment, civic movement Eco Guerilla, asks the Mayor to visit more the enterprises that do not possess the ecological permission in order to encourage them to get equipped with it". The non-governmental organisation "Mother and children" from Tetovo organised on March 20 a protest against the indifference of the government towards the air contamination in the region. They used the moto "we change the toys for filters" in order to sensitize the government about the huge damage the air pollution has on the lives of their children. The protesters kept placards with slogans "Stop the ecologic genocide". This placard is shown in the photo which accompanies the news of *Alsat-M* on its online version in the official website of the television.

On April 4th 2015 the prime minister of the country came to Tetovo. He is met with protest by the citizens of Tetovo. In a news report of *Alsat-M*, entitled "Mothers and children in Tetovo meet Gruevski with protests", the discourse was constructed over the claims of civil society "Eco guerrilla" and "Mother and child" who showed to the prime minister "*the drawings of children about the air pollution*" and "*air filters that Jugohrom has not fixed yet*" (Alsat-M, 2015c) It had the same angle of news treatment as the protesters had. At the same time, the news text ironizes the local government for hypocrisy

towards the central government. It tries to show that the local government (the municipality of Tetovo that is led by an Albanian politician) is holding the same position towards the topic just like the government that is led and dominated by Macedonian politicians. After this discourse involved the public opinion, the media and the government, some foreign reactions appeared. Since Macedonia is a South East European country aspiring to be part of the European Union, it is asked to fulfil some European standards even in environmental issues. Thus, the government paid attention to the environmental affair involving *Jugohrom* during a press conference on the occasion of a European project funding for Macedonia (Alsat-M, 2015d). The minister of environment declared that the government will pay more attention to the respect of the pollution norms. But, more relevant than the minister seems to be the reaction of the Head of EU delegation in Macedonia who declared: "*I assure you that the European Union will continue the financial assistance in the field of ecology, however, we cannot achieve anything, if the state itself does not invest in appropriate human resources, infrastructure and does not contribute to raising public awareness*".

Concerning this topic, the social media such as Facebook and Tweeter have been used by intellectuals and civil society organisations to help raise the awareness of citizens and even of the Macedonian and Albanian political classes. A Facebook group called "Jugohromm" is one of the pages providing information details about the air pollutions in Tetovo, commenting the situation and inviting friends to participate in the protests. As a result, thousands of people joined the protests in Tetovo. On Tweeter, the British ambassador in the Republic of Macedonia wrote on its profile an ironic comment concerning the air pollution "*We stopped to respire a little of fresh air outside of Jugohrom factory. It is not the best place. You should see it to believe*" (Alsat-M, 2015e). Sequences by the pique of air pollution in Tetovo are published by citizens on YouTube. NGOs have published cartoon animations ironizing the ecological-political situation of western Macedonia.

Discussion

In a post-communist and multi-ethnic country like the Former Yugoslav Republic of Macedonia, the political discourse is focused in general on the political crisis, the failure of implementation of the Peace Agreement, the deepening of inter-ethnic division, the corruption involving the political class and public administration and less in the economic crisis. Erwan Fouéré from the *Centre for European Policy Studies* and former Special Representative of European Union in Macedonia diring the 2005-2011 periode wrote in an article in Balkan Insight on March 23, 2015, entitled "Gruevski Must Resign and Make Way for Transition Process", that the country has "*a government which, over the nine years that it has been in power, has strengthened its repressive grip over the country [...] ethno-nationalist and populist brand of politics*" (Fouéré, 2015b). Currently in Macedonia ecological issues are not in the political agenda, except during electoral campaigns. Comparing to Western Europe where the so called "political ecology" started from the early 20th century (Bozonnet, 2000:11), in Macedonia these ideas are more than tardive. It is clear than environment is not the first concern of politics nor of the public opinion. As Bazonnet and Jakubec say "*the pressure of the opinion pushes the political parties to integrate the environmental themes in their programmes: "écologisation" of the politics or more simply recuperation of an electoral clientele?*" But in Macedonia, the ecological issues are not even seriously considered as an integrated part of the political programmes. They are only mentioned in the electoral discourse in the form of electoral promises and

not as real environmental platforms or in the form of real projects. In Macedonia, this problem is duplicated because of the ethnically divided political class. Ethnicity may serve for different purposes (Coakley, 2012). In Macedonia, it serves to the government to better control the citizens with less efforts. Macedonian and Albanian political parties make different electoral promises to their divided electorate. This lack of coordination causes clashes in the electoral promises and their later fulfilling. So, both ethnic sides of political parties avoid to resolve such issues and prolong them for decades, from a governing term to another. The case of air pollution caused by *Jugohrom* is one of those clashes. Environmental issues are taken in discussion only in ecological catastrophic cases, such as the case of *Jugohrom*. The reason is the non-coordinated politics. The Macedonian political party in power has promised to its electorate, during the campaigns, that the mega metallurgical factory will not be closed. Most of the 1200 of its workers are Macedonians from the village of Jagunovce of Tetovo and if the factory gets closed they will be unemployed. From the other side, the Albanian political party in power promised to its electorate during the campaigns that the problem of *Jugohrom* will be solved at best: either it will use filters or it will be closed. Many other more emergent issues are emerging in the meantime such as corruption, economic crisis etc. and the attention of the public opinion on the air pollution gets shifted to them.

As seen from the analysis, television has produced a total of thirty news reports about the air pollution in the region of Pollog Valley. These news reports are produced in a six months period, from October 2014 to April 2015 which means the issue had a high priority in the news agenda. It started when the government giving to the enterprise two more years in order to work further to meet the ecological standards, even after nine years of such a deadline. The news frame chosen by *Alsat-M* was "the air pollution from *Jugohrom* is killing the citizens of Tetovo and the government is protecting it". The content analysis shows strong correlation between the news coverage of the topic and the intensity of the reactions of civic movements. From November to April, the reporting about the functioning of the factory was followed by a strong activity of non-governmental organisations. As a consequence, their activity mobilised the citizens who organised in massive pacific protests. People from all the Pollog region, including the cities of Tetovo and Gostivar, as well as the suburban areas, joined the protests.

At the same time a certain level of correlation is detected between news coverage and political reaction. The content analysis shows that only seven news items have as subject a political reaction. However, the discourse analysis shows that the political discourse about the topic is constructed in terms of justification and not at all in terms of a solution to the problem. As first, having in consideration the whole stage of weakened democracy in Macedonia where "*the ruling party does not tolerate any minority or dissenting views, and uses fear and intimidation to exercise its repressive authority over society*" (Fouéré, 2015a) and the stage of media freedom that is "*the worst media freedom record in the Balkan region; the latest Reporters Without Borders index ranks it in 123rd place, just above Angola, a drop of almost 90 places from 2009, when it was ranked 34th*" (Fouéré, 2015a), this politico-ecological discourse is coherent with the whole. As second, having in mind the whole interethnic and political relationship in Macedonia, this discourse is coherent as well. So, from both perspectives, the democracy and the multi-ethnic harmony, the political discourse about air pollution by *Jugohrom* in Tetovo is not a professional one and as a consequence it may not be as much influenced by the media and the public discourse as it may have been in a normal democratic country. A strong argument for this reasoning is the political context in Macedonia. Since February 9 a mega

political scandal has born in the country. A large telephone wiretapping is effectuated on "*over 20,000 people - including ministers, judges, business people, journalists and even foreign diplomats - in a country of only 2 million*" (Fouéré, 2015a). The content of recordings are being published by the leader of the political opposition. The conversations are exposing corruption, organised state crime and ethnic discrimination against the Albanian part of the population.

The public discourse about the *Jugohrom*, initiated by the news media, strongly influenced the massive social movements and in a certain degree the political reactions from both government and foreign officials who are present in Macedonia such as ambassadors and European Union high officials. We analysed the news media agenda, content and discourse rigorously. We did not analyse the social media in the same way (Kovach, Rosenstiel, 2011: 93-115), nevertheless, we were able to notice the main discourse line. The discourse of news media follows the same line as the comments on the social media. Facebook texts, YouTube videos and caricatures contain terminology and symbols which directly and indirectly suggest the government as the protector of the air pollution creator. Political interests as well as populist and nationalist policies are denounced as the reason to the compromise between the Albanian part and the Macedonian part of the government.

Conclusions

This paper investigated the correlation between media discourse and public discourse versus the political discourse in Macedonia, concerning an ecological and ethnic issue, taking it as an example of the power of the mass media and the social media, even in a country with not good democratic political systems. Macedonia is not only a post-communist country but it has also experienced a quasi-inter-ethnic war, a country in transition which pretends a membership in the European Union but to which the membership in NATO was refused, a multiethnic country with many unsolved issues concerning the equality of human rights among the two largest ethnic groups. The analysis in this paper showed evidence that in such a country, the news media agenda may influence the public agenda more than the political agenda. The news framing helps citizens orientate their priorities even in a social, political, ethnic and economic context as Macedonia's. News media discourse as well as the social media influenced the discourse of the public opinion at a certain degree. Concerning the influence on the political discourse, the analysis shows a lower degree. This means that the media and the public are in the same side, in front of government that stands in the very opposite side of society. In a country with an injured democracy like the one Macedonia has presented recently, media may survive and even influence the public discourse to a certain point. However, it remains difficult to influence as much as to build an alliance between media and the public opinion in order to force the government make changes even for issues such as environment, ecology and health.

References:

Alsat-M (2014a). *Jugohrom kërkon 2 vite shtesë për standardet ekologjike*. 31 October. Retrieved from: https://www.youtube.com/watch?v=_oO8ecdHwE8.

Alsat-M (2014b). *Ndotja e ajrit, 'Makstil' dhe 'Jugohrom' nuk do të mbyllen?* 30 October. Retrieved from: https://www.youtube.com/watch?v=lZn6PNlYBtc.

Alsat-M (2014c). *Qytetarët e Tetovës: Të mbyllet Jugohromi ose ngrihemi në protesta*. 31 October. Retrieved from: https://www.youtube.com/wat ch?v=5QYN6vhjQwU.

Alsat-M (2014d). *Protesta në Tetovë -"Më lini të marr frymë"*. 14 November. Retrieved from: http://m.alsat-m.tv/article/protesta-n--tetov--lidhur-me-ndotjen-e-ajrit/?article-id=9000.

Alsat-M (2015a). *Rritet numri i sëmundjeve që shkakton ndotja*. 08 February. Retrieved from: http://m.alsat-m.tv/article/protesta-n--tetov--lidhur-me-ndotjen-e-ajrit/?article-id=9000.

Alsat-M (2015b). *Arifi viziton firmat që ndotin ajrin në Tetovë, por jo edhe Jugohromin*. 13 February. Retrieved from: http://alsat-m.tv/News/5930/arifi-viziton-firmat-qe-ndotin-ajrin-ne-tetove-por-jo-edhe-jugohromin.

Alsat-M (2015c). *Nënat dhe fëmijët tetovar pritën Gruevskin me protestë*. 04 April. Retrieved from: http://alsat-m.tv/News/15161/nenat-dhe-femijet-tetovar-priten-gruevskin-me-proteste.

Alsat-M (2015d). *Ndotja në Tetovë, Izairi paralajmëron masa ligjore dhe dënime*. 28 April. Retrieved from: http://alsat-m.tv/News/191177/ndotja-ne-tetove-izairi-paralajmeron-masa-ligjore-dhe-denime.

Bennett, W. L., Entman, R. M. (2001). *Mediated politics: communication in the future of democracy*, Cambridge, UK: Cambridge University Press.

BIRN (The Balkan Investigative Reporting Network) – Balkan Insight, (2015a). *Gruevski Has Made a Nightmare out of Macedonia*. 27 February. Retrieved from: http://www.balkaninsight.com/en/article/gruevski-has-made-a-nightmare-out-of-macedonia.

BIRN – Balkan Insight (2015b). *Gruevski Must Resign and Make Way For Transition Process*. 23 March. Retrieved from: http://www.balkaninsight.com/en/article/gruevski-must-resign-and-make-way-for-transition-process.

Bozonet, J. P., Jakubec J. (2000). *L'écologisme à l'aube du XXIe siècle : De la rupture à la banalisation?* Genève: Georg Editeur.

Coakley, J. (2012). *Nationalism, ethnicity and the state: making and breaking nations*, London: SAGE.

Entman, R. M. (2004). *Projections of power: Framing news, public opinion and U.S. foreign policy*, Chicago: The University of Chicago Press.

Forest, M., Mink, G. (2004). *Post-communisme: Les sciences sociales à l'épreuve*, Paris: L'Harmattan.

Guldi, J., Armitage, D. (2014). *The History Manifesto*, Cambridge: Cambridge University Press.

Gunter, B. (2007). The quantitative research process. In Jensen K.B. (ed.), *A handbook of media and communication research: Qualitative and quantitative methodologies*, London and New York: Routledge.

Jashari, H., Raimi, S. (2013). The Identity of Albanians in Macedonia and the New Religious Movements. *Revista de Ştiinte Politice*. *Revue des Sciences Politiques*, (40), 25-38.

Jensen, K. B. (2007). *A handbook of media and communication research: Qualitative and quantitative methodologies*, London and New York: Routledge.

Krippendorff, K. (2004). *Content Analysis: An introduction to its methodology*, 2nd ed., London: Sage Publications.

Kovach, B., Rosenstiel, T., (2011). *Blur: How to Know What's True in the Age of Information Overload*, New York: Bloomsbury.

Laramée, A., Vallée, B. (2002). *La recherche en communication : éléments de méthodologie*, Québec: Presses de l'Université du Québec / Télé – université.

Meyer, T. (2014). *Identiteti i Europës : shpirti i përbashkët i Unionit Europian*, Shkup: Instituti për Studime Politike dhe Ndërkombëtare.

McCombs, M. (2004). *Setting the agenda: the mass media and the public opinion*, Cambridge: Polity.

Ndrio Karameti, A. (2011). *Guerre, médias et la géopolitique: les influences réciproques. Le conflit de Macédoine sous le regard de la presse internationale et albanophone*. Saarbrucken: Lambert Academic Publishing.

Ndrio Karameti, A. (2014a). News media as a social factor for law enforcement in the Republic of Macedonia. *Mediterranean Journal of Social Sciences*, 13 (5), 301-307.

Ndrio Karameti, A. (2014b). The role of Alsat-M as a bilingual medium for the ethnic recognition of its audience. *Vizione*, 22 (1), 767-772.

Protess, D., McCombs, M. (eds.), (1991). *Agenda setting: readings on media, public opinion, and policymaking*, New Jersey and London: Lawrence Erlbaum Associates.

Ramadani, K., Abdullai, J., Tresi, A. (2014). The role of president in the policy-making in Macedonia. *Revista de Ştiinte Politice*. *Revue des Sciences Politiques*, (42), 216-227.

Soin, R., (2008). *Politikat e Bashkimit Europian : historia, krizat, zhvillimet dhe perspektivat e proceseve të integrimit*, Tirana: Papirus.

Article Info

Received: March 31 2015
Accepted: May 29 2015

RSP • No. 46 • 2015: 356-364

ORIGINAL PAPER

Unpacking the Right to a Name: A Diachronical Legal Analysis of the Administrative System and Regulations

Oana-Nicoleta Retea*

Abstract
The purpose of this article is to provide the first comprehensive legal analysis of the relation between the right to a name and the administrative authorities. In order to individualize the personality of an individual in relation to another individual, the name of the physical person (surname and forename) must be used. Although the name is a complex notion whose birth, historically speaking, represents primarily the result of a long usage, as any element related to language, it becomes a legal concept, its structure and rules of assigning are the subject of the regulations, and not the name itself. The right to a name is one of those personality rights which are simultaneously identification attributes of an individual. The name, as an element or means of identifying physical persons in civil right, contributes to determining the status of the individual holder of rights and obligations in a legal relation. Changes in civil status of a person such as: changes in filiation, changes arising from adoption, changes caused by the institution of marriage, determine the change of the surname which is not at all the same with the administrative procedure of changing the name. This last procedure consists in the replacement of the name on request, through administrative decision. This administrative procedure is due to different causes unrelated to civil status but included in special provisions.

Keywords: *right to a name, administrative procedure, name changing, reasonable grounds.*

* PhD Candidate, University of Craiova, Faculty of Law and Social Sciences, Law Specialization, Phone: 0040763670127, E-mail: retea.oana.nicoleta@gmail.com.

From "name" to the "right to a name"

Roman jurists believed that for a man to be a *person*, he was required to have legal capacity under its two aspects: of use and exercise. The capacity of use was held by the one who had *status libertatis*, *status civitatis*, and *status familiae*, therefore he was a free man, citizen (*quirit, cives romanum*) and was not in the power of a *pater familias*. The capacity of exercise belonged to those who, in terms of sex, age or mental status, were able (presumed *iuris tantum*) to appreciate the significance and consequences of their actions in legal terms (Hanga, 1971: 102).

Legal personality, according to old Romanian Law, begins at birth and ends with death, applying the Roman rule *infans conceptus pro nato habetur quontis de commodis ejus agitur*. According to article 34 of the Code Calimah: "laws care for those conceived, since the time of their conception, because they are considered as newborn babies when the cause is reached by themselves, and not the third person" and article 986 applies this rule in successions matter. It was required for the newborn "to be alive and viable and have human appearance", solution taken also by the current legislation, except for the requirement of viability. The moment of birth is particularly important to establish legal personality and the appearance of birth records marked the beginning of the era of Augustus. Therefore they imposed the obligation to declare a birth within 30 days and the obligation to give a name to the newborn – the name being assigned on the eighth day of life for girls and on the ninth day for boys. That day was called the name day, which was preceded by various ceremonies, including purification by fire (Dogaru, Cercel, Dănișor, Popa, 2008: 505-507). Constituent of the language of every people, every person's name is in fact a sound sequence used constantly in the community to designate a person. The appearance of names is conditioned by the existence of a human group, of peoples as a social being. On the other hand, the name is an emblem of the family. Visible sign of belonging to a particular family, a sign of relationship to a house, the name implies a family connection, and applies only to those who descend from a common author (Ionescu, 1975: 8-19). The name can be refered as "that attribute of the physical person who consists in the human right to be individualized, within the family and society, by the words set out in the law, in this meaning" (Beleiu, 2005: 381). Such a definition presents the failure to not reveal the essential quality of the name that of being a personal non-patrimonial right, from the class of identification attributes.

At the beginning, in Romania, there was the unique and non-transferable name system, people simply called John, Peter. Later, the people's individualization became more difficult among those who wore the same name, so they started to use phrases such as John, the son of George. The first law governing the whole name issue is the "special" Law from March 1895, which offers concrete solutions for different situations, not containing "scattered provisions" (Hamangiu, Rossetti-Bălănescu, Băicoianu, 2002: 139) like the Code. Due to legislative provisions that were void until then it draged in serious problems. There were some foreigners who carried on a trade in a corner of the country, they went bankrupt, therefore they went to another corner of the country and Romanized theirs names, changing it completely, because there was no relative formality to change the name. So Rosenfeld changed into Rosetti, Rosenzweing into Roznoveanu and Braustein in Brateanu. Although this law was fought with great talent by Delavrancea Barbu it was, however, adopted to meet the needs of those times (Titulescu, 2004: 133).

Under this law any person must have a surname. No one was allowed to use a patronymic name other than the one that was registered in the register of civil status. If they did not had such a surname, they were forced to give a statement to the mayor of the

place of origin. Thereby demonstrating that they agree to have as a surname the father's Christian name plus one of the endings "-escu" or "-eanu", being designed to differentiate name by surname. For example, if the father had the first name as "Ștefan", his son was to be called "Ștefănescu". These names are the result, in principle, of the development of culture in schools and churches (Val Popa, 2006: 393). So, most of the villagers who did not have a patronymic name formed one, thus the name acquired was written down on the birth certificate of the person.

In these latter days, the name structure is established by article 83 of the new Civil Code which provides: "the name consists of a surname and forename". In addition, article 1, paragraph (1) of Government Decree no. 41/2003 (published in Official Gazette no. 68 of February 2, 2003) repeats the same idea and develops it in the provisions regarding the acquisition and change of individuals' names administratively (Chelaru, 2003: 9-11). Family connections are the ones that determine that part of the name called "surname", often used in everyday speech as the expression "family name". It is acquired according to the law, without possibility of any manifestations of voluntary choice. As an exception, a limited manifestation of voluntarism is allowed when the child's parents do not share the same name. In this case, the child will bear the name agreed by the parents that may be the surname of one of them or their surnames combined. If parents cannot agree, the court of guardianship will decide according to article 18, paragraph (3) of Law no. 119/1996 on civil status papers, republished in in the Official Gazette no. 339 of 18 May, 2012 (Chelaru, 2012). Voluntarism is manifested as far as assigning the forename by the parents is concerned, designated in common speech as "Christian name". Assigning the forename is voluntary, meaning that the parents are the ones who choose their child's forename (Chelaru, 2012). However, the law allows, under certain conditions, limited intervention of the public authority in this area. Thus, according to article 84 paragraph (2) second sentence of the new Civil Code, "the registrar must prohibit the registration of indecent, ridiculous forenames which are likely to affect the public order and the morality or interests of the child, as appropriate".

The binary structure of the name was also provided by article 12 paragraph (2) of Decree no. 31/1954, which had the same wording as that of article 83 of the new Civil Code. Therefore, from the perspective of civil law, the name represents the reunion of two non-patrimonial civil subjective rights of an individual, the right to a surname and the right to a forename. Thus, unjustifiably, the component elements of the only right recognized as such by law, the right to a name, reached the status of independent rights. The wording of the provisions of article 82 of the new Civil Code (text with the same wording as that of article 12 paragraph (2) of Decree no. 31/1954, published in the Official Gazette no. 8 of January, 1954, which states that "everyone has the right to an established name or to a name acquired according to the law") in conjunction with those of the article 83 of the new Civil Code, allows no other interpretation than the one according to which the surname and forename are just components of a single right: the right to a name (Chelaru, 2012).

The name is a subjective civil right from the point of view of its legal nature, since article 81of the new Civil Code speaks of "the right to a name". The same legal nature of the name results from article 7 point 1 of the Convention on the Rights of the Child, adopted by the United Nations General Assembly on November 20, 1989 and ratified by Romania by Law no. 18/1990, published in the Official Gazette no.109 of September 28, 1990, which provides: "the child shall be registered immediately after birth and shall have the right to a name from this point forward". This principle is reinforced

by article 9 of Law no. 272/2004, republished in the Official Gazette no. 159 of March 5, 2014, according to which the child has a right to a name, as part of its right to identity. "Individual attributes are by definition attributed, whereas personality rights are, by excellence, assumed" (Gheorghe, Popescu, 1992: 59-60).

The prerogative of name, residence and marital status are attributed to the person outside his manifestation of will, not referring to the fact that at birth, a person acquires a default name by law. In addition, a person with full capacity, in principle, can choose a name or another, a home or another, a civil status. What is essential is that throughout its existence a person must have a name, a home and a civil status. The conclusion reached by the authors, Mihai Gheorghe and Popescu Gabriel is that individual attributes are both rights and duties for the holder. This duality is explained by the fact that the assigning of the elements exceeds the individual's will, depending on the will of the law, and their bearing exceeds the individual interest, belonging to the interest of the society. In the case of personality rights, the will is not presumed but left to the choice of the holder. Other personality rights such as the right to privacy, the right to physical and mental integrity, not being used for individualization of the person within the family or society, they are not identification attributes.

Being a part of the personality, the name is not a patrimonial value and is therefore a personal non-patrimonial right (Cornu, 1991: 276). However, there is controversy over the legal nature of the name, some authors in foreign legal literature, as well F. Zenati-Castaing, believes that this is a good that can be acquired by long possession (Zenati-Castaing, Revet, 2006: 57, 62). The name can gain some economic meanings when it's used to identify a merchant, natural or legal person (Malaurie, Aynés, 2003: 45-46) or natural persons exercising a liberal profession, such as those of lawyer, notary, doctor, architect, and judicial executor (Cercel, Olteanu, 2009: 41-54). The forename has the same legal characters as the surname, but only when it is associated with the latter. Viewed in isolation, the forename has a lower legal force; for example, it has no legal effect the signature consisting only of the first name (Ungureanu, 2013: 297).

Administrative System and the Right to a Name

It is the principle that an individual should not be able to change family name (or Christian name) arbitrarily but only by its will. Just because the name is an attribute for identifying individuals in social relations and in the family, it is clear that the social interest requires that the name should be constant and not necessarily unchangeable (Dogaru and Cercel, 2007: 132). In addition, the legality of the name requires that any change in the family name (or first name) can be carried out only when and as provided by law (Dogaru et al., 2008: 625). In Roman law, the name change was possible unless the change would have been fraudulent. This possibility was preserved in the Middle Ages, with some restrictions: craftsmen they could not change the name when it served as trademarks; notaries could not change neither their name nor their normal signiture without an authorization. Gradually monarchy has increased control in this matter, tending to turn a social institution into a police one. Thus, in the old France there were settled laws like this: no citizen will carry a different forename or surname than that the one established by his act of birth, and those who forsake them will be held to retake them (Capitant, Terre, Lequette, 2007: 106).

The first "special" law from our legislation that regulated issues concerning one's name, the Law from March 1895, stated in article 1 that it is not possible any voluntary change of name, being illegal; but sets no penalty for changing the name. Furthermore,

the same article states that the name can be changed only for "cause blessed", leaving the court the freedom to appreciate what are these causes and how they can be determined. In general, it is considered as accepted a request to change the name where this was "ridiculous, obscene or immoral". The request for changing the name was addressed to the Ministry of Justice, following to be published in the Official Gazette and in newspapers. If in a certain time there was not any opposition, it had to be approved by the Council of Ministers. This change fully operate upon the wife and minor children, if necessary (Hamangiu et al., 2002: 140). Furthermore, according to article 1 paragraph 4 of the earlier said law, anyone could take any name, the only condition being that you had no right to take a historical name. But what is a historical name? Nicolae Titulescu stated that historical names are not boyar's names, but it must have done something in history, not being enough to have exercised only the title of a boyar. Following the researches undertaken, Barbu Delavrancea said once with the name law debate, that there were only 130 historical names for Moldavia and Muntenia, the other names being boyar's names. While nobility was considered just a function, aristocracy sprang from an ancestral right, based on historical facts (Titulescu, 2004: 135). According to article 85 of the new Civil Code, "Romanian citizens may obtain, under the law, the administrative change of surname and forenames or only one of them". Changing family name or forename is that operation of replacing them or only one of them at the request of the interested person with another one through an administrative decision (Boroi, 2010: 375; Beleiu, 2005: 410; Dogaru, Cercel, 2007: 133; Lupan, Sabău-Pop, 2007: 79). So, unlike the name modification, which leads only to last name change, administrative change of the name can see both the last name and the first name (Ungureanu, Munteanu, 2011: 185). The administrative change of the name, unlike the family name modification, is not supposed to replace it as a result of changes in the status of the person (Irinescu, Afrăsinie, 2012: 129), but its replacement is based on solid grounds expressly regulated. The administrative replacement of the name occurs only on request, once again marking a limit between the change of the surname and the modification of the surname. In the case of name modification, its replacement is not conditioned by any expression of will of that person in such a direction (Boroi, 2010: 375).

Regulation of name change is in Government Ordinance no. 41/2003 on acquiring and changing the names of individuals administratively, which expressly repealed Decree no. 975/1968 concerning the name. The right to request the change of name of the individual is recognized by article 3 of O.G. No.41 /2003, which provides that: the name can be changed administratively. The statement used in the art. 3 is similar to that used in article 85 of the new Civil Code. Article 4 to 21 of O.G. No.41 / 2003 regulates uniformly both the change of last name and of first name. Moreover, through the application, the person concerned may request either a change of surname and forename, or only the change of one of the two. In the following we are going to relate the change of the name generally, taking into consideration, especially, changes of the last name.

The cases for the administrative change of the name are expressly provided in O.G. no. 41 / 2003. While article 4 of Decree no. 975/1968, was only content to provide that the name change could be obtained for solid reasons, without providing further explanation in this regard, the Government Ordinance no. 41/2003 considers solid the grounds that are provided by article 4 which containes an illustrative list in paragraph (2) letter a) to j) and paragraph 3. That we are in the presence of an illustrative list it results from the elaboration of article 4 paragraph (2) letter m), which refers to "other similar justified reasons" (Chelaru, 2012).

The persons entitled to apply for administrative name change

The administrative procedure of the name change is regulated by articles 5 to 19 of O.G. no. 41/2003 and articles 106 to 114 of the Methodology on the implementation of the provisions on civil status, approved by H.G. no. 64/2011. Romanian citizens, whether they have or not their residence in Romania can obtain the administrative name change (article 4 paragraph (1) of O.G. no. 41/2003 and article 87 paragraph (3) of the Methodology for implementation of the provisions on civil status), but also stateless persons which have their residence in Romania (article 5 of the O.G. no. 41/2003). *Per a contrario*, stateless persons not having their residence in Romania and foreign nationals would not have this right even if the latter have their residence in Romania (Chelaru, 2003: 30). From article 7 results that, for the minor, the application form for the name change is made by his parents. When the application for the name change is made by one parent, it is required the consent of the other one, in duly certified form. If parents cannot agree on changing the name of the child, the guardianship court will decide. The agreement of the other parent is not required if this one is laid under an interdiction, deprived of parental rights or legally declared missing.

For the minor protected under guardianship, as for the person placed under judicial interdiction, the demand will be made by the guardian, with the consent of the family council. According to article 136 of the new Civil Code, this notice is required for any action concerning the protected person, except those who have a current character (Chelaru, 2012). If the child's parents are deceased, unknown, laid under interdiction, declared judicially dead or missing and deprived of parental rights and guardianship has not been established, where the child was declared abandoned by a final court decision, and if the court decided not to entrust the child to a family or an individual, under the law, a minor name change request is made by the specialized public service for child protection subordinated to the county council or, where appropriate, the local council (article 7, paragraph (5) of the O.G. no. 41/2003). If we are talking about changing the name of a minor over the age of 14, the application shall be signed by him. The surname change of a minor may be required once with his parents' change of surname or separately, but only for solid reasons (article 8, paragraph (1) of the O.G. no. 41/2003).

If the spouses have agreed to wear during the marriage a common family name, for the change of surname it is also necessary the consent of the other spouse (article 9 paragraph (1) of the O.G. no. 41/2003]. *Per a contrario,* if the spouses at marriage have agreed to keep each of them their previous name, any of them can change his names without needing the consent of the another (Ungureanu and Munteanu, 2015: 265). Changing the surname of one of them has no effect on the other spouse's surname (article 9 paragraph (1) and (2) of the O.G. no. 41/2003). Therefore, changing the name of one spouse does not lead to the name change of the other spouse or to the child's family name change (Lupan, Sztranyiczki, 2012: 129).

The administrative procedure

The applicant must justify the request by one of the cases provided by article 4 paragraph (2) and (3) of the O.G. no. 41/2003. Therefore, the request is submitted to the public service community for persons' record, subordinated to the local council of the village, town, city or sector of Bucharest, in whose jurisdiction the applicant is having his residence (article 6 of the O.G. no. 41/2003). The application must be submitted personally or by private attorny and by proxy or power of attorney (Ungureanu, Munteanu, 2015:

265).

The request for the change of the name is subdued to publicity in 30 days from its publication, so that any person interested may be in a position to know and ask for an injunction, if necessary. The request shall be published in excerpt in the Official Gazette of Romania, 3-rd Part, by the applicant's care and expense (article 10 paragraph (1) of the O.G. no. 41/2003). It is excluded of the publication the name change request that consists in indecent, ridiculous expressions, or of names transformed by translation or otherwise, if it was obtained the approval of the person that runs the county civil service or the public service of the municipality of Bucharest, by case (article 11 paragraph (1)) of the G. O. no. 41/2003. It is stated that the opposition must be grounded, without being expressly provided what circumstances might justify it. The right to wear a name legitimately is closely related to the idea of family and filiation (Dogaru, Cercel, 2007: 139), therefore the honorable and glorious name cannot be taken by anyone (Hamangiu, Rossetti-Bălănescu, Băicoianu, 2002: 142). Eugen Chelaru considers unjustified the establishment of the above exception, at least when the opposition seeks to defend a right or a legitimate interest in the name of the holder of the application wants to wear due to the change of his actual name. Furthermore, all the conditions provided by law are checked out and after analyzing the thoroughness of the request and the oppositions made, the president of the county council or the mayor of Bucharest proposes, reasoned, the issuing of the disposition by which whether accepts or rejects the request for name change within 60 days of receiving it (article 12 and article 13 of the G. O. no. 41/2003). The provision granting the request is communicated to the public service to which the application was filed. Then, after the payment of fees, public service would deliver a copy of the disposal of admission of the name change. The name change is written, by reference, on the birth certificate, as well as on that of marriage, where it is the case (article 15 paragraph (1) of the G. O. no. 41/2003). To this effect the public service to which application was first registered will send to the public services (General Direction of Passports, Directorate for Statistics, Judicial and Operative Records within IGRP, etc.) that dealt with acts of civil status, a copy on the disposal of name change. According to article 16 paragraph (1) of G. O. no. 41/2003, the disposal of name change has legal effect only from the date of registration of the corresponding indication on the birth certificate. Proof of the change is made with the provision for admission of the name change or the certificate issued by the civil service on the basis of the admission of the name change (Lupan, Sztranyiczki, 2012: 130). The effects of the administrative change of a person's name do not extend to other family members.

The disposal for rejecting the request for the name change can be challenged under Law no. 554/2004 (article 18 paragraph (2) of the G. O. no. 41/2003). The person who was dismissed by the name change can make a new application if in its support appeared new reasons. If the name change request was denied due to the admission of an opposition, the person concerned can make a new application, if the same name is requested only after the cessation of the causes that conducted to the admission of the opposition (article 19 of the G. o. no. 41/2003). A person whose rights or legitimate interests recognized by law were injured by accepting the application of the name change may bring an administrative action under Law no. 554/2004, which may require the cancellation of the disposal regarding the name change (Chelaru, 2012). This legal action that may be brought within 6 months from the date of the request for the name change is subsidiary, the applicant must prove that, for objective reasons, out of his power, could not form the opposition (article 21 of the G. O. no. 41/2003).

Public authorities with competence in the field of the right to name

Powers to the public authorities for the name change by administrative means have been established in accordance to the provisions of Government Emergency Ordinance no. 84/2001 on the establishment, organization and functioning of public services for people. Government Emergency Ordinance no. 84/2001 was published in the Official Gazette of Romania, Part I, no. 544 of 1 September 2001 and was approved by Law no. 372/2002, published in Official Gazette of Romania, Part I, no. 447 of 26 June 2002. Subsequently the regulatory document in question suffered several changes, the last by Law no. 329/05.11.2009. This legislation has set up communitarian public services for people. Therefore, the reorganization of the departments of civil status from the local councils and local entities of the registry office from the structure of the Ministry of the Interior were set up local communitarian public services for people in local councils of villages, towns and cities, and in the local councils of Bucharest, and by the reorganization of the civil service within the county councils and offices of population registration and driving licenses and registration certificates from the county services computerized record of the person, from the Ministry of the Interior were set up county communitarian public services for people subordinated to county councils. At central level, the National Inspectorate for Persons' Record was set up as a specialized body of the central public administration, with legal personality, into the Ministry of Public Administration, through the reorganization of the General Directorate for Personal Data Records – Population Registry Department and the Central Service scheme driving licenses and registration certificates from the structure of the Interior Ministry.

Conclusions

The function of a name as a means to individualize a person has resulted in that private law and public law aspects are inter-twined. The relation between authorities of public administration and the right to a name meet together once with the opportunity given by the law to change this attribute that individualises a person in society by a couple of words that are not chosen by him but by his parents or even by public authorities in certain cases. While there may be real reasons that persuade an individual to want to change his name, the public interest can justify some legal restrictions on such possibilities (ECHR, Strejnic case against Finland, 25 November 1994).

Acknowledgement

This work was supported by the strategic grant POSDRU/159/1.5/S/141699, Project ID 141699, co-financed by the European Social Fund within the Sectorial Operational Program Human Resourses Development 2007-2013.

References:

Afrăsinie, M. (coord.) (2012). *Noul Cod Civil.Comentarii, doctrină, jurisprudență*, vol. I. Bucharest: Hamangiu Publishing House.

Beleiu, G. (2005). *Drept civil român. Introducere în dreptul civil. Subiectele dreptului civil.* Bucharest: Universul Juridic Publishing House.

Boroi, G. (2010). *Drept civil. Partea generală. Persoanele.* Bucharest: Hamangiu Publishing House.

Capitant, H., Terre, Fr., Lequette, Y. (2007). *Les Grands arrêts de la jurisprudence civile.* 12-th Tome 1. Bibliographie en droit des personnes Edition, Paris: Dalloz.
Cercel, S., Olteanu, E. G. (2009). *Considerații privind drepturile personalității.* RSJ (4), 41-54.
Chelaru, E. (2003). *Drept civil. Persoanele*, Bucharest: All Beck Publishing House.
Chelaru, E. (2012). *Drept civil. Persoanele- în reglementarea NCC*, Bucharest: C. H. Beck Publishing House.
Chelaru, E. (2003). *Privire critică asupra noii reglementări a numelui*. *Dreptul*, (7), 9-11.
Cornu, G. (1991). *Droit civil. Introduction. Les personnes. Les biens.* 5th Edition, Paris: Montchrestien Publishing House.
Dogaru, I., Cercel, S. (2007). *Drept civil. Persoanele*. Bucharest: C. H. Beck Publishing House.
Dogaru, I., Cercel, S., Dănișor, D. C., Popa, N., (2008). *Bazele dreptului civil*, vol. I., *Teoria generală.* Bucharest: C. H. Beck Publishing House.
Gheorghe, M., Popescu, G. (1992). *Introducere în teoria drepturilor personalității.* Bucharest: Romanian Academy Publishing.
Hamangiu, C., Rossetti-Bălănescu, I., Băicoianu, Al. (2002). *Tratat de drept civil român*. Bucharest: All Beck Publishing House.
Hanga, V. (1971). *Drept roman privat*. Bucharest: Didactical and Educational Publishing House.
Ionescu, C. (1975). *Mică enciclopedie onomastică*. Bucharest: Romanian Encyclopedic Publishing House.
Lupan, E., Sabău-Pop, I. (2007). *Tratat de drept civil. Persoanele*. Bucharest: C. H. Beck Publishing House.
Lupan. E., Sztranyiczki, S. (2012). *Persoanele în concepția Noului Cod civil.* Bucharest: C. H. Beck Publishing House.
Malaurie, Ph., Aynés, L. (2003). *Les personnes. Les incapacités*. Paris: Défrenois Publishing House.
Titulescu, N. (2004). *Drept civil*, Bucharest: All Beck Publishing House.
Ungureanu, C. T. (2013). *Drept civil. Partea generală. Persoanele*, Bucharest: Hamangiu Publishing House.
Ungureanu, O., Munteanu, C. (2011). *Drept civil. Persoanele în reglementarea noului Cod Civil*. Bucharest: Hamangiu Publishing House.
Ungureanu, O., Munteanu, C. (2015). *Drept civil. Persoanele în reglementarea noului Cod Civil*, Bucharest: Hamangiu Publishing House.
Val Popa, V. (2006). *Drept civil. Partea generală. Persoanele.* Bucharest: C.H. Beck Publishing House.
Zenati-Castaing, F., Revet, Th. (2006). *Manuel de droit des personnes*. Paris: Presses Universitaires of France.

Article Info

Received: April 2 2015
Accepted: May 26 2015

RSP • No. 46 • 2015: 365-374

ORIGINAL PAPER

The Protection Order Seeking and Accessing: A Mechanism in Combatting Domestic Violence

Roxana Gabriela Albăstroiu[*]

Abstract
The necessity to protect the victims of domestic violence determined the appearance of the Law no. 25/2012 – The Protection Order. The social reality that goes beyond the juridical one determined the legislator to regulate many ways of domestic violence: starting with the physical one to the social, economic and spiritual violence. The area of the victim and the aggressor is pre-established, being determined by the legislator under the terms: "family member", without a limited configuration of the Protection Order towards the family members, as it was established by the general civil law, but a wider field of action, which includes the persons which are living together, even if between them it is not a legal relation of kinship or affinity. The Protection Order is, in fact, an injunction pronounced in specials conditions: urgency, it is adopted in secret room, with the citation of the parties. This judicial decision will offer to the victim of domestic violence the necessary protection against the aggressor, in order to guarantee her integrity and personal freedom, both physically and mentally. Besides, by the way wich this protection mechanism is designed it interferes with the principles and rules relating to the protection of human rights, the privacy and family life, the principles enshrined in the Basic Law, rules of civil law, criminal law or procedural law. The study aims to answer the following question: Which are the measures that can be taken in such case of violence? Who can ask to the Court for a Protection Order? How can be applied such a measure in our Romanian contemporary society? Are we protected and outside the borders of the State?

Keywords: d*omestic violence, state of danger, family member, the protection order, the restraining order*

[*] Assistant Professor, PhD, University of Craiova, Faculty of Law and Social Sciences, Law Specialization, Phone: 0040751146551, E-mail: roxana.albastroiu@yahoo.com.

Introductory notions

The protection order is regulated by Law 25/2012 (Official Gazette of Romania 365 from May 30, 2012) amending and adding to Law 217/2003 (Official Gazette of Romania, Part I. 367 from May 29, 2003) about preventing and combatting violence. These provisions come in response to the numerous statistics (Open Society Foundation, 2013: 4) which show an alarming number of domestic violence cases. Noticing that in practice Law 217/2003 does not provide effective protection to victims of domestic violence, lawmakers have considered it necessary to create a tool to try to combat this type of violence from the moment it becomes an imminent and irremovable danger. The very purpose for issuing the protection order is to eliminate the state of danger represented by "any deliberate action or inaction, except in self-defense or defense, manifested physically or verbally committed by a family member against another family member which causes or may cause physical, mental, sexual, emotional or psychological damage, including threats with such acts, coercion or arbitrary deprivation of liberty" (article 2 paragraph (1) of Law 25/2012).

Therefore, the amendments to Law 217/2003 reconfigure the notion of "domestic violence" by re-assessing the actions that justify issuing an order. The scope of the concept of "family member" is expanded, with protection being afforded to any person cohabiting without necessarily establishing a line of kinship. The governing principles in the protection and promotion of interests of domestic violence victims are determined. The "protection order" is introduced as a mechanism for the protection of domestic violence victims (Văduva, 2012: 36). The abilities of competent bodies are reconfigured to allow the enforcing of the court's decision represented by the protection order.

Protection Order vs. Restraining Order – Concept and Legal Foundations in Different Legal Systems

Regulating the protection order in Romanian law was modelled on the existing similar institutions in other legal systems, as well as discussions on the European protection order. Therefore, we find that the *protection order* is governed in all 50 American states (Americanbar, 2007: 8) and in Colombia, obviously with some features known from one legislation to another. By order of protection (Findlaw, 2013): perpetrators of violence shall be prohibited to attack, strike, contact or disturb the victim; perpetrators of violence are obliged to leave the house they shared with the victim; perpetrators of violence are forced to keep at least 100 yards from the victim and the victim's home or workplace; orders the perpetrator of violence to attend counselling; prohibits the perpetrator from carrying firearms.

The protection order may also include a provision for the protection of children or persons living in the victim's house. Regarding *the restraining order* (Webster's New World Law Dictionary, 2010: 2112), it is known as an "ex parte" judicial order whereby the perpetrators of violence cohabiting with the victim are forced to leave home temporarily. The restraining order is most often a temporary injunction issued at the request of the abuses cohabitant. In most states, the notion of "cohabitant" refers to the person is in a sexual relationship with the perpetrators of violence against them and who has lived with them at least 90 days in the year preceding their application for the restraining order (Htun, Weldon, 2011: 14). The victim is exposed to imminent danger or has already been abused by the abuser (and/or already has a protection order against him) and has no other legal way to defend themselves than to requesting the issue of a

restraining order. In most states, applying for an order may be done only by an attorney (Player, 2012: 589).

The protection order is regulated on a European level, with some countries having provisions similar to those of the United States, while others fuse the two institutions, having covered only the protection order that mixes characteristics from both of them. Thus, under the national legislation in Europe, the term "protection order" has become somewhat synonymous with the restraining order and is used depending on the focus either on the victim or the aggressor.

In France, articles 515-9 of the French Civil Code regulate the protection order, an instrument to protect victims of domestic violence, introduced to French law by the Law from the July 9, 2010 (Jaspart, Brown, Condon, 2013: 121). According to surveys (Zebrinska, 2003: 51) conducted in France in 2000, one in ten women is a victim of acts of physical, mental, verbal or sexual violence from their partner and three women are killed every two weeks by a current or a former partner. Also, 20% of medical emergencies are cases of domestic violence. Of these victims, only 6% reported the incident. Austria and Germany (Haller, 2007: 64) have regulated an extension of police powers in order to very rapidly and effectively intervene to remove the victim from under the influence of the aggressor. In serious cases of violence, the police have been given the power to enter the family home, call the victim and evacuate the aggressor. Also, competent police authorities prohibit the perpetrator to return home to the family or to approach the victim's home or workplace. Such interventions can take place even if the victim has not applied to the court for protection.

At present, in our country article 31 paragraph (3) from Law 25/2012 provides that to enforce a protection order the police may enter the family home and all its attachments, with the consent of the protected person or, in the absence of that, the consent of another family member. This can be achieved but only under a protection order. We observe that the protection order as regulated in our legal system has a number of specific elements. These are more interesting when they highlight a number of exceptions or limitations of rights already provided for in our legislation. And in order to state some of them, we need to start right from the example consisting in the power conferred to the police *to enter the victim's domicile,* at their request, to protect them from the danger posed by the presence of the perpetrator there. In most cases, the victim's domicile is not their personal property, but is the family home, placed in joint ownership of the spouses, or moreover, is the personal property of the abusive spouse. In this last particular case, we notice the specificity that the legislature intends to infuse into the protection order legislation.

Therefore, entering into *the domain of criminal law*, we consider that article 224 paragraph (1) from the New Code of Procedure describes breaking the protection order and entering the victim's domicile as "entering without the right, by any way possible, in a house, room, outbuilding or enclosed space pertaining to them, without the consent of the person using them... ". Can we discuss trespassing in the case of the police executing a protection order? Obviously not. On one hand, because the policeman acting on the basis of a court ruling to be enforced and, on the other, the police have received the consent of a person living in that dwelling. Moreover, when legislating the protection order, the lawmaker had in mind principles like respect for human dignity, equality of opportunity and treatment, protection and visibility of domestic violence victims. These points were considered primordial, the actions that may affect the home are noticed only when the police's intervention is done abusively and without respect for rules laid down in the

regulation of the protection order. Also, in the same situation of executing the protection order by the competent body, we discuss the specifics of this rule, based on *rules of civile law*, i.e., regulation of private property rights and prerogatives it gives to the right holder. Prerogatives are violated by regulating private property right protection order? No. We believe that the legislature is considering only a limited exercise of the rights of ownership, with the limitation made to ensure the safety of the person in a space that is extremely hard to access, the family space breached by police personal and in which the victim is particularly exposed the more it relates to a person and a space which should normally provide extra security and tranquility. In light of *rules of civil procedure law*, we believe that the protection order is a type of presidential ordinance (Ghiță, 2014: 21) which needs to fulfill the same expediency and emergency conditions as in the ordinance, as we may observe from the analysis of admissibility conditions for the issue of a protection order.

The Protection Order in Romanian Legal System

At the request of the person suffering from violence caused by a family member, the court may issue a decision that materializes in the very protection order. The application may be made both personally as well as through a representative, article 25 paragraph (3) of Law 25/2012 listing persons that may act as a representative. *The conditions under which a protection order can be issued* are provided in article 23 paragraph (1) of Law 25/2012. For such an application to be allowed, the following conditions must be met:

The state of danger created from an act of violence

Article 4 of Law 25/2012 lists and defines the forms that domestic violence can take. We note that in comparison to previous regulations, the legislator intends to broaden the notion of violence and psychological, social and mental actions or inactions. Domestic violence occurs in the following *forms*: verbal violence, psychological violence, physical violence, sexual violence, economic violence, social violence, spiritual violence. The scope of the concept of state of danger now covered in the regulation includes some uncommon forms of violence extremely, which are much harder to know and observe, such as economic violence, spiritual violence. It can only give potential victims additional protection in order to deter aggressors, victims often terrorized by such actions which the law does not provide. However, in practice, it remains quite difficult for the victim to prove the existence of such acts. In a judgment of the Dolj Courthouse (Court of Dolj, 2013) it is noted that the defendant has manifested *verbal and social violence* towards the female plaintiff, as defined in article 4 letter a and f of Law 25/2012 and verbal violence against underage children, for which reason the application and issue of a protection order which for a duration of three months, the measures provided for in article 23 letter d of Law 217/2003. Therefore, the defendant shall be refused any contact, including by telephone, mail or otherwise, with the plaintiff for a period of 3 months from the judgment and will be forced to keep a minimum distance of 50 m, for the same period. Also, (in this appeal which amends the sentence granted by the court) amid conflicting relations between former spouses materialized in violent behavior of the respondent towards plaintiff, the court considers that obligation for the aggressor to undergo psychological counseling as provided in article 23 paragraph 3 of Law 25/2012 is fair and does not affect their dignity, because this could help normalize relations between spouses.

The act of violence committed by a family member

In our legal system issuing a protection order only aims to protect the victim of domestic violence. The whole procedure is based on trying to eradicate domestic violence

so that the protection order is known as a tool for combatting this form of aggression. Therefore, the beneficiary of the protection conferred by these regulations will be in relation to the family relationships towards the person that caused a state of danger by acts of violence (whatever form it takes). In this sense, to have access to this form of protection it is necessary for the applicant to meet the conditions and prove to be a victim of domestic violence (Ghiță, 2014: 23). From an etymological point of view, the term "family" comes from Latin, *familia/-ae* and originally designed all persons living under the same roof under the authority of a *pater familias* (Avram, 2013: 5). From a legal point of view, nowadays, the concept of family has acquired a wider definition *latu sensu* – *"the family represents the community framework of life and interests of those who make it up, united by the moral essence of marriage and lineage in a single model of human solidarity"(* Florian, 2011: 2; Albu, 1975: 7; Filipescu, 1998: 2) – as well as a definition in the strict sense – *"the family is a social reality that takes shape in the communal life between spouses, between parents and children"* (Bacaci, Dumitrache, Hageanu, 2002: 1) – each with the foundation kinship or affinity established between its members.

The concept of *family member* is defined in article 5 of Law 25/2012 by the lawmaker who gives it a special meaning in comparison to the civil law in general, extending family relationships by incorporating kinship and affinity relationships. In order to produce legal effects as broad as possible, the concept of family member involves: a) ascendants and descendants, brothers and sisters, their children, and people who through adoption, by law, have become such relatives; b) husband/wife and/or former spouse/former spouse; c) persons who have established relationships similar to those between spouses or between parents and children, in case they live together; d) guardians or other persons exercising rights *de facto* or *de jure* to the person of the child (Drăghici, 2013: 134); e) the legal representative or any other person who cares for a person with mental illness, intellectual disability or physical disability, except those that fulfill these functions in the exercise of professional duties.

The lawmaker thus extends the concept of family member even to people who do not have such links to the aggressor, precisely to ensure greater protection for those who live with or without the existence of a family relationship or affinity, even though article 277 Civ. code prohibits other forms of marital union (Ghiţă, Albăstroiu, 2014: 201).

The jurisprudence of the European Court of Human Rights is the same in interpreting article 8 of the Convention in respect to private and family life, recognizing not only biological relationship but also emotional relationships based on which family-like relationships can be created (Renucci, 2009: 421; Bîrsan, 2006: 501). Our domestic jurisprudence follows the same line or reasoning. Therefore, Court of Piatra Neamț records in one of its judgments that, according to article 5 of Law 25/2012, family members are "persons who established relationships similar to those between spouses or between parents and children, where they live". The court considers that relationships of cohabitation between the parties fall under article 5 letter c of the aforementioned law, if they have a relationship similar to the one between spouses.

The act of violence is likely to endanger life, physical or mental integrity or to a person's liberty

As we have already seen, the legislature regulates many more forms of violence, giving victims the opportunity to seek protection regardless of how the abuser tries to commit violence. Article 2 paragraph (1) of Law 25/2012 determines the legal meaning of the concept of domestic violence as "any intentional action or omission, unless the act of self-defense or defense, manifested either physically or verbally, committed by a family

member against another member of the same family (Gorunescu, 2012), which causes or may cause physical, mental, sexual, emotional or psychological damage, including threats with such actions, coercion or arbitrary deprivation of liberty Paragraph (2) of the same article completes the notion stating that "preventing women from exercising their rights and fundamental liberties" also constitute domestic violence.

From these legal texts we can state the view according to which in order to issue a protection order it is necessary and sufficient to have an existing state of danger and not produce actual suffering, whatever its nature. This is clear from the wording of the legal text "... can cause damage or suffering... ".

Characteristics of the Protection Order

The Quality of Urgency

The urgency that characterizes the issuing procedure for a protection order, as in the case of presidential ordinance, lies in trying to prevent and combat those acts of violence whereby the victim is concerned. Thus, even an application requesting the issue of protection is based on the state of imminent danger, though not engendering this state. The *quality of urgency* is the very condition that justifies the use of the order in question, the judgment procedure is concise and characterized by celerity. According to what the lawmaker states, issuing the order is strictly done in order to eliminate exposure to danger.

Given the characteristics of the presidential ordinance (Ghiță, 2014: 151), which the protection order as its variation meets, bring into question the regulation of article 996 paragraph (1) from the New Code of Civil Procedure.

The Provisional Quality

Given the assertion of the order that the particular form of the presidential ordinance (Tăbârcă, 2013: 745), we recognize that besides the urgency of the measure and its temporary/provisional character. Therefore, the assented measures are likely to maintain the state of things, without it escalating or causing serious consequences to the resolution of the dispute. However, the temporary nature of the protection order is conferred by the need of another dispute on the merits of the case. Application admissibility pertains exclusively to the fulfillment of the conditions already set, it remains an interim measure, based on the very text of the law governing it. According to article 33, the temporary nature is given by the law even in the sense that the order will be issued for a maximum period of *six months* with a possible extension of the same time. It has been recorded that (Tăbârcă, 2013: 754), because the emergency ordinance requires the adoption of interim measures, the court is not to prejudge the merits of the merits but – so that the solution is not arbitrary, however – it is obliged to investigate the appearance of the right.

Issue to order to Eliminate the State of Danger

According to article 24 of the aforementioned Law, the duration of measures of the protection order by the order is determined by the judge, but may not exceed six months from the date of issue of the order. This order provides measures to eliminate the state of danger. Thus, by borrowing from the law and jurisprudence of Western countries in controlling violence, Romanian law allows the judge to order, according to article 23 paragraph (1), one of the following: a) the temporary evacuation of the aggressor from the family home, whether they are the owner of the property; b) re-integration of victims and, where appropriate, children, into the family home; c) limiting the right of the aggressor to use only a part of the house where it can be shared so that the abuser does not come into contact with the victim; d) ordering the abuser to maintain a specified minimum distances to the victim, to his children or other relatives thereof to or from the residence, work or

education unit of the protected person; e) prohibiting the abuser from entering certain localities or determined areas that the protected person attends or visits regularly; f) prohibiting any contact, including telephone, mail or otherwise, with the victim; g) ordering the abuser to surrender all weapons to the police; h) awarding custody of minor children or establishing their residence.

Also, by the same judgment, the court may order: the payment by the aggressor of the rent and maintenance for temporary accommodation for the victim, underage children or other family members where they live or are to live because of their inability to remain in the family home (article 23 paragraph (2) L. 25/2012); the abuser to attend counseling, psychotherapy, or may recommend control measures, receiving treatment or of several forms of care, particularly for rehabilitation purposes (article 23 paragraph (3) L. 25/2012). This jurisprudence is based on numerous cases of domestic violence (Liiceanu, Saucan, Micle, 2004: 71), against which it was almost impossible to fight before the entry into force of Law 25/2012. Although initially somewhat reluctant to issue protection orders, currently the national courts have seen an increase in the number of such cases, which are not founded on the increasing number of victims of family violence, but these victims increased confidence in this tool of protection, the restraining order (Coaliția Națională a ONG-urilor implicate în programe privind violența împotriva femeilor, 2012). As an example, we can give a case (Court of Craiova, 2014) from the Court of Craiova, according to which accept the application and has sought the issue of a protection order of the applicant OAM against her mother, DAV for a period of six months with the measure of re-integrating the applicant in the family home located in Craiova.

The European Protection Order

The regulation concerning the protection order is preconfigured country of adoption in the European Union Directive 2011/99 / EU of the European Parliament and of the Council of 13 December 2011 on the European Protection Order. Representing to the Romanian legislator a warning of the existence of a significant number of domestic violence victims, or maybe just the desire to modernize and harmonize national legislation with European legislation (Olimid, 2014: 222-236), this directive was the moment of "birth" in the Romanian legal system of a protective tool with a real application. The European order aims to protect victims of all forms of violence, thus having a wider scope of application than at national level.

In the sense of the Directive, according to article 2 paragraph (1): the "European protection order" signifies a decision taken by a judicial or equivalent authority of a member state in relation to a protection measure against which a judicial or equivalent authority of another member state shall adopt appropriate measure or measures under their national legislation to further ensure the protection of the person under legal protection. The objective that this Directive proposes is to draw "rules allowing a judicial or equivalent authority of a member state which adopted a safeguard to protect a person against the criminal act of another person which might endanger the life, their physical or psychological integrity, dignity, personal liberty, sexual integrity, to issue a European protection order to allow a competent authority of another member state to continue the protection of the person in the territory of this member state, following criminal conduct, or alleged criminal conduct, in accordance with the law of the issuing state" as provided even in article 1.

The purpose of this bill is to ensure the security of the person, beyond the state of nationality (Otovescu-Frăsie, 2007: 299; Valeria, 2014: 67). In its press release (European

Commission, 2015), the European Commission states: "A citizen who suffered from domestic violence will now be able to feel safe when travelling outside his country of origin, by simply transferring the order that protects them against the offender. Previously, to obtain recognition in other EU member states, victims were forced to go through complex procedures and initiate a separate certification procedure in each country. Currently, these protective orders will be easily recognized in any EU member state, which means that a citizen who has been the victim of violence can travel without having to go through cumbersome procedures". The new mechanism consists in two separate instruments: the Regulation of mutual recognition of protection measures in civil matters and the Directive on the European Protection Order (European Commission, 2014-2019). The mechanisms reflect the differences between protective measures of member states which may be of civil, criminal or administrative nature. The rules will ensure, together with free movement of the most common types of protective measures in the European Union (European Commission).

Conclusions

The regulation of the European protection order is clearly one of the most important steps in the fight against domestic violence. Ensuring the protection and security of the person manifested in its complex forms, beyond the state borders it may represent only the joint effort of EU countries to eradicate this type of violence. Regarding the protection order regulated at a national level, it cannot be the only answer to the numerous legislative realities felt in society. The importance of this regulating tool is really consented to by the presence in the role of the Court of requests from victims of domestic violence. These applications may not mean, in fact, anything other than becoming aware of the seriousness that long silence has protected and encouraged aggressors and, on the other hand, the determination of the victims of such violence to end the suffering they have endured.

Acknowledgment

This work was supported by the strategic grant POSDRU/159/1.5/S/141699, Project ID 141699 co-financed by the European Social Fund within the Sectorial Operational Program Human Resources Development 2007-2013.

References:

Albu, I. (1975). *Dreptul familiei*, Bucharest: Didactic and Pedagogic Publishing House.

Avram, M. (2013). *Drept civil. Familia*, Bucharest: Hamangiu Publishing.

Bacaci, A., Dumitrache, V., Hageanu, C. (2002). *Dreptul familiei* (III), Bucharest: All Beck Publishing House.

Birsan, C. (2006). *C.E.D.O. Comentariu pe articole. Drepturi şi libertăţi* (I), Bucharest: C H Beck Publishing.

Decision 3508/2014 (2014). Court of Craiova.

Decision 778/R/2012 (2013). Court of Hunedoara, civil section. *"Hunedoara Juridică" Magazine*, (1): 138-141.

Decision 94/2013 (2013) of the Court of Dolj amending civil ruling 7682/16.05.2013 of the Court of Craiova.

Directive 2011/99/UE of the European Parliament and of the European Council from 13

December 2011 concerning the European protection order, the Official Journal of the European Union. Retrieved from: http://eur-lex.europa.eu/legal-content/en/TXT/?uri=OJ:L:2011:338:TOC.

Draghici, A. (2013). *Protecția juridică a drepturilor copilului*, Bucharest: Universul Juridic Publishing House.

European Commission (2015). *Press release – A better protection for violence victimes anywhere in the EU*, Brussels. Retrieved from: http://europa.eu/rapid/press-release_IP-15-3045_en.htm.

Filipescu, I. P. (1998). *Tratat de dreptul familiei*, Bucharest: All Publishing.

Florian, E. (2011). *Dreptul familiei* (4), Bucharest: C.H. Beck Publishing.

Ghiță, D. (2014). Reforming the Trials' Procedure in the New Civil Procedure Code. *Revista de Științe Politice. Revue des Sciences Politiques*, (44), 148-160.

Ghiță, O. (2014). Ordinul de protecție – varietate a ordonanței președințiale. *Revista Avocatul* (1), Uniunea Națională a Barourilor din România. Retrieved from: http://unbr.ro/ro/ordinul-de-protectie-varietate-a-ordonantei-presedintiale/.

Ghiță, O., Albăstroiu, R. G. (2014). Is the family of the 21st century based exclusively on the marriage between a man and a woman? *Revista de Științe Politice. Revue des Sciences Politiques*, (43), 195-206.

Gorunescu, M. (2012). *Ordinul de protecție în legislația romanească*. Retrieved from: http://www.juridice.ro/ordinul-de-protectie-in-legislatia-romaneasca. html.

Haller, B. (2007). *The Austrian Legislation against Domestic Violence*. Retrieved from: http://www.ikf.ac.at/english/austrian_legislation_against_domestic_violence.pdf.

Htun, M., Weldonl, L. (2011). *Sex Equality in Family Law: Historical Legacies, Feminist Activism and Religious Power in 70 Countries*, World Development Report. Retrieved from: http://siteresources.worldbank.org/INTWDR2012/Resources/7778105-1299699968583/7786210-1322671773271/Htun-Weldon-family-law-paper-april-11.pdf.

Jaspart, M., Brown, E., Condon, S. (2013). *Les violences envers les femmes*, Paris: La Documentation française.

Liiceanu A., Saucan, D. S., Micle, M. I. (2004). *Violența domestică și criminalitatea feminină,* Bucharest: Institutul Național de Criminologie.

Olimid, A. P. (2014). International Peace and Security Cause in UN Security Council Resolutions. A State of Art Analysis (2012-2014). *Revista de Științe Politice. Revue des Sciences Politiques*, (43), 222-236.

Open Society Foundation (2013). *Studiu la nivel național cu privire la implementarea ordinului de protecție – Legea 25 din 2012*. Retrieved from: http://www.aleg-romania.eu/docs/protectie.pdf

Otovescu-Frăsie, C. M. (2007). The Right to Respect for Private and Familly Life. In *Knowledge Based Organisation Juridical Science*, Sibiu: Land Forces Academy Publishing, pp. 296-301.

Player, K. K. (2012). Recent Development: Expanding Protective Order Coverage. *St. Mary's Law Journal*, (43), 1037-1056.

Renucci, Fr. (2009). *Tratat de drept european al drepturilor omului*, Bucharest: Hamangiu Publishing.

Coaliția Națională a ONG-urilor implicate în programe privind violența împotriva femeilor, (2012). *Ordinul de restricție în legislația statelor europene – Studiu comparativ*. Retrieved from: http://www.ce-re.ro/home.

Tăbârcă, M. (2013). *Drept procesual civil, vol. II – Procedura contencioasă în fața primei instanțe. Procedura necontencioasă judiciară. Proceduri speciale*, Bucharest: Universul Juridic Publishing House.

Valeria, G. (2014). Brief Considerations regarding the Juridical Protection of Private Life in the Regulation of the New Romanian Civil Code. *Agora International Journal of Juridical Sciences*, 2 (8), 66-71.

Văduva, F. (2012). *Familia ca sursă de agresivitate şi violenţa*, Doctoral thesis publicly defended at University of Bucharest, Bucharest: University of Bucharest.

Webster's New World Law Dictionary (2010). New Jersey: Wiley Publishing, Inc., Hoboken.

Zebrinska, N. (2003). *La guerre secrète, vaincre la violence conjugale*, Paris: L'Harmattan.

Article Info

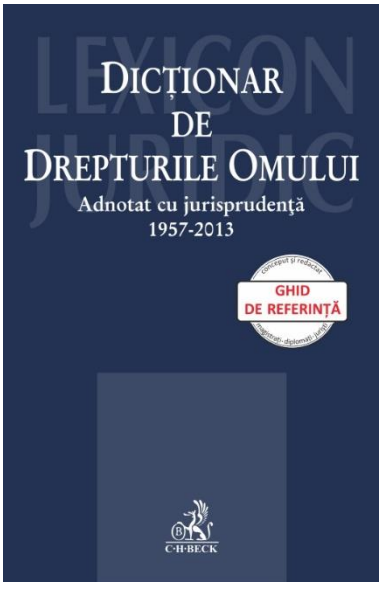
Received: February 27 2015
Accepted: May 25 2015

RSP • No. 46 • 2015: 375-377
BOOK REVIEW

BOOK REVIEW

Dana Cristina Bunea, Cornel Gabriel Caian, Irina Cambrea, Dragos-Alin Calin, Roxana Maria Călin, Victor Horia Dimitrie Constantinescu, Ionuț Militaru, Mădălina Ioana Morariu, Geanina Munteanu, Irina Alexandra Neagu, Ileana-Gabriela Popa, Răzvan Horațiu Radu, Vasiescu Mihaela (2013). *Dicţionar de drepturile omului (Dictionary of Human Rights),* Bucharest: C. H. Beck Publishing House, ISBN 978-606-18-0203-6, 976 pages.

Cătălina Maria Georgescu*



The "Dictionary of Human Rights" is an innovative formula of correlating the conceptualization, definition and historical evolution of fundamental human rights notions, institutions, instruments and mechanisms of national and international human rights law. Marvelously accomplished, the volume gathers the contributions of specialists and practitioners in human rights law such as prosecutors, judges, Government agents, diplomats and jurists specialized in human rights, within the Ministry of Foreign Affairs. From the defition of *Abuse of right* to the explanation of *xenophobia*, the Dictionary of Human Rights provides useful resources for a professional in-depth understanding of a number of 153 terms. Each entry respects the formula of featuring a general presentation of the term, including a discussion on its historical evolution within international and European human rights systems of law, as well as necessary definitions consecrated through the judgements of the European Court of Human Rights. Each entry provides the

* Lecturer, PhD, University of Craiova, Faculty of Law and Social Sciences, Political Sciences specialization, CEPOS Staff, Member of the Board of Directors of the CEPOS Conference 2014, Phone: 0040251418515, E-mail: cata.georgescu@yahoo.com.

interested reader with a key background of theoretical and practical knowledge in the field offering the general presentation of the legal expertise on the judicial practice (*abuse of right, misuse of law, access to court, adoption, arrest, brought promptly before a judge or other office authorised by law to exercise judicial power, brought before a competent judicial authority – non-compliance with the lawful order of a court or an obligation prescribed by law, agent provocateur, entrapment, claim preclusion, effective investigation, inquiry, expropriation, individual application, inter-state application, just satisfaction, locus standi, miscarriage of justice, the principle of audi alteram partem, release, rights of defence, the right to remain silent, right to an effective remedy, right of appeal in criminal matters*), access to the French and English translations and supplying useful general and specific links to the indispendable literature.

The 153 entries provide a scrutiny of institutions, mechanisms, conventional and emerging rights, freedoms and obligations brought forth by globalization and integration processes (*adoption, servitude, secure the payment of taxes, contributions or penalties, right to marry, right to a healthy environment, right to reputation, right to life, civil rights and obligations, children's rights, euthanasia)* within the UN system and under the provisions of the European Convention of Human Rights and the ECHR judgments. The volume offers an in-depth academic perspective and doubled by a professional expertise on the most recent international agreements presented in a thorough institutionalism approach *(death penalty, capital punishment, use of lethal force, torture, inhuman or degrading treatment*) constantly correlated to ECHR jurisprudence. Thus, the lecture of this volume generates a critical understanding of the leverage and limits of international and governmental authorities' actions within stable democracies offering an expected toolkit, a repertoire of fundamental human rights and institutions (*Government agent, public authority, licensing of broadcasting, television or cinema enterprises, asylum and migration, possession, censorship, human dignity, discrimination, right to free elections, respect for correspondence, right to strike, right to education, right to liberty and security, fundamental rights, extraction, expulsion*), thus enabling the habituation as regards state obligations under the provisions of the European Convention of Human Rights.

This volume contributes to the consolidation of Human Rights as an international academic discipline providing a holistic legal, political, social, philosophical, economic, and cultural understanding and usage of key phrases and related concepts (*accusation in criminal matters, criminal conviction, crimes against humanity*). The work accustoms the reader to the international and European provisions and relevant jurisprudence by offering an extensive view of international treaties and related reference texts, political declarations, control instruments and international engagements (*European Union Charter of Fundamental Rights, European Social Charter, European Convention of Human Rights, unilateral declaration*) and international organizations and institutions *(The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, CoE Committee of Ministers, Council of Europe, Council of the Europen Union, European Court of Justice, European Court of Human Rights, International Criminal Court).*

The volume is recommended as a rich resource providing access to the scientific thought and procedural administration of international human rights law providing extensive comprehension of the rationality of governmental authorities and the measures intended as guarantees of rights and liberties and as safeguards against abuses under the international governance. Consequently, the Dictionary of Human Rights becomes a

reference guide for all interested students, academics, practitioners opening the perspectives towards an interdisciplinary study of human rights within democratization and transition studies as regards state institutions and democratic change assumptions, assessment of state capacities and political parties actions for human rights support policies.

Book review Info

Received: March 7 2015
Accepted: May 15 2015

RSP MANUSCRIPT SUBMISSION

GUIDELINES FOR PUBLICATION
REVISTA DE ŞTIINŢE POLITICE. REVUE DES SCIENCES POLITIQUES (RSP)

Email: Manuscripts should be submitted online at rsp.editassist@gmail.com, cepos2013@yahoo.com and cepos2013@gmail.com with the following settings:

Page setup: B5 JIS
Paper title: For the title use Times New Roman 16 Bold, Center.

Author(s): For the Name and Surname of the author(s) use Times New Roman 14 Bold, Center. About the author(s): After each name insert a footnote (preceded by the symbol *) containing the author's professional title, didactic position, institutional affiliation, contact information, and email address.

E.g.: Anca Parmena Olimid*, Cătălina Maria Georgescu**, Cosmin Lucian Gherghe***

* Associate Professor, PhD, University of Craiova, Faculty of Law and Social Sciences, Political Sciences specialization, Phone: 00407******, E-mail: parmena2002@yahoo.com. (Use Times New Roman 9, Justified)
** Lecturer, PhD, University of Craiova, Faculty of Law and Social Sciences, Political Sciences specialization, Phone: 00407******, E-mail: cata.georgescu@yahoo.com. (Use Times New Roman 9, Justified)
*** Lecturer, PhD, University of Craiova, Faculty of Law and Social Sciences, Political Sciences specialization, Phone: 00407******, E-mail: avcosmingherghe@yahoo.com. (Use Times New Roman 9, Justified)

Author(s) are fully responsible for the copyright, authenticity and contents of their papers. Author(s) assume full responsibility that their paper is not under review for any refereed journal or conference proceedings.

Abstract
The abstract must provide the aims, objectives, methodology, results and main conclusions of the paper (please submit the papers by providing all these information in the abstract). It must be submitted in English and the length must not exceed 300 words. Use Times New Roman 10,5, Justify.

Keywords
Submit 5-6 keywords representative to the thematic approached in the paper. Use Times New Roman 10,5, Italic. After the keywords introduce three blank lines, before passing to

the Article text.

Text Font: Times New Roman: 10,5

Reference citations within the text Please cite within the text. Use authors' last names, with the year of publication.
E.g.: (Olimid, 2009: 14; Olimid, Georgescu, 2012: 14-15; Olimid, Georgescu, Gherghe, 2013: 20-23).

On first citation of references with more than three authors, give all names in full. On the next citation of references with more than three authors give the name of the first author followed by "et al.".

To cite one Article by the same author(s) in the same year use the letters a, b, c, etc., after the year.
E.g.: (Olimid, 2009a:14) (Olimid, 2009b: 25-26).

References: The references cited in the Article are listed at the end of the paper in alphabetical order of authors' names.
References of the same author are listed chronologically.

For books
Olimid, A. P., (2009a). *Viaţa politică şi spirituală în România modernă. Un model românesc al relaţiilor dintre Stat şi Biserică*, Craiova: Aius Publishing.
Olimid, A. P., (2009b). Politica românească după 1989, Craiova: Aius Publishing.
For chapters in edited books
Goodin, R. E. (2011). The State of the Discipline, the Discipline of the State. In Goodin, R. E. (editor), *The Oxford Handbook of Political Science*, Oxford: Oxford University Press, pp. 19-39.
For journal Articles
Georgescu, C. M. (2013a). Qualitative Analysis on the Institutionalisation of the Ethics and Integrity Standard within the Romanian Public Administration. *Revista de Ştiinţe Politice. Revue des Sciences Politiques*, (37), 320-326.
Georgescu, C. M. (2013b). Patterns of Local Self-Government and Governance: A Comparative Analysis Regarding the Democratic Organization of Thirteen Central and Eastern European Administrations (I). *Revista de Ştiinţe Politice. Revue des Ştiinţe Politice*, 39, 49-58.

Tables and Figures
Tables and figures are introduced in the text. The title appears above each table.
E.g.: Table 1. The results of the parliamentary elections (May 2014)

Proposed papers: Text of the Article should be between 4500-5000 words, single spaced, Font: Times New Roman 10,5, written in English, submitted as a single file that includes all tables and figures in Word2003 or Word2007 for Windows.
All submissions will be double-blind reviewed by at least two reviewers.