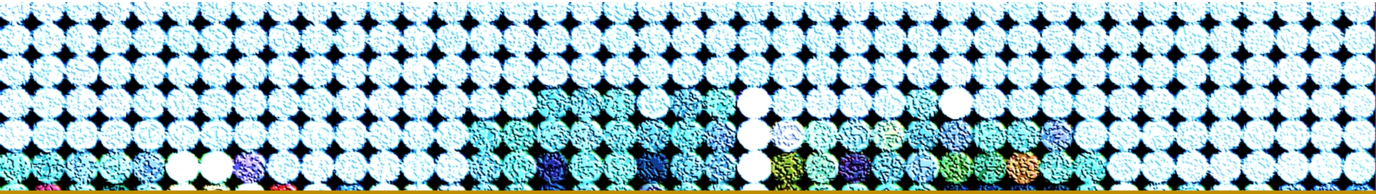

UNIVERSITY OF CRAIOVA
FACULTY OF SOCIAL SCIENCES
POLITICAL SCIENCES SPECIALIZATION &
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REVISTA DE ŞTIINŢE POLITICE. REVUE DES SCIENCES POLITIQUES

No. 50 • 2016

UNIVERSITY OF CRAIOVA
FACULTY OF SOCIAL SCIENCES
POLITICAL SCIENCES SPECIALIZATION &
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Revista de Ştiinţe Politice.

Revue des Sciences Politiques

No. 50 • 2016

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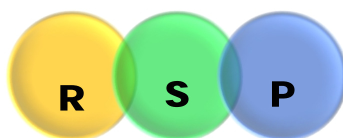

EDITORS' NOTE

Note of the Editors of the *Revista de Ştiinţe Politice. Revue des Sciences Politiques* *RSP @50: Celebration Issue*

Anca Parmena Olimid[*], **Cătălina Maria Georgescu**[**], **Cosmin Lucian Gherghe**[***]

Welcome to the 50th issue of the *Revista de Ştiinte Politice. Revue des Sciences Politiques* (hereinafter **RSP**). The topics of this special issue encourage the timing balance between the Past and the Future from the perspectives of the human security, education and cultural identity.

The exploration of the Eastern Europe realities offers the unique chance to discover the political, social and legal approaches of the types of democracies, administrative authorities, legal systems, cultural diversity and new politics of identity, democracy assistance and the European encounters, types and actions of the constitutional control, rights to education, institutional speeches, public health information and social challenges.

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The contents of this special issue meet the Past, recognize the Present and welcome the Future by establishing its three main topics: Security, Education and Identity. All original articles gathered in this issue allow us to investigate the immediate and long-term effects of education and security in Eastern Europe by rationalizing the encounters of the constitutional, social and political factors, acts and actions.

Further, Anca Parmena Olimid allows us in her paper titled: "*A Research Analysis of RSP's Articles and Topics across Forty-five Issues between 2005 and 2016: Critical Appraisal and Evaluation*" to investigate the articles and topics across forty-five issues since double issue 6-7/ 2005. This research analysis is both a critical appraisal and evalution of the last twelve years of constant and permanent publication of the *Revista de Ştiinte Politice. Revue des Sciences Politiques.*

The paper analysis the *RSP'S* articles published between 2005 and 2016 is based on the average (mean) / issue and per period of the panel research topics, editorial notes and research articles. Based on this average, 736 articles were analysed in terms of the total number of articles per issue and per period and percentage of the total number of articles.

Daniel Cojanu considers in his paper titled: "*Cultural Diversity and the New Politics of Identity*" the politics of identity and the new politics of identity by exploring the variations and various types of the cultural diversity and political self-determination and making a clear difference between cultural identity and other types of identity: gender, racial, religious etc.

Further, Bülent Sarper Ağır, Barış Gürsoy and Murat Necip Arman claim in their article entitled: "*European Perspective of Human Security and the Western Balkans*" the importance and role of the human security "due to the transnational nature of non-traditional security issues" and "because security issues that needed to be addressed should not only be in reference to the state, but also to individuals and societal groups".

This approach is enriched by Adrian Cojanu in his paper titled: "*The West European Communist Parties and the Emergence of their Political Identity. Case study: The Belgian Communist Party*" who individualized the perpectives of the West European Communist Paties and the emergence of their political idenitity. The study explores "the concrete historical and political realities in their own states" of these parties.

In this direction, Valentina Marinescu investigates in her paper titled: "Direct democracy in Romania after 1989: Particularities of the Formal-Legal and Practical Aspects" the emergence of the direct democracy in Romania after 1989 and the particularities of the formal-legal and practical aspects by claiming that "the problems of direct democracy are an extremely important subject of study by present-day political scientists, sociologists, and legal scholars".

Samson Masalu Peter Paschal places in his work titled: "*Romania: A Case-Study of Regional and Global Integration Ongoing Process - the Legal, Economic, and Social Implications Facing Countries such as Romania in Ongoing* Integration Process" the case-study of Romania in the regional and global ongoing process and reaffirms the importance of the legal, economic, social and political implications facing countries in this perspective.

Sevastian Cercel and Ștefan Scurtu propose in their study titled: "*The Extinctive Prescription: the Solutions of the Romanian Civil Code and the UNIDROIT Principles Applicable to International Commercial Contracts*" a new direction of research for the

extinctive prescription by challenging the solutions of the Romanian Civil Code and the UNIDROIT principles applicable to international commercial contracts and considering also other "international conventions governing the relations of international trade law".

Lavdim Terziu, Nazyktere Hasani and Osman Osmani exercise the role of the schoold principle in increasing students' success in their research titled: "*The Role of the School Principal in Increasing Students' Success*". The authors claim that the "students' success depends not only on themselves, but also on other factors, especially the principal of the school, whose supporting and communicating role significantly affects the success of students"and that "the commitment of the school principal in increasing school's success consists of supporting the initiatives, cooperation, communication and constant motivation of students and teachers".

The paper of Adela Teodorescu Calotă titled: "*Translation as Transplant in Contemporary Law*" aims at exploring legal translation under the more comprehensive umbrella-concept of "*legal transplant*". The author considers that "understanding the cultural, social, political, economic, historical, geographical and identity-related peculiarities of a given legal system is indispensable in the process of legal translation".

As the reader shall discover, „the autonomous administrative authorities were first created and implemented in the United States of America, this type of authorities was adopted also in Europe". Thus, Radu Cristian Dragomir invites us in his paper entitled: "*The Autonomous Administrative Authorities in the Romanian Legal System*" to challenge whether "the autonomous administrative authorities currently form an institutional system within the frame of public administration, having statutory guarantees and certain powers that allow them to perform actions without being politically influenced or forced in any way by different economic or professional interest groups".

Moving forward to Teodora Kaleynska's article entitled "*Democracy Assistance - Bulgaria and the Council of Europe (1989-2007)*", we will learn about "the process of democratization in Bulgaria, started November 10th 1989, ended with the Bulgaria accession at EU in 2007". The author investigates the approaches to the democracy assistance in Bulgaria and in relation to the Council of Europe between 1989-2007. The author investigates the influence and importance of the international actors and factors and "the development and strengthening of civil society and formed conditions for democratic development institutions, expanding their capacity conditions existence and stability".

Besard Belegu and Zemri Elezi discover in their article entitled "Constitutional Control of the Constitutional Court of the Republic of Kosovo" the essential elements of constitutional control and rule of law arguing that in order to "distinguish constitutionality as a constitutional principle, whether by formal or political aspect, different theorists use the word "constitutionality" in its meaning as "constitutional" (constitutionality)".

Jonuz Abdullai and Xhemail Cupi in their paper titled "Policy making and Secularism in Macedonia" place the "social multiethnicity and multiculturalism" considering and detecting "the interethnic and interreligious dialogue" as an "imperative of time which should be initiated by the government itself".

Adelina Mihai investigates in her article titled "*The Right to Education of Persons with Disabilities - A utopia of Romanian Education System*" the right to education of persons with disabilities as a utopia of the Romanian education system. The author argues that "regarding Romania, this freedom of action involves limited

material resources, a thing which determines the restriction of the right to education for persons with disabilities in the matter of the applicability of the legal provisions on education nationwide".

Alexandra Florina Mănescu explains in her article titled "The Romanian Presidents' Speech about Education" that "for over twenty years education is also normative a national priority" and investigates "the differences and similarities of speeches about education of the four presidents of Romania, of their programs, of their projects and of their reforms".

Gabriela Rusu-Păsărin explores the immediate and long term effects of public information. The author explains in her article titled "Immediate and Long Term Effects of Public Information. The National Health Card in Romania" the socio-political conceptualization of the phenomenon and the information received within the public space considering that "the political - religion relations would have in this case an unexpected impact and reaction within a segment of the population as a consequence of constructing the religious significance of the insignia on health cards".

Alina-Maria Văduva-Şahhanoğlu, Mădălina Xenia Călbureanu-Popescu and Siemon Smid show in their paper titled "Automated and Robotic Construction - a Solution for the Social Challenges of the Construction Sector" the social and political challenges of the construction sector arguing that "there are also many challenges regarding human capital such as high unemployment, labour mismatches, and increasing numbers of young people without education, employment and training".

As a reminder, within the first RSP issue of 2016, issue no 49/ 2016, the Center of Post-Communist Political Studies (CEPOS/ CESPO) launched the Call for Papers for the 7th Edition of the International Conference *After Communism. East and West under Scrutiny*, University House, Craiova, Romania, 24-25 March 2017, proposing the following panels: Communism, transition, democracy; Post-communism and colective memory; Politics, ideologies and social action in transition; Revolution and political history; Political culture and citizen participation Law, legal studies and justice reform; Constitution(s), legality & political reforms; Political parties, electoral systems and electoral campaigns; Security and diplomacy in national and Euro-Atlantic environment; Rights, identities policies & participation; Education, media & social communication; Administrative history and governance within South-Eastern Europe during transition; Political leadership, democratization and regional security; Comparative policies, sustainable growth and urban planning; Knowledge transfer and competitiveness in regional economies; Global environment and cultural heritage; Integration, identity, and human rights in European systems; Religion, cultural history and education; Media, communication and politics; Discourse, language and social encounters; Bioethics and transition challenges (see all CEPOS 7th Edition of the International Conference *After Communism. East and West under Scrutiny*, University House, Craiova, Romania, 24-25 March 2017 details, panels and registration procedures and forms on the CEPOS official website available at the following address http://cepos.eu/upcoming.html).

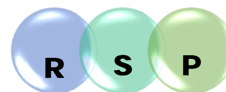
We consider that the main focus of the issue 50/ 2016 is to enable the relationship among security-education-identity preserving the main research tasks undertaken in the previous issue 49/2016 of RSP assessed on *the individual-state relationship.* Both first issues of RSP/2016 map a new arena of the national, regional

and international relationship in the contemporary period and guarantee a multi-approached understanding of research and analysis of human relations, public involvement and political participation.

We continue to innovate and to inaugurate the new concept design of the RSP this year and we invite our authors and readers to join us by thanking them for the research highlights offered across this celebrating RSP issue 50/ 2016!

Wishing you all the best,

RSP Editors



EDITORIAL RESEARCH ANALYSIS

ORIGINAL PAPER

A Research Analysis of RSP's Articles and Topics Across the Issues between 2005 and 2016: Critical Appraisal and Evaluation

Anca Parmena Olimid[*]

Abstract:
The present paper investigates the *Revista de Ştiinţe Politice. Revue des Sciences Politiques* (hereinafter RSP) articles published between 2005 and 2016 based on the average (mean) / issue and per period of the research topics, editorial notes and research articles. Based on this average, 756 articles were analysed in terms of the total of articles per issue and per period and percentage of the total number of articles. Findings show that the majority of the articles (27,91%) of the articles were published in the period between 2005-2008 and the average of articles published varies from 14 articles between 2005-2008 to 22/23 articles between 2014-2016 and 18 articles between 2011-2013.

Keywords: *research topics, articles, publication, journal, frequency*

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Introduction

The Editorial Board of the Revista de Științe Politice. Revue des Sciences Politiques (RSP) is honoured and pleased to introduce the 50th issue, the journal published on behalf of the Center of Post-Communist Political Studies CEPOS / CESPO and the Political Sciences Specialization, Faculty of Social Sciences, University of Craiova in the areas of political sciences and related fields.

In this direction, RSP provides a really unique perspective to re-evaluate and scrutinize the perspectives of the interdisciplinary arenas of the social sciences since its sixth issue no. 6-7 published in 2005 using the data provided by the official website of the RSP available at the following address: http://cis01.central.ucv.ro/revistadestiintepolitice/ and the RSP Archive of articles available at the following address: http://cis01.central.ucv.ro/revistadestiintepolitice/acces.php.

As such, we are confident that the topics of the journal are always connected and linked to the regional, European and international challenges of the moment, engaging and enabling an integrative approach to the European dynamics and its provocative processes of the last twelve years.

As proved, RSP provided also a synthesis of the regional politics and security in Europe, in general, and in the Balkans, in particular, demonstrating critical analysis and professional insights. Needless to argue, RSP traditionally encounters East-West main challenges in the political, historical, social, economic, religious, cultural and legal review.

For research comparison purposes, we separated the periods of publication as follows: first period 2005-2008 (the period when RSP was in process for indexing and listing in most international databases where currently is indexed; second period 2009-2010 (the period of inclusion in the first international databases; third period 2011-2013 (the period when the journal was first entirely published in English); fourth period 2014-2016 (the period when the journal offered a new cover and a new design).

The data set of articles consists of 712 research articles. The research articles were selected starting with RSP issues no. 6-7/ 2005 and till RSP issue no. 49/ 2016 (we "labelled" and counted also the double issues as "autonomous each issue" following (RSP issue 6-7 /2005, RSP issue 9-10 / 2005, RSP issue 18-19/ 2008, RSP issue 21-21/ 2008, RSP issue 30-31/ 2011, RSP issue 33-34/ 2012, RSP 37-38/ 2013).

Methods and methodology

Accurate methods of identifying and mapping the journal topics issues are needed in order to explore and rank the research infrastructure for a period. In the case of RSP, we evaluated forty issues of its fifthy issues published between 2004 and 2016 for 12 years. In addition, we take into consideration a methodology that estimates the yearly and per issue intersection of topics, themes and research topics based upon the following main indicators: political theory, international relations, politics and law/ economic/ religion, applied social sciences and related fields.

Furthermore, the topics of the each issue of RSP published since 2005 was classified, using the research period above presented, by issue and year of publication (Hahs-Vaughn, Onwuegbuzie, 2010; Onwuegbuzie, Leech, 2010). We such avoided double counting of a theme focusing exclusively on each issue according to its particular topics for the last twelve years of publication. To determine the main topics addressed by RSP for each period, we used the content analysis of each topics enabling a research connection with the other themes of the summary and using the formula of the arithmetic mean (Kohler, Kreuter: 2005, 153; Bhardwaj, 2008: 124; García Cruz, Garret: 2008; King,

Tenopir, Clarke: 2006; Caplan, Arms, 1999; Vinkler, 2013; Caplan, Arms, 1999; Dringus, Scalese, 2001). To count the arithmetic mean (average or mean) of the articles, panel research topics and editors' note we used the formula: Arithmetic mean = the sum of all values/ the number of values (Francis, 2008: 96; Lewis-Beck, Bryman, Futing Liao: 623; Gordon, 2012: 115).

$$A = \frac{1}{n} \sum_{i=1}^{n} xi$$

We defined the arithmetic mean (A) for articles and panel research topics. We have a data set of articles containing the values x_1, x_2, x_3, $x_4 \ldots x_n$ (we used the single value of each article/ panel research topics for a single issue or single period) (Rao, 2008: 125; (Francis, 2008: 96; Lewis-Beck, Bryman, Futing Liao: 623; Gordon, 2012: 115). We considered the arithmetic mean: (1) for the set of the articles, first, per each issue (double issues) published in the period 2005-2016; second, for period considered: 2005-2008, 2009-2010, 2011-2013, 2014-2016; (2) for the panel research topics, per each issue (double issues) published in the period 2005-2013. When dealing with the set of articles or panel research topics, the values themselves are considered in the general terms of the "article published" or "panel research topics" selected. The panel research topics were selected from the same originally provided at the moment of the journal publication (see the results in the following graphs: Graph 1. Period 2005-2008 RSP's topics, Graph 2. Period 2009-2010 RSP's topics, Graph 3. Period 2011-2013 RSP's topics, Graph 4. Period 2005-2013 RSP's topics).

When the panel research topics dealt with more than one research topics due to its interdisciplinary approach, we considered the first research development (see the tables with the number of article, panel research topics and editors' note published as follows: Table 1. Number of articles, panel research topics and editors' note published in RSP in the period 2005-2008, Table 2. Number of articles, panel research topics and editors' note published in RSP in the period 2009-2010, Table 3. Number of articles, panel research topics and editors' note published in RSP in the period 2011-2013, Table 4. Number of articles, panel research topics and editors' note published in RSP in the period 2014-2016, Table 5. Number of articles / period and / issue & total number of articles, Table 6. Average number of articles / period and / issue). We selected the each issue the main themes categorising similar articles (see the figures with the panel research topics frequency/ per period as follows: Figure 1. Panel research topics frequency in the period 2005-2008, Figure 2. Panel research topics frequency in the period 2009-2010, Figure 3. Panel research topics frequency in the period 2011-2013, Figure 4. Panel research topics frequency in the period 2005-2014, Figure 5. Number of articles published in RSP in the period 2005-2008, Figure 6. Number of articles published in RSP in the period 2009-2010, Figure 7. Number of articles published in RSP in the period 2009-2010).

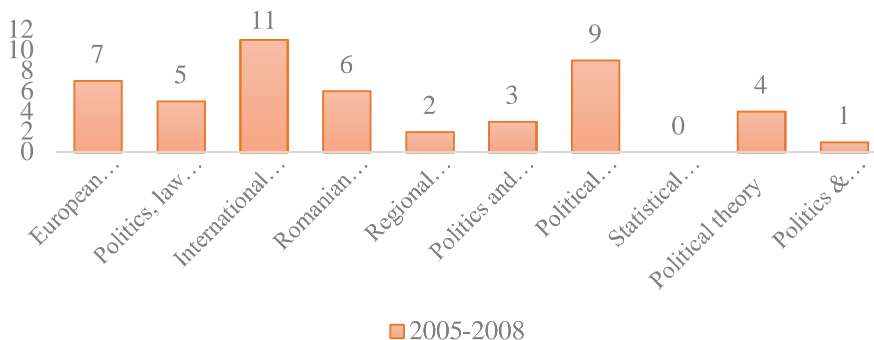
Results and discussion

Since issue no. 6-7/ 2004, the scientific objectives and the research topics were to publish high-quality studies and research papers in the following fields:

(a) *period 2005-2008 RSP's topics*: European studies, politics and law, international relations (issues 6-7/ 2005); Romanian political history, political theory, politics and law, politics and religion, international relations, politics and economics (issue 8/ 2005); contemporary problems, Romania in international relations, political theory, politics and law, politics in the Balkans (issues 9-10/ 2006); global politics, Romania's long road to the EU, EU today (issue 11/ 2006); Romanian politics, international politics, political history, European studies

(issue 12/2006); Romanian politics, politics and human rights, French presidential elections, political history, international political economy, European studies (issue 13/ 2007); problems of globalization, politics and international security, applied methodology, history and applied philosophy (issue 14/ 2007); problems of globalization, international politics, Romanian politics, political history (issue 15/ 2007); international politics, law and politics, Romanian politics, political theory and communication (issue 16/2007); Romanian politics, international politics, political theory and methodology, European studies (issue 17/2008); politics and international security, European studies, regional politics; politics-law references, economic challenges (issues 18-19/ 2008); cooperation and integration: building the international community, conflicts and threats: pieces of the global puzzle, contemporary Romania: action and reflection; history studies: first steps in Romania's modernization (issue 20/2008);

Graph 1. Period 2005-2008 RSP's topics

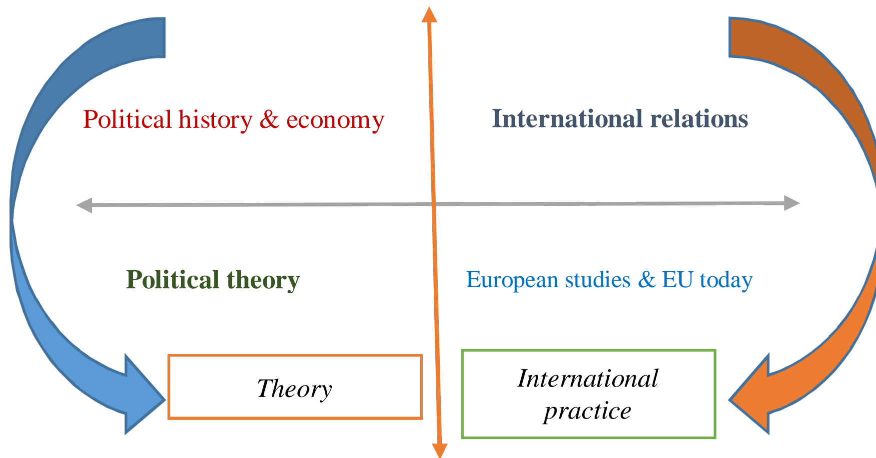


Source: Author's own calculations

Graph 1(1). Period 2005-2008 RSP's topics (variation)

Source: Author's own calculations

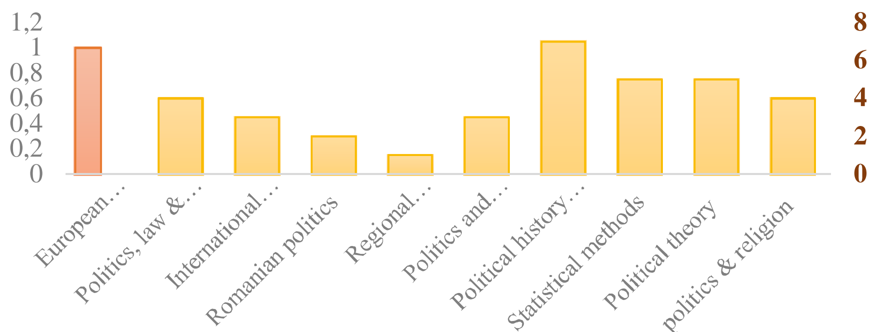
Figure 1. Panel research topics frequency in the period 2005-2008



Source: Author's own compilation

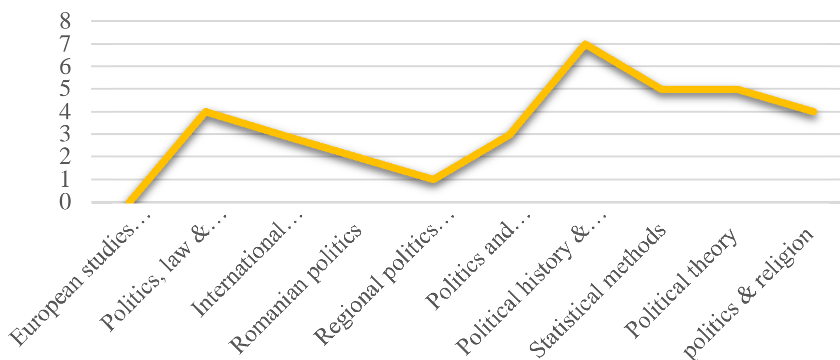
(b) *period 2009-2010 RSP's topics*: political history: thought and practice, Romania today: politics, law and administration, international politics: how to deal with the recent issues?, media studies (issues 21-22/2009); Romanian politics: a permanent transition?; international politics: issues at the apex, politics and religion: Gods and citizens, politics and administration: is there room for new approaches?, statistical methods: exploring social diversity; media studies: texts and contexts (issue 23/ 2009); political theory, international relations, Romanian politics, politics and religion, politics and law, statistical methods, media studies (issue 24/ 2009); political theory, international relations, Romanian politics, politics and religion; politics and law, media studies, statistical methods (issue 25/2010); international relations, political theory, politics and religion, politics and law, media studies (issue 26/2010); international politics, political theory, politics and law, statistical methods, media studies (issue 27/2010); political history, political theory, contemporary challenges, statistical methods (issue 28/2010);

Graph 2. Period 2009-2010 RSP's topics



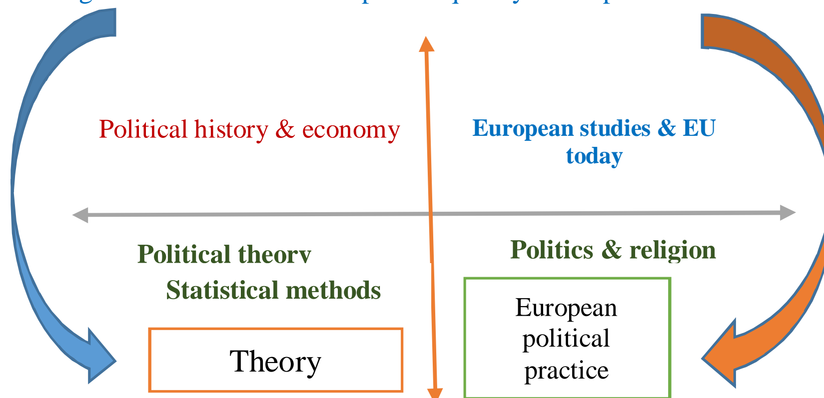
Source: Author's own calculations

Graph 2(2). Period 2009-2010 RSP's topics (variation)



Source: Author's own calculations

Figure 2. Panel research topics frequency in the period 2009-2010

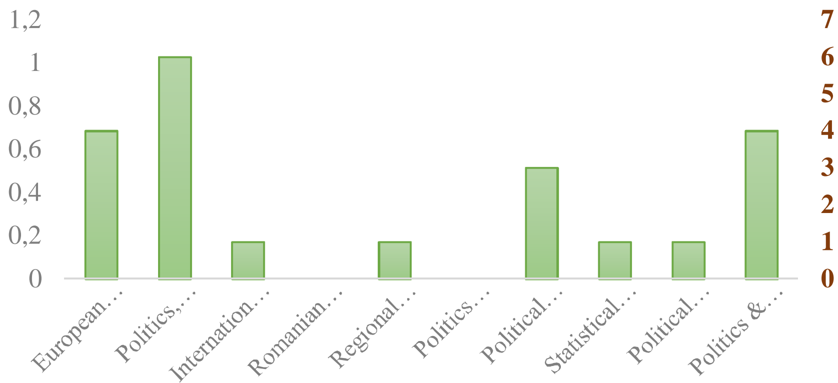


Source: Author's own compilation

(c) *period 2011-2013 RSP's topics*: Romania today: politics, law and administration, political history: thought and practice, international politics: how to deal with the recent issues?, politics & religion: building unity in diversity, statistical methods (issue 29/ 2011); political history, political theory, comparative politics and institutional reform, politics and justice reform, politics and religion (issues 30-31/ 2011); political history: thought and practice; politics today: how to deal with the recent issues?, justice and institutional reform: paths to EU integration; politics & religion: building unity within diversity (issue 32/ 2011); politics and cultural history: thought and practice; politics today: how to deal with the recent issues?, justice and institutional reform: paths to EU integration; media studies: perceptions and realities in the new media age (issue 33-34/ 2012); political and cultural history; thought and practice, politics today: how to deal with the recent issues?, justice and institutional reform: paths to EU integration, media studies; perceptions and realities in the new media age (issue 35/ 2012); political and cultural history: thought, practice and dynamic indicators, politics today: how to

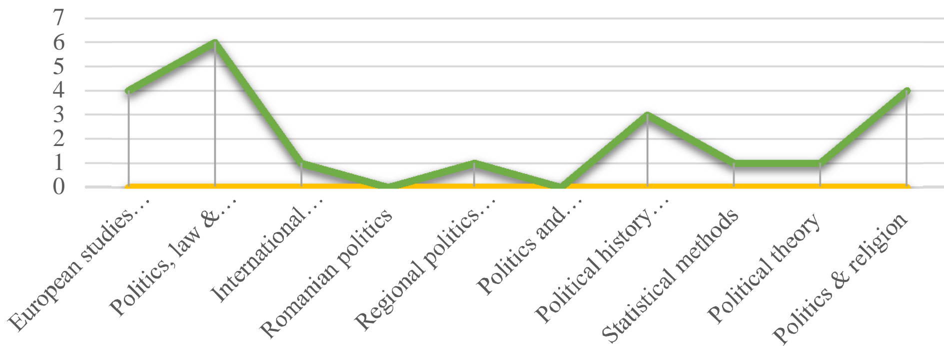
deal with the recent issues? (issue 36/ 2012); political and cultural history: thought and practice; politics today: how to deals with the recent issues?, justice and institutional reform; paths to EU integration, e-government, communication and media (issues 37-38/ 2013); political and cultural history: thought and practice, politics and institutions today; how to deal with the recent issues?, politics and religion: challenges and perspectives (issue 39/ 2013); political and cultural history: thought and practice, politics and institutions today; how to deal with the recent issues? (issue 40/ 2013);

Graph 3. Period 2011-2013 RSP's topics



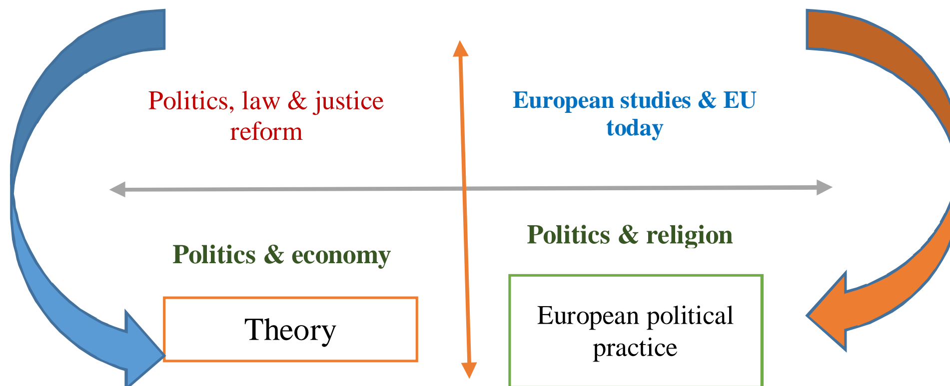
Source: Author's own calculations

Graph 3(3) Period 2011-2013 RSP's topics



Source: Author's own calculations

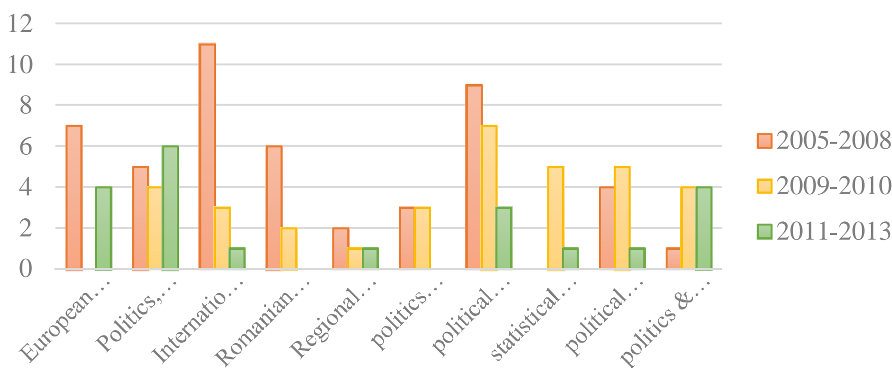
Figure 3. Panel research topics frequency in the period 2011-2013



Source: Author's own compliation

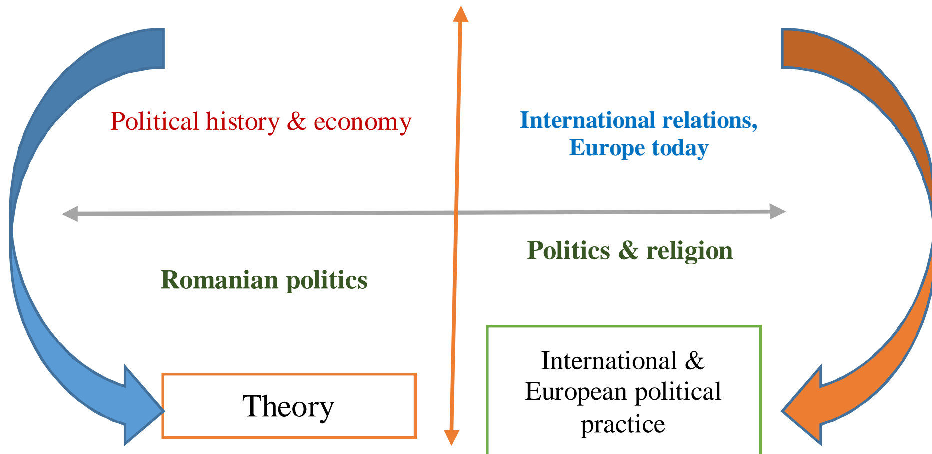
(d) *period 2014-2016 RSP's topics (for the issues for 2014-2016, RSP had only special issues and not a specific topics)*: East & West Post-Communist Encounters: Ideologies, Policies, Institutions Under Scrutiny (special issue 41/ 2014); Citizenship, Elections and Security: An Analytical Puzzle (issue 42/ 2014); Compass of Politics: Systems and Regimes Synopsis (special issue 43/ 2014); Local Governance & Local Political Participation Engagement: A Dialectics of Transition (special issue 44/ 2014); (Re)loading Borders, Bounderies & Bounds - Sheltered Reflections on Power and Influence (issue 45/ 2015); Human Rights, Migration and Identity Perceptions: Capturing Regional Bids & Displays (issue 46/2015); European Governance, Europeanization and Peace-Building in the New European Democracies: Regulations and Self-Assessments (issue 47/ 2015); Post-Communist Memories and Local Patterns In-Between East and West (issue 48/ 2015); From Citizen to State: In Depth Post-Communist Analysis of Governance and Administration (issue 49/ 2016).

Graph 4. Period 2005-2013 RSP's topics



Source: Author's own calculations

Figure 4. Panel research topics frequency in the period 2005-2013



Source: Author's own compilation

Figures 1-4 show the profiling of RSP areas the issues published between 2005 and 2013. This balance between the political history, political economy, politics and religion and Romanian politics areas is due probably to the practice of European and international life along with the approaches to the theory of contemporary politics (here including policy proposals, comperative analysis, speech analysis, media studies etc.).

On the evolution of the topics (Figure 1) between 2005-2008, we discover an increasing interest in that period to the potential of the political history and economy and the international relations fields. This trend is easily explored in the articles on social justice, unemployment, European regulations, e-commerce (political history and economy) and international relations (paradigms of the international relations, policies, institutions and democracy, globalization).

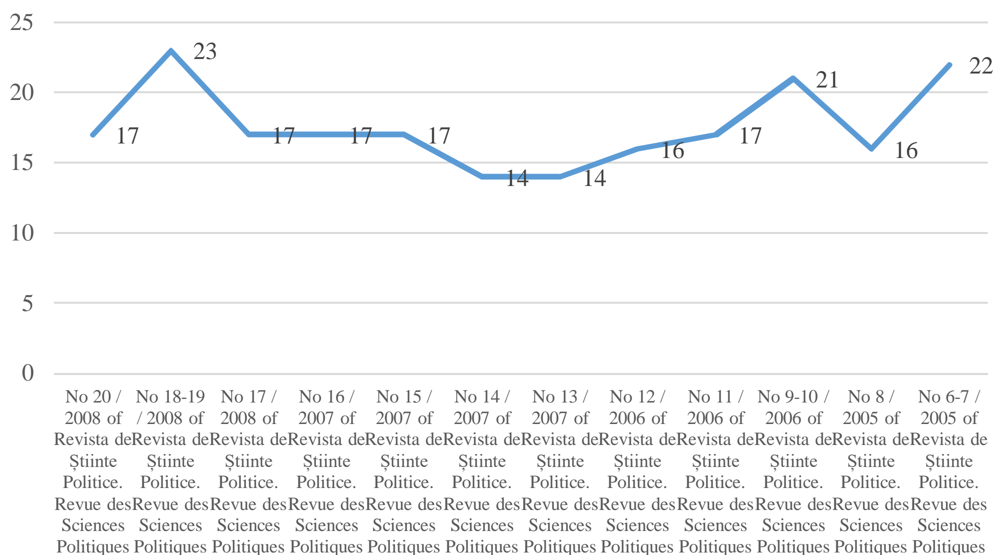
Table 1. Number of articles, panel research topics and editors' note published in RSP in the period 2005-2008

Number of the issue of Revista de Ştiinte Politice. Revue des Sciences Politiques	Number of articles, editors' note, panel research topics published per each issue
No 20 / 2008 of Revista de Ştiinte Politice. Revue des Sciences Politiques	17 articles and 4 panel research topics
No 18-19 / 2008 of Revista de Ştiinte Politice. Revue des Sciences Politiques	23 articles and 7 panel research topics
No 17 / 2008 of Revista de Ştiinte Politice. Revue des Sciences Politiques	17 articles and 4 panel research topics
No 16 / 2007 of Revista de Ştiinte Politice. Revue des Sciences Politiques	17 articles and 4 panel research topics
No 15 / 2007 of Revista de Ştiinte Politice. Revue des Sciences Politiques	17 articles and 4 panel research topics

No 14 / 2007 of Revista de Ştiinte Politice. Revue des Sciences Politiques	14 articles and 4 panel research topics
No 13 / 2007 of Revista de Ştiinte Politice. Revue des Sciences Politiques	14 articles and 6 panel research topics
No 12 / 2006 of Revista de Ştiinte Politice. Revue des Sciences Politiques	16 articles and 4 panel research topics
No 11 / 2006 of Revista de Ştiinte Politice. Revue des Sciences Politiques	17 articles and 3 panel research topics
No 9-10 / 2006 of Revista de Ştiinte Politice. Revue des Sciences Politiques	21 articles and 6 panel research topics
No 8 / 2005 of Revista de Ştiinte Politice. Revue des Sciences Politiques	16 articles and 6 panel research topics
No 6-7 / 2005 of Revista de Ştiinte Politice. Revue des Sciences Politiques	22 articles and 3 panel research topics
RSP issues 2005-2008	Σ $_{\text{articles 2005-2008}}$ = 211 articles
Average number of articles/ issue	Average $_{\text{(period 2005-2008)}}$ ≅ 14 articles/ issue
Total panel research topics	Σ $_{\text{panel research topics 2005-2008 =}}$ 55 panel research topics
Average number of panel **research topics** / issue	Total ≅ 3/ 4 panel research topics / issue
% from the total number of articles published between 2005-2008	27,91%

Source: Author's own calculations

Figure 5. Number of articles published in RSP in the period 2005-2008



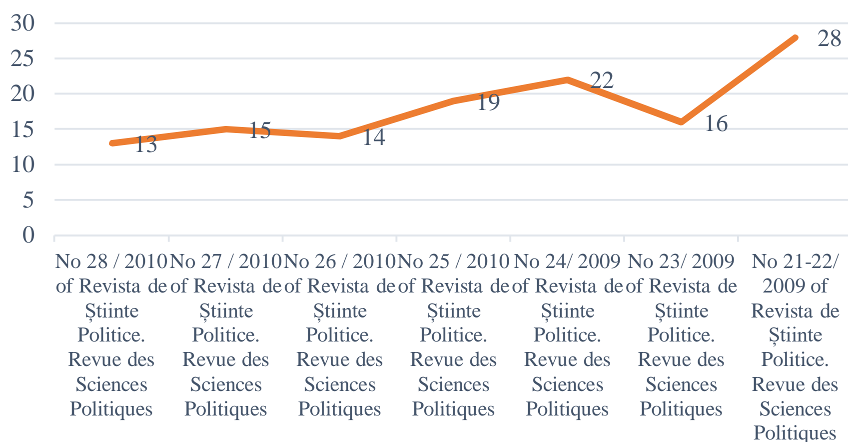
Source: Author's own calculations

Table 2. Number of articles, panel research topics and editors' note published in RSP in the period 2009-2010

Number of the issue of Revista de Ştiinte Politice. Revue des Sciences Politiques	Number of articles, editors' note, panel research topics published per each issue
No 28 / 2010 of Revista de Ştiinte Politice. Revue des Sciences Politiques	13 articles and 4 panel research topics
No 27 / 2010 of Revista de Ştiinte Politice. Revue des Sciences Politiques	15 articles and 5 panel research topics
No 26 / 2010 of Revista de Ştiinte Politice. Revue des Sciences Politiques	14 articles and 5 panel research topics
No 25 / 2010 of Revista de Ştiinte Politice. Revue des Sciences Politiques	19 articles and 7 panel research topics
No 24/ 2009 of Revista de Ştiinte Politice. Revue des Sciences Politiques	22 articles and 7 panel research topics
No 23/ 2009 of Revista de Ştiinte Politice. Revue des Sciences Politiques	16 articles and 6 panel research topics
No 21-22/ 2009 of Revista de Ştiinte Politice. Revue des Sciences Politiques	28 articles and 4 panel research topics
RSP issues 2009-2010	$\Sigma_{\text{articles 2009-2010}}$ = 127 articles
Average number of articles/ issue	Average $_{\text{(period 2009-2010)}}$ ≅ 16 articles/ issue
Total panel research topics	$\Sigma_{\text{panel research topics 2009-2010}}$ = 38 panel research topics
Average number of panel **research topics** / issue	Total ≅ 4/5 panel research topics / issue
% from the total number of articles published between 2009-2010	16, 79%

Source: Author's own calculations

Figure 6. Number of articles published in RSP in the period 2009-2010



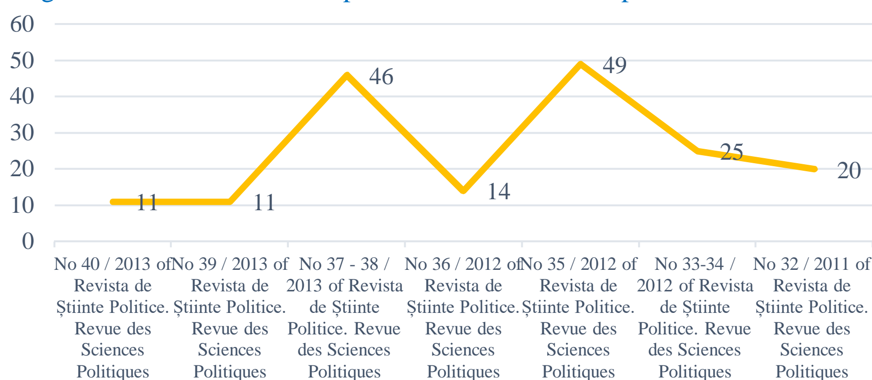
Source: Author's own calculations

Table 3. Number of articles, panel research topics and editors' note published in RSP in the period 2011-2013

Number of the issue of Revista de Ştiinte Politice. Revue des Sciences Politiques	Number of articles, editors' note, research topics published per each issue
No 40 / 2013 of Revista de Ştiinte Politice. Revue des Sciences Politiques	11 articles and 2 panel research topics
No 39 / 2013 of Revista de Ştiinte Politice. Revue des Sciences Politiques	11 articles and 3 panel research topics
No 37 - 38 / 2013 of Revista de Ştiinte Politice. Revue des Sciences Politiques	46 articles, 1 editors' note and 4 panel research topics
No 36 / 2012 of Revista de Ştiinte Politice. Revue des Sciences Politiques	14 articles, 1 editors' note and 2 panel research topics
No 35 / 2012 of Revista de Ştiinte Politice. Revue des Sciences Politiques	49 articles and 4 panel research topics
No 33-34 / 2012 of Revista de Ştiinte Politice. Revue des Sciences Politiques	25 articles, 1 editors' note and 5 panel research topics
No 32 / 2011 of Revista de Ştiinte Politice. Revue des Sciences Politiques	20 articles, 1 editors' note and 4 panel research topics
No 30-31 / 2011 of Revista de Ştiinte Politice. Revue des Sciences Politiques	27 articles and 5 panel research topics
No 29 / 2011 of Revista de Ştiinte Politice. Revue des Sciences Politiques	13 articles and 5 panel research topics
RSP issues 2011-2013	$\Sigma_{\text{articles 2011-2013}}$ = 216 articles
Average number of articles/ issue	Average $_{\text{(period 2011-2013)}}$ ≅ 18 articles/ issue
Total panel research topics	$\Sigma_{\text{panel research topics 2011-2013}}$ = 34 panel research topics
Average number of panel **research topics** / issue	Total ≅ 2/3 panel research topics / issue
% from the total number of articles published between 2011-2013	28,57%

Source: Author's own calculations

Figure 7. Number of articles published in RSP in the period 2009-2010



Source: Author's own calculations

Table 4. Number of articles, panel research topics and editors' note published in RSP in the period 2014-2016

Number of the issue of Revista de Ştiinte Politice. Revue des Sciences Politiques	Number of articles, editors' note, panel **research topics** published per each issue
No 49 / 2016 of Revista de Ştiinte Politice. Revue des Sciences Politiques	13 articles and 1 editors' note
No 48 / 2015 of Revista de Ştiinte Politice. Revue des Sciences Politiques e	17 articles and 1 editors' note
No 47 / 2015 of Revista de Ştiinte Politice. Revue des Sciences Politiques	29 articles and 1 editors' note
No 46 / 2015 of Revista de Ştiinte Politice. Revue des Sciences Politiques	34 articles and 1 editors' note
No 45 / 2015 of Revista de Ştiinte Politice. Revue des Sciences Politiques	21 articles and 1 editors' note
No 44 / 2014 of Revista de Ştiinte Politice. Revue des Sciences Politiques	21 articles and 1 editors' note
No 43 / 2014 of Revista de Ştiinte Politice. Revue des Sciences Politiques	20 articles and 1 editors' note
No 42 / 2014 of Revista de Ştiinte Politice. Revue des Sciences Politiques	23 articles and 1 editors' note
No 41 / 2014 of Revista de Ştiinte Politice. Revue des Sciences Politiques	24 articles and 1 editors' note
RSP issues 2014-2016	$\Sigma_{\text{articles 2014-2016}}$ = 202 articles
Average number of articles/ issue	Average $_{\text{(period 2014-2016)}}$ ≅22/23 articles/ issue
Average number of editors'note / issue	Total = 1 editors' note/ issue
% from the total number of articles published between 2014-2016	26,71%

Source: Author's own calculations

Table 5. Number of articles / period and / issue & total number of articles

RSP period issue	$\Sigma_{\text{articles/ PERIOD}}$
RSP issues no. 41 to 49 (2014-2016)	$\Sigma_{\text{articles 2014-2016}}$ = 202 articles **(26,72%)**
RSP issues no. 29 to 40 (2011-2013)	$\Sigma_{\text{articles 2011-2013}}$ = 216 articles **(28,57%)**
RSP issues no. 21-22 to 28 (2009-2010)	$\Sigma_{\text{articles 2009-2010}}$ = 127 articles **(16,79%)**
RSP issues no. 6-7 to 20 (2005-2008)	$\Sigma_{\text{articles 2005-2008}}$ = 211 articles **(27,91%)**
RSP issues no. 6-7 to 49 (2005-2016)	$\Sigma_{\text{articles 2005-2016}}$ = 756 articles

Source: Author's own calculations

Table 6. Average of articles / period and / issue

RSP Average of articles/ issue/period	Average articles/ issue/ period
Average of articles/ issue in the period (period 2014-2016)/ (period 2011-2013) (period 2009-2010) (period 2005-2008)	Average *articles* (period 2014-2016) ≅ 22/23 articles/ issue
	Average *articles* (period 2011-2013) ≅ 18 articles/ issue
	Average *articles* (period 2009-2010) ≅ 16 articles/ issue
	Average *articles* (period 2005-2008) ≅ 14 articles/ issue
Average number of articles period 2005-2016	Average *articles* (period 2005-2016) ≅ 16/17 articles/ issue

Source: Author's own calculations

Table 7. Number of articles / period and / issue & total number of articles

% from the total number of articles published/ period	% from the total number of articles published
RSP issues 2005-2016	Σ articles 2005-2016 = 756 articles
% from the total number of articles published between 2005-2008	**(27,91%)**
% from the total number of articles published between 2009-2010	**(16,79%)**
% from the total number of articles published between 2011-2013	**(28,57%)**
% from the total number of articles published between 2014-2016	**(26,72%)**

Source: Author's own calculations

Table 8. Number of issues (double issues)/ per period

RSP period issue	% from the total number of articles	Number of issues/ period	Σ **articles/ PERIOD**
RSP issues no. 41to 49 2014-2016	**(26,72%)**	8 issues, *no double issue*	Σ articles 2014-2016 = 202 articles
RSP issues no. 29 to 40 2011-2013	**(28,57%)**	11 issues, *2 double issues* RSP No 37 - 38 / 2013, RSP No 30-31 / 2011	Σ articles 2011-2013 = 216 articles
RSP issues no. 21-22 to 28 2009-2010	**(16,79%)**	8 issues, *1 double issue* RSP No 21-22/ 2009	Σ articles 2009-2010 = 127 articles
RSP issues no. 6-7 to 20 2005-2008	**(27,91%)**	15 issues, *3 double issues* RSP No 18-19/ 2008, RSP 9-10/ 2006, RSP 6-7 / 2005	Σ articles 2005-2008 = 211 articles
RSP issues 6-7 to 49 2005-2016	**100%**	*6 double issues*	Σ articles 2005-2016 = 756 articles

Source: Author's own calculations

Table 9. Total of articles and average of panel research topics/ 9 years of publication, panel research topics/ year, panel research topics/ issue

RSP Total panel research topics/ period	**Total of articles and average of panel research topics/ 9 years of publication, panel research topics/ year, panel research topics/ issue**
Total panel research topics $_{2005\text{-}2008}$	Σ $_{\text{panel research topics 2005-2008}}$ = 55 panel research topics
Total panel research topics $_{2009\text{-}2010}$	Σ $_{\text{panel research topics 2009-2010}}$ = 38 panel research topics
Total panel research topics $_{2011\text{-}2013}$	Σ $_{\text{panel research topics 2011-2013}}$ = 34 panel research topics
Panel research topics/ 9 years of publication	127 panel research topics/ 12 years of publication
Panel research topics/ year	Average ≅ 10,58 panel research topics/ year
Panel research topics/ issue	Average ≅ 2,64 panel research topics/ issue

Source: Author's own calculations

Conclusions

The average number of articles published in the period 2005-2016 varied from 14 articles/ issue in the period 2005-2008 to 16 articles/ issue in the following period 2009-2010. In the period 2011-2013 and 2014-2016 we explored the almost the same data when considering the average number of article/ issue, meaning 22/23 articles in the period 2014-2016 and 18 articles in the period 2011-2013 (see Table 6. Average number of articles / period and / issue, Table 3. Number of articles, panel research topics and editors' note published in RSP in the period 2011-2013 and Table 4. Number of articles, panel research topics and editors' note published in RSP in the period 2014-2016). Although the general tendency in the publication policy is almost similar for the period 2005-2008 and 2009-2010/ 2011-2013 and 2014-2016, the publication growth of articles has been encouraged, Table 7. Number of articles / period and / issue & total number of articles shows many variations when considering the number of articles published during the selected periods. On the cronological order of the panel research topics, the number of articles published between 2005 and 2008 represents 27,91% from the total number of articles published between 2005-2016. This trend shows the particular interest to the fields of political history and economy, European studies and EU chalenges today in the period 2005-2008 (see also Figure 1. Panel research topics frequency in the period 2005-2008) and to the fields of Political theory and Politics & religion in the period 2009-2010 (see Figure 2. Panel research topics frequency in the period 2009-2010) or Politics & economy and Politics, law & justice reform in the period 2011-2013 (Figure 3. Panel research topics frequency in the period 2011-2013 and Figure 4. Panel research topics frequency in the period 2005-2014). As for the period 2014-2016, the panel research topics of Romanian politics, International relations and Politics & religion (see Figure 3. Panel research topics

frequency in the period 2011-2013 and Figure 4. Panel research topics frequency in the period 2005-2014). Based on the above results of Table 5. Number of articles / period and / issue & total number of articles and Table 7. Number of articles / period and / issue & total number of articles, 16,79% of the total number of article meaning 127 articles were published in the period 2009-2010 and 28,57% meaning 216 articles were published in the period 2011-2013 and 26,72% meaning 202 articles in the period 2014-2016 from a total of 756 articles. The findings also showed that for the period 2005-2016, RSP had 6 double issues (3 double issues in the period 2005-2008) 1 double issue (2009), 2 double issues (2011-2013) and no double issue in the period 2014-2016 (see Table 8. Number of issues (double issues)/ per period). Moreover, most of the articles were published in the period 2011-2013 (216 articles) and in the period 2005-2008 (211 articles). Considering the period 2014-2016, 202 articles were published and in the period 2009-2010, 127 articles (see Table 8. Number of issues (double issues)/ per period and Table 5. Number of articles / period and / issue & total number of articles). Concerning the publication of the Editors' note, in the periods 2005-2008 and 2009-2010, there was no editorial note. In the period 2014-2016 (RSP issue 42/ 2014 to RSP issue 46/ 2016), there was 1 Editors' note / each issue published and in the period 2011-2013, two double issues (RSP issue 37-38/2013 and RSP issue 33-34/ 2012) and RSP single issue (RSP issue No 36/2012) provided one editors' note.

The findings of the present study presents the variations of the panel research topics, editorial notes and research articles in the RSP issues published in the period 2005-2008. Based on these findings, more than 756 articles were analysed providing a cross-periods screening and monitoring of the researches published in RSP. The analysis recognized the importance of the quantitative method of the arithmetic mean as a useful tool for examining the average of articles published in the periods selected: 2005-2008, 2009-2010, 2011-2013, 2014-2016.

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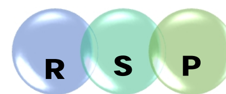

ORIGINAL PAPER

Cultural Diversity and the New Politics of Identity

Daniel Cojanu*

Abstract
In a world of interdependence, the politics of identity should be reformulated according to the new realities: i.e. the refugees' crisis, the threat of terrorism, the phenomena inherent to globalization. Globalization puts a severe strain on ethnic, religious or national identities whereby people used to define themselves. Local identities do not disappear, but are reinterpreted. The ethnic diversity and the claims of cultural and political self-determination, even of territorial autonomy, formulated by historical minorities, have weakened the national state, which is no more capable of social integration. Some people regard cultural diversity as a source of instability and conflict, others think that cohabitation and dialogue are still possible. As groups want not only to be tolerated but also recognized in the multicultural public space and respected for their specificity, the new identity politics should differentiate between individual and collective identity, between inherited identities and chosen ones, between cultural identity and gender, racial, professional or religious identities; it should also specify the criteria for the application of cultural rights in the relationship of national minorities with the majority population or between migrants and receiving countries.

Keywords: *cultural diversity, inherited identity, modus vivendi, cultural rights, politics of recognition*

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The political relevance of cultural identity

The new identity politics emerge from the concrete and pressing need to answer all identity issues postmodern societies are faced with. Social environment, which nowadays is much more dynamic, entails the rapid reconfiguration of collective identities and individual identity. Individual identity is caused, at the same time, by individuals' affiliation with a group, by the personal history of each of them and also by the collective memory of the ethno-cultural community they come from, choices people make, inherited cultural traditions and elements, by the way they interpret these traditions and the place they occupy within them, by the way they are perceived by others in certain contexts and certain stages of their life. Therefore, the question of identity is both anthropologically and politically relevant. It requires field work, gathering of statistical data, systematic analysis of ways of expression and moral or political normative importance of identity acknowledgment in the public space.

Freedom, equality are political values that guided the public policy agenda in the western world in the second half of the last century. Starting with the last two decades of the 20th century, social and political thinking has started to shift its emphasis from social and economic issues related to preservation of natural rights and fair distribution of material goods to symbolic goods. Acknowledgement of identity, of cultural identity first and foremost (some kind of symbolic entitlement), counterbalances the issues of social (distributive) justice. That is why certain authors compare recognition and redistribution (Fraser, Honneth, 2004).

Charles Taylor analysed the transition of the need for recognition from rank acknowledgment in pre-modern societies to the recognition of affiliations and inherited identities as a defining element of human dignity in egalitarian modern societies (Taylor, 1994:27-28). Traditional societies of the Old Regime, which were hierarchical societies, professed mores based on the code of honour and acknowledging of ranks. In the spirit of that age, people would have an exclusivist attitude of denying cultural otherness. Hierarchical societies would regard ethnical diversity as inequality. The contact with the Stranger, the Other would not entail moral dilemmas: whatever is not like me is inferior, therefore it has to be removed, assimilated by forced conversion or extermination or accepted in a subordinated position. Acknowledgment has shifted from the social level of rank recognition to the interpersonal and intercultural level of difference acknowledgment.

The transition to early modernity also meant a moral and behavioural transition from practices related to honour recognition to those related to dignity recognition. And dignity is no longer a privilege, a prerogative of a social class, but the right of every individual who is simultaneously a rational agent and a legal subject. In a world in which states and ranks have disappeared, recognition can no longer address class membership, or a hierarchical stage, but man as such, man seen as a subject that needs to always be treated as an end, never as a means (Kant, 1993: 30).

The situation became much more complex in late modernity when egalitarian regimes faced the multicultural coexistence phenomenon. For modern democratic societies, the question of identity is much more complicated. Social relationships in a world which is open to globalisation cannot be regulated only legally or through a policy of neutrality and natural rights. Claims in the name of social justice and fundamental

liberties have been complemented by identity claims. Groups of all kinds and individuals who make them up claim not only rights and welfare, just distribution of material goods, but also recognition of symbolic goods.

Identity, particularly, that of cultural communities, needs public recognition, therefore a fundamental right of cultures and ethno-cultural communities to express their specificity and preserve this specificity is appealed to. It is why a number of debates have been held within the UNESCO especially by the Fribourg Group (Fribourg, 2007). The emergence of cultural rights is also a consequence of the impact and influence anthropological studies have on the study of multicultural societies. The frequency with which human rights are invoked today seems to be rivalled only by the frequency with which cultural relativism is invoked when a lucid and objective evaluation of relationships between ethnical and religious groups in the present-day social landscape is carried out.

The presence of identity groups causes problems within contemporary liberal democracies. The recognition these groups claim appears in the current view as a threat to public order and community life forms. That is why identity groups and inherited identities are discredited while interest groups and chosen identities are acknowledged as legitimate. Hostility towards traditions and belonging identity comes also from the fact that their founding values are not negotiable, while interest is. Identity groups should not be mistaken with interest groups. An interest group can be very well constituted in the absence of a mutual identification among its members.

All an individual has to do in order to approach an interest group is to share the same instrumental interest as the other members of the group. Even identity groups may defend the interests of their members, but this will not be deemed as the group's reason of being and will in no way be a necessary consequence of its existence. In this case, interest is not a founding element, but a derivate of the group's existence. Amy Gutmann sums up the difference between the two pattern groups as follows: "In paradigmatic form, identity group politics is bound up with a sense of who people are, while interest groups politics is bound up with a sense of what people want" (Gutman, 2003: 15).

Unlike interest groups, which fall apart when the convergent interest disappears or has been satisfied for all those who have adhered, ethno-cultural groups are founded on values, have persistence and structure despite syncretism and acculturations due to social circumstances. Interests, which are fatally individual, can only generate contractual cooperation (therefore conditioned by compliance with the agreement). It is only values that can bond the social fabric, can maintain solidarity, which is the communion of destiny of a community. Consequently, cultural identity is a collective identity which applies both to groups and individuals insomuch as they belong to these groups. You may belong to a group by origin or by affiliation, but not optionally. Cultural communities are not the result of the voluntary and interested decision of their members to live together. Usually, cultural identity is perceived as inherited identity, connected rather to someone's origin and heredity. One may deny their culture of origin, and thereby affirm it however. And one denies it not to place themselves outside any culture, but to look for another culture that should respond to their needs. Let us share the view stated by Joseph de Maistre: "In the course of my life, I have seen Frenchmen, Italians, Russians, etc.; I am even aware, thanks to Montesquieu, that one can be a Persian. But, as for Man, I declare that I have never met him in my life. If he exists, I certainly have no knowledge of him" (De Maistre, 1994).

Identity claims are perceived as a reactionary phenomenon, as irrational

aspiration to return to the past, to an out-dated stage, as an attempt to circumvent the law or to create a state within a state. Therefore, chosen identities are regarded as the only legitimate ones, while cultures are seen as contingent forms of life in common, which may possibly disappear leaving room for some forms of cooperation and rational arrangements; as inherited identities (traditions, religions) build social life upon determinism and affiliations that limit the freedom of agents, they are regarded with suspicion. Castells, who described the tensions cultural identity encounter in a network society, states: "However, the defenders of the community would argue, which is in agreement with my own theses, that people generally resist the process of individualisation and social atomisation and tend to group in forms of community organisation which, in time, generate a feeling of belonging and, eventually, in many cases, a common cultural identity" (Castells, 1997: 64).

Clifford Geertz speaks about the primordial attachment of the individual to the world, which is expressed as an attachment to a particular life framework. This attachment emerges from the data of people's social existence: contiguity, family relationships, being born in a particular culture, with a certain religion, mother tongue, sharing the same social practices. According to Geertz, biological, genetic affinities, those that have to do with language, beliefs, attitudes, customs, are perceived by people as inexpressible and, at the same time, overwhelming: "By a primordial attachment is meant one that stems from the givens of existence or, more precisely, as culture is inevitably involved in such matters, the assumed givens of social existence: immediate contiguity and kin connection mainly, but beyond them the givenness that stems from being born into a particular religious community, speaking a particular language, or even a dialect of a language, and following particular social practices. These congruities of blood, speech, custom and so on, are seen to have an ineffable, and at times overpowering coerciveness in and of themselves" (Geertz, 1963: 109).

This primordial attachment is connected to the feeling of belonging and the inside-outside symbolism of identification. But it can be associated with other social relationships and attachments as well, such as kinship, contiguity or territoriality, with the attachment to the common language, common customs, myths and symbols of a common origin. This attachment is the foundation of identifications which shape the feeling of belonging to an ethno-cultural community, to a tradition. Furthermore, it explains why cultural identity prevails in the structuring of individual identity. It nourishes the projects and the ethno-nationalist political discourse when it comes to majority groups or support identity claims and the policy of recognition when it comes to minorities striving to live together in the multicultural environment. In both cases, the stake is preserving identity. In postmodern times, the fight for freedom or social justice has been replaced by the fight for recognition, of identity in particular. According to Smith, (Smith, 1986: 22-31; Smith, 1991: 21) an ethnic group is a community characterised by a common collective name, shared myths, common ancestry, memory, shared historical memories, an association with a particular territory and a sense of solidarity.

By a "sense of solidarity" Smith understands deep feelings of commitment to a group expressed through values and altruistic actions. It includes a sense of membership to a common ethnic group which in times of crisis is seen as superior to other forms of social identification. In other words, ethnic solidarity is an essential condition of belonging to an ethnic group and surpasses any type of individual or collective attachment, attachments such as those based on class, religion, politics or regional

affiliation. Although group solidarity may vary and change in time, including one or several layers of society, as Smith shows (Smith, 1986: 30), in order to talk about an ethnic community in the true sense of the word, this sense of solidarity has to at least animate the superior, educated layers of the community so that they should communicate it to the other levels of society. We shall call ethnicity the membership to an ethnic group based on shared cultural elements. Culture has an anthropological meaning and a normative, existential one as well. "An ethnic group is a type of cultural collectivity, one that emphasizes the role of myths of descent and historical memories, and that is recognized by one or more cultural differences like religion, customs, language or institutions" (Smith, 1991: 20). Although he deems the ethnic collectivity as the result of the intervention of historical memory and symbolic representation, in other words a cultural process, Anthony Smith is well aware that ethno-genesis as an anthropological fact and symbolic construction, resumed and reinvested, is a given, that culture is the environment, the natural given of man, while ethnic communities are cultural and natural at the same time.

In early Romanticism, Herder believed that only within a particular culture may the humanity of each individual be fully achieved. There is no human nature, no special, universal "humanity" separated from the particular cultures in which people live. This doesn't mean that there is no human nature at all, but that it is expressed only contextually and mediated. And the cultural context, though it can be considered as an accident at universal scale, has a privileged, essential relationship with the human individual. This makes of collective, inherited identities elements which are not to be ignored for the individual profile. Cultural identity is something else, is the type of identity which, as unsurpassable horizon of human condition, is expressed by rootedness, persistence, fidelity to certain formative principles, style. Local specificity, limit and diversity are also vested with value. Nature: "has placed in our hearts inclinations towards diversity; she has placed a part of diversity in a limited circle around us; she has restricted man's view so that by force of habit the circle becomes a horizon, beyond which he could not see nor scarcely speculate. All that is akin to my nature, all that can be assimilated by it, I hanker and strive after, and adopt; beyond that, kind nature has armed me with insensibility, coldness and blindness, which can even turn into contempt and disgust" (Herder, 1774: 509-510).

One may find in Romantic political philosophy a precursor of today's communitarianism. Community is a social reality that cannot be reduced to the sum of individuals that make it up. Community represents a qualitative synthesis and therefore has autonomy, certain characteristics that are not to be found at the level of individuals' behaviours and psychology. On the other hand, methodological individualism is the main instrument of researchers in studying the epistemology of social sciences today and represents a consequence of nominalism as intellectual attitude and method of research: the fact that in analysing social phenomena, only the individual who possesses his autonomous intentions and possibilities has explicative value. Methodological individualism entails a constructivist and voluntaristic vision over all social relations. Those who interpret ethno-cultural identity in this way do not give it more importance than other markers of identity, or to ethnic communities' greater importance than to other groups to which the individual can join. The portrait of man which they make is an intersection of identities. These identities decrease or increase in intensity depending on the concrete existential circumstances in which the individual is included in every particular stage of his life.

The individual identity depends not only on bio-anthropological or psychological constants of the individual but also on the configuration and the significance that different identities of belonging or affiliation have at a time. The identification of an individual with the group of belonging fluctuates according to circumstantial opportunities and interests. In this way the cultural identity is seen only instrumentally, subordinated to the interests of individuals or groups. Moreover, according to modern political theories of individualist, contractualist nature, the individual is the norm; it is only the individual that carries significance and values and all social arrangements must have, as final goal, the individual, his interests, rights, welfare.

Social contract theories can only interpret cultural communities as the result of a mutual agreement among their members. That is why these theories claim that group members recognise their common ancestry and ethnic affiliation to the group only when they have a political interest, in other words, when they are ideologically motivated to do it. Methodological individualism cannot nevertheless account for the pathos with which individuals appeal to cultural identity to support both nationalist convictions and ideologies and legitimate claims of recognition within the public space of various ethnical minorities. Anthony Smith criticises the instrumentalism and modernism of certain interpretations of nation, nationalism and ethnicity. Individualism, Smith states, cannot explain the virulence of ethnical conflicts, the sensitivity of the masses regarding the membership to a community which invokes common ethnical origin and ethno-cultural traditions. (Smith, 1996: 445-448).

Cultural diversity and the politics of recognition

Charles Taylor supports the identity based on difference, a version of multiculturalism which is sensitive to the preservation of cultural diversity, lifestyles that, according to him, are sources of authenticity. In this sense, he gives a number of arguments such as the recognition politics against cultural imperialism, against the hegemony of western culture. Charles Taylor shows how recognition moves from the social level of rank recognition in pre-modern ages to the interpersonal and intercultural level of dignity recognition, hence of identity. (Taylor, 1994: 27-28).

The public recognition of cultural identity could be interpreted as an individual natural right linked to the right to free speech and to dignity. The private expression of cultural difference, as stipulated by Rawls's conception about the right society, could deprive man from a fundamental right inscribed in its very nature. On the trail of the classic antiquity, Hannah Arend acknowledged the importance of the public space as favourite locus of visibility and affirmation of each unmistakable individual face. „For though the common world is the common meeting ground of all, those who are present have different locations in it, and the location of one can no more coincide with the location of another than the location of two objects. Being seen and being heard by others derive their significance from the fact that everybody sees and hears from a different position" (Arendt, 1998: 57). The same thing can be said in the case of cultural groups. Or it can be interpreted as a special right of ethno-cultural minority groups, involving special treatment designed to preserve the specificity, the traditions, the identity of a culture. Such claims are made also in the name of so-called cultural ecology. As the preservation of biological diversity is good so is good the preservation of cultural diversity. Today it is talking more often about the global culture. Intuitively, the term culture is associated to the idea of ethno-cultural community. Culture is the spiritual environment, specific to a human group with common origins, that allows it to self-

reproduce and to persist over the time, environment that offers to the members of the community a specific vision of the world, ways of understanding, values and specific behaviours, ways of expression and creation that are different from those of members of other cultures.

Culture is the specific environment of an ethnic group, of a „natural" community, that allows it to be different from others. The term „culture", in identitary sense, was re-emphasised thanks to anthropology (Kroeber, Kluckhohn, 1952). What is most interesting is that not recognising the other as another means annihilating or abandoning one's own identity. As culture must have a face and an identity, it is self-limited in point of expression and dissemination. It cannot express itself and expand so far as to cause the cancellation and annihilation of the other cultures. Therefore, western culture cannot expand to the detriment of the other cultural forms and identities without self-annihilating. I am interested in the other not for what is similar to me, but for the difference that reconfirms my identity. Not the other as myself, but myself as the other, "soi-même comme un autre" (Ricoeur, 1993).The issue of cultural identity has polemic and even subversive potential in terms of a rational social-political order (contractually built and regulated, proclaiming its neutrality and thus indifference to values, opinions, beliefs, which, inevitably, have the colour of a particular perspective, of local specificity). Given the labour force migration at global level, this new nomadism, some liberal or communitarian authors have reflected upon the need for the politics of recognition (Taylor, 1994) or upon multicultural citizenship (Kymlicka, 1995). Starting from the example of Canadian multicultural society, Kymlicka will try in his writings to accommodate the liberal philosophy with the ethnic groups' claims, specifically to ensure, at theoretical level, a liberal framework for fair treatment to ethno-cultural minorities (Kymlicka, 1995: 18) For minority groups, cultural rights represent not just the claim to be publicly recognized, but create the possibility of more concrete demands, like independence and territorial jurisdiction. These special claims are considered indispensable for the normal and unhindered development of cultures, to preserve their specificity and to defend the interests of their members.

It is a real balancing act of decision makers to permanently renegotiate through engaged politics the recognition of cultural differences or the relationship between the respect for fundamental human rights and the respect for cultural rights. The politics of recognition is all the more difficult to profess in the multicultural public space where coexistence, a *modus vivendi* of various ethnical groups, must permanently be renegotiated. When coming from majority ethnic communities, which make up the demographical basis of national states, identity claims, especially those referring to the inhabited territory, are perceived as a reactionary phenomenon, as a form of xenophobia. When coming from national minorities or groups of immigrants, they are regarded as an attempt to undermine public order, to break the law or to create a state within a state.

Pragmatism and new identity politics

By postulating the neutrality of public policies in terms of opinions, convictions, loyalties and memberships, deontological liberalism has evacuated the issue of cultural identity in the private sphere of personal choices, choices of conscience and freedom of expression. And that is because deontological liberalism defines human persons by the ability to choose. However, human individuals are not defined as rational and autonomous beings only by the freedom to choose, but also by what they choose.

A first virulent criticism received deontological liberalism from the

communitarian camp. M. Sandel incriminates the utopia of a self which doesn't define itself by its purposes, by the choices it makes, but by its ability to choose (Sandel, 1982). As if it is just this ability, while the object of its choices is something external, that could be appropriated by the very act of choice, but which is not constitutive, inherent for the human being. Man is ability to choose and has goals. The procedural liberalism assumes a priori that moral doctrines and worldviews are necessarily particular, because they cannot be the subject of a disinterested and objective rational consensus. The same fate have the values, beliefs and convictions, which can be freely professed in the private sphere and may be expressed publicly as long as they do no harm to the other members of society.

But the instrumental reason subordinates the values and interests, deconstructs the traditions, loyalties, affiliations and the identitary ethos. By following Kant, Rawls consecrate "the priority of the right over the good". Further, "the main idea is that given the priority of right, the choice of our conception of the good is framed within definite limits... The essential unity of the self is already provided by the conception of right." (Rawls, 1971: 563). The way in which man perceives himself through the relation with his values and purposes, his conception regarding the relation between law and morality determines what he actually is. The deontological liberalism separates the self from its purposes; the latter are separated from the self, are the subject of its choice and are not the expression of a deep and defining need for human individuals. Sandel criticizes the simplistic anthropological model of deontological liberalism that the rational man as agent is defined only by its ability to choose. More, „the priority of the self over its ends means that I am not merely the passive receptacle of the accumulated aims, attributes and purposes thrown up by experience, not simply a product of the vagaries of circumstance, but always, irreducibly, an active, willing agent, distinguishable from my surroundings, and capable of choice" (Sandel, 1982: 19). The ultimate consequence of this vision is the reduction of all identities and belongings to the choices that the individual makes. Therefore, traditions and affiliations cannot have a constitutive role in the formation of the human individual, but are simply contingent determinations that can be changed by free decision.

In the real world, the human being imagines itself not as a person with a variety of relationships and contingent attachments, but as being made up of the history and the community to which they belong, with all the ensuing contradictory consequences. Man chooses (and is autonomous) because he belongs to a culture that defines him by his choices, orders them, orients and gives them a local colour. His choices are oriented and limited by a structured and structuring horizon of significations, which is practically provided by a culture of belonging. The human person is also the involuntary bearer of certain cultural values shared within the communities of affiliation, of a way of interpreting experiences, of a view of the world and human condition.

The political reality of the coexistence of cultural groups in the world of today requires rethinking the political theory. The pluralism of values and life forms made clear the impossibility of searching for a consensus not only in terms of values, but also of principles. Human beings pretend to be understood in the fullness of their concrete existence, of their particular belonging and rooting, of cultural forms and public expression that unites and differentiates them at the same time. The cultural identity begins to be considered as a decisive ingredient of human dignity along with the natural individual rights, which are understood especially as rights-liberties. Thus, the public non-recognition of cultural identity is perceived and interpreted in the current context as

a flagrant form of oppression that is even comparable to the violation of universal rights of freedom of conscience and expression. The respect for the dignity of human individuals also includes the recognition of their concrete dimension as historical beings that owe their way of life to specific traditions, ethnic groups and cultures of origin.

That's why, even Rawls is forced to reformulate its initial version of liberal theory so as to recognize the right to existence of different modes and styles of life, it means of traditions and cultures with their specificity. The compromise solution is to abandon the ideal of the universal consensus, which is also abstract and rational, and to accept the particular, concrete and realistic forms of consensus (the overlapping consensus). That's what Rawls performed in the second stage of his philosophical creation. The political liberalism begins to be sensitive to the diversity of lifestyles. (Rawls, 1993: 141-142). In some cases there is not even partial consensus. Because even cultures and ways of life that are incomparable, because they were built on experiences, fundamental values, worldviews and conceptions radically different, could be found in circumstances of coexistence.

Then, the multicultural public space will not emerge from the ideal of consensus, but from the need for pragmatic coexistence which is negotiated taking into account the cardinal values that guide the particular lifestyles and the elements of behaviour that express better the ethnic groups. The rules of coexistence will be adapted to the context and will involve the mutual recognition, the importance of cultural difference not only the equality of rights. The principles of coexistence and cooperation will express a *modus vivendi* and not abstract principles (Gray, 2002: 121-157). The coexistence rules will be adopted in the presence of values and not apart from them, behind a symbolic veil of ignorance. This implies a rethinking of the relation between public space and private sphere.

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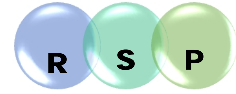

ORIGINAL PAPER

European Perspective of Human Security and the Western Balkans

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Abstract
Due to the transnational nature of non-traditional security issues, the role of the security is no longer limited solely to the defense of the national territory, but to defend interests of a whole region even a continent. So, it is the interest of the EU to stabilize the Western Balkans region permanently in order to focus on the changing security challenges. In this context, human security conception can be seen as a redefinition of the role of EU in the Western Balkans. Because security issues that needed to be addressed should not only be in reference to the state, but also to individuals and societal groups. Indeed, the concept of human security broadens the actors and structures identified as being causes of insecurity.

Keywords: *Security, Human Security, European Union, Western Balkans, Non-Traditional Security Issues*

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Introduction

With respect to the Balkans, the EU has always been challenged in its attempts to pursue a coherent and long-term strategy to stabilize this volatile region. The EU failed in 1991 to avoid the dissolution of Yugoslavia and would later fail to prevent the emergence of ethnic conflicts in Kosovo and Macedonia. While the North Atlantic Treaty Organization (NATO) intervention in Kosovo has probably seemed to eliminated the risk of further conflicts and wars, it is claimed that "large-scale aggression against any EU member state is now improbable. Instead, Europe faces new threats which are more diverse, less visible and less predictable" (European Council, 2003: 3). The geographic closeness of the region made the EU more decisive in maintaining peace and stability in the Balkans. This became more important especially after the last two enlargements of 2004 and 2007 when the EU frontiers were moved closer to the countries of the Western Balkans.

The issues of human security are getting importance for the countries in the Western Balkans as well as for the whole of Europe. Ivan Krastev claims that "levels do vary from one country to another but it is clear that most countries share common risks and common concerns in all major fields of security - political, societal, economic and environmental" (Krastev, 1999: 15). In the post-conflict period, does the Western Balkans region provide an opportunity or a challenge for EU's foreign policy? In addressing this question, this article will undertake an analysis of EU engagement in the Balkans during 2000s, with a particular focus on the principles of human security conception. The aim of the article is not to describe the large debate around the concept of human security itself, but to analyze the EU's security approach towards the Western Balkans states in the context of its security strategy documents. This article will try to display if, how, and, to what extent the implementation of the human security concept is useful in the Western Balkans.

A Necessary Conception: Human Security

The concept of 'security' within International Relations discipline has undergone conceptual and practical evolution in the post-Cold War era, since not all of the developments fitted in the theoretical and conceptual frameworks of traditional security conception which neglects non-military threats to peace and stability (Ağır, 2015: 366). In this respect, critical security scholars examine, inter alia, human security and societal security- that is, they analyze how threats to individuals and groups (including to their identity) within states should also be seen through the lens of security and insecurity (McSweeney, 1999; Bilgin, 2003; Buzan, Weaver, de Wilde, 1998). As a new phenomenon in the Security Studies subfield, a series of interrelated developments created a cognitive space that was necessary for developing such a concept; decreased threat of nuclear war, predominance of non-traditional security threats, democratization, strengthening of human rights in global politics, globalization, poverty and increase number of intra-state conflicts (Prezelj, 2008). Human security is commonly understood as prioritising the security of people, especially their welfare and safety, rather than that of states (Ağır, 2015: 366). Most analytical and conceptual considerations of human security take the 1994 United Nations *Human Development Report* as more or less the alpha of human security thinking (UNDP, 1994). Actually, taking the individuals as the core of a security conception necessitates a threat list beyond the traditional security

conception such as terrorism, poverty, unemployment, organized crime, corruption and economic security.

Conceptually, human security is defined as freedom for individuals from basic insecurities caused by gross human rights violations and includes both *freedom from fear*, through the protection of individuals and communities from direct violence, and *freedom from want*, through the promotion of unhindered access to the economy, health and education (UNDP, 1994). Henceforth, human security is concerned with both conflict-related and development-related threats or vulnerabilities. By using a definition that primarily focuses on violent threats, the narrow definition of the concept clearly separates human security from the established field of international development. The narrow definition, therefore, restricts the parameters of human security to violent threats against the individual. This can come from a vast array of threats, including the landmines, ethnic discord, state failure, trafficking in small arms and light weapons (SALW), etc (Liotta, Owen, 2006: 91). During conflicts and in their aftermath the protection of the people against violence and therefore their physical security is in the foreground.

Human security raises critical questions that point out the referent objects, threats and means of achieving security (Paris, 2001: 87-102). Even if there is no agreement on the definition of human security concept, decision-makers increasingly recognize the importance of human security as a policy framework. It is clear that human security is increasingly employed in post-conflict situations. Because, the pattern of security threats and vulnerabilities in a post-conflict situation can hardly be grasped with a traditional approach to security. Therefore, multi-dimensionality of human security conception appears well suited to address the security problems existing in post-conflict societies. Because human security attempts to open up and expand the security by developing its human dimension (Ağır, 2015: 367).

The European Union's Human Security Conception

The human security concept has inspired -and at times driven- the official 'doctrines' of some relevant players on the global scene, including such countries as Canada and Japan. Finally, it has made inroads into the EU policy arena, first by influencing some parts of the European Security Strategy of December 2003 (Kotsopoulos, 2006). The ESS sets out what constitutes a threat to national and global security by listing five key threats: "terrorism, proliferation of weapons of mass destruction, regional conflicts, state failure and organized crime by making several references to human security conception" (European Council, 2003).

As the ESS points out, 'none of the new threats is purely military; nor can any be tackled by purely military means' (European Council, 2003: 3-5). Accordingly, it reflects the changing security environment by recognizing the shift from a merely military conception of security to the inclusion of non-traditional security threats. Then, the Human Security Study Group's report "A Human Security Doctrine for Europe" was received by High Representative for the Common Foreign and Security Policy (CFSP) Javier Solana on 15 September 2004 and is known as *the Barcelona Report* (The Barcelona Report, 2004). The doctrine recommended the integration of human security into the EU's foreign and security policies by proposing that in the 21st century human security would be the most appropriate security strategy for the EU (The Barcelona Report, 2004).

At the heart of a European human security conception is the set of principles, developed by the Barcelona Report, which "both give substance to the human security

conception as applied by the EU and serve as an operational methodology to guide and evaluate the EU's international operations" (The Madrid Report, 2007: 8-9). These principles are the primacy of human rights, clear political authority, multilateralism, bottom-up approach, regional focus, the use of legal instruments, and the appropriate use of force (The Barcelona Report, 2004: 14-20). By using these principles as a framework, it is argued that the EU would add to what it already does in the area of a normative foreign policy by developing a shared strategic narrative (Martin, 2007: 17). For Ian Manners, "the normative basis of the EU is based on five core norms and values such as peace, liberty, democracy, rule of law and human rights. So, the EU is viewed as both a creator and propagator of above-mentioned norms and values" (Manners, 2002: 235-258).

The discourses and practices associated with human security conception involve a normative commitment to the reframing of security debates. In this respect, human security has served as a strategy to foster the emergence of the EU as a regional normative power aiming to promote regional cooperation, human rights, democracy and rule of law. For instance, Javier Solana defined EU's foreign policy in these terms: "Our common foreign policy cannot just be interest-based. Protecting and promoting values, which are part of our history and very dear to the hearts of our citizens, must continue to be a priority" (Solana, 2002). Thus, in ontological terms, a human security narrative reflects the self-identity of Europeans and reinforce the foundational ideas behind European external relations (Martin, 2007: 15).

The human security conception recognises that 'freedom from fear' and 'freedom from want' are both essential to people's sense of well-being. In this respect, the question arises as to which approach towards human security is being adopted by the EU either implicitly or explicitly. Madrid Report states that "A European Way of Security" should focus on the protection of individuals and communities as well as the interrelationship between 'freedom from fear' and 'freedom from want'(The Madrid Report, 2007: 8). In 2006 the Commissioner for External Relations Benita Ferrero-Waldner explained: 'The philosophy underlying the EU's approach to security is that security can best be attained through development, and development through security. Neither is possible without an adequate level of the other. That's why we focus on the holistic concept of human security'(Ferrero-Waldner, 2006). However, it seems more useful to focus on 'freedom from fear' aspect of human security rather than 'freedom from want' since human development is already the target of much of EU's development agenda. For example, the development component of human security has been further enshrined in the 2005 European Union Consensus on Development, wherein human security is mentioned as a goal of the EU's development policy (Gottwald, 2012: 14). In general sense, this paper argues that the strategies that focus exclusively on development in technical terms and neglect human security notably fail to prevent further violence.

Therefore, the focus shall be given to the 'freedom from fear' in order to benchmark EU's contribution to the field of human security concept. Accordingly, it can be assumed that the document of ESS presents a decidedly narrow definition for human security. Indeed, by emphasizing "law-enforcement... with the occasional use of force," the focus on human security remains strictly limited (Liotta, Owen, 2006: 85-102). However, when the debate comes to the 'freedom from fear' aspect of human security, it can be said that the EU is rather weak due to its incapability in its foreign policy to respond to the emergency situations (Ağır, 2015: 370). In this respect, the Barcelona Report suggested the formation of a Human Security Response Force which would include military units as well as civilian experts that would be suited to carry out human security

operations (The Barcelona Report, 2004). The force should be roughly the size of a division, 15,000 personnel. And it is envisaged that at least one-third of the 15,000 personnel would be police and civilian specialists (human rights monitors, development and humanitarian specialists, etc.) who would support crisis management operations. The EU's recently established joint civil-military planning unit is a first step in this direction (The Barcelona Report, 2004: 20-22).

According to the Barcelona Report, there are three reasons why the EU should adopt a human security concept. The first reason is based on morality. According to this reason, European states' interventions for humanitarian reasons, whether in Kosovo or East Timor, have been based on strong public support, even public pressure, from European citizens (The Barcelona Report, 2004: 5). A second reason is related to the legality. The Barcelona Report states that "If human security is considered as the protection of human rights, then it is generally accepted that other states and international actors such as the EU, have not only a right, but also a legal obligation to concern themselves with human security worldwide" (The Barcelona Report, 2004: 5). In this respect, according to Article 4 of the EU Constitution, the EU recognises that it has obligations concerning the human security of people outside its borders.

The third reason for adopting a human security approach is 'enlightened self-interest'. According to the Barcelona Report, "the whole point of a human security approach is that Europeans cannot be secure while others in the world live in severe insecurity" (The Barcelona Report, 2004: 9-10). The effects of insecurity and instability in the Balkans, for example, are more strongly felt in Europe in terms of crime, refugee flows and human trafficking than the effects of conflicts further away (The Barcelona Report, 2004: 12). Therefore, it is claimed that "the EU is fully aware of the benefits associated with the promotion of human rights and democracy in terms of stability and security, in particular, in the European continent" (Juncos, 2005: 100).

As a result, the human security approach provides an interesting blueprint for the EU to address the challenges set out in the ESS, as it is better suited to translate the Union's founding principles into a policy practice (The Madrid Report, 2007: 3). The EU has implicitly incorporated 'human security' into its thinking - although not as a doctrine proper or a fully-fledged policy (Kotsopoulos, 2006). The implementation of the ESS in the Balkans provides an important test case on whether the comprehensive security approach can be applied as prescribed in the ESS. But, the conclusions a policy paper prepared by the Finnish Presidency in May 2006 rest on the fact that the spill-over of soft security issues into the hard security agenda of the Western Balkans has not been properly managed and it requires a revision of the approach (Finnish Presidency, 2006). Therefore, the 2008 Report on the Implementation of the European Security Strategy was written to update the 2003 ESS. In this report, for the first time the Council of the EU, which authored the document, also explicitly referred to human security as central to the EU's particular strategic goals (Martin, Owen, 2010: 216).

New Security Threats in the Western Balkans and Their Implications for the EU

An early effort to employ the human security perspective in the Balkans was a special report commissioned by United Nations Development Programme on *Human Security in South-East Europe* (Krastev, 1999: 15). Its main focus was on human security in weak states, which was to be overcome mainly by strengthening all aspects of human security. However, there have been fewer voices from the region itself in terms of human

security. Almost all strategic documents of the countries in the region does not mention about the concept of human security (Hadzic, Timotic, Petrovic, 2010). But the new risks and threats such as unemployment, poverty, ethnic-nationalism, uncontrolled migration and coerced displacement, and the organized crime have increasingly affected human security in the Balkans.

These threats emanating from the region are making impossible to put sharp dividing lines between internal and external security of the EU and result in serious repercussions for the whole European continent due to their spill-over effect (Hürsoy, 2010: 93). Therefore, a comprehensive approach is required, since non-traditional security issues undermine regional stability which in turn affects European interests directly and indirectly. In terms of the Balkans, Chris Patten, the European Commissioner for External Relations, believes that the region must be treated as part of Europe, not an adjunct. “Either Europe exports stability to the Balkans or the Balkans exports instability to the rest of Europe. So Europe must show the vision and leadership required, and that means matching fine rhetoric with hard action on the ground” (Patten, 2001). The ESS suggests that it will be of paramount importance for European security to empower Balkan countries to contain effectively non-traditional security issues such as organized crime, terrorism, proliferation of SALW in their own countries.

The transition from communist rule to democracy, wars on the Balkans region in 1990s, and the presence of weak states in the post-war context provided a favourable environment for networks of organized crime to bloom (Stojarova, 2007). Generally, the regional organized crime networks find their expression in the trafficking of illicit goods (such as arms and drugs), money laundering, the organisation of illegal immigration and trafficking in human beings. Exploiting insecurity, lack of proper organization and nonexistence of the rule of law, the organized crime groups have created links with high-ranked political officials and parts of the military establishments (Vukadinovic, 1999: 13) In most countries of the region corruption is systematic and well organized, and has taken root in state institutions. The Corruption Perception Index of Transparency International of 2008 shows Macedonia on rank 72, Serbia, Albania and Montenegro equally on rank 85 and BiH on rank 92 (Kosovo does not figüre in this index) (Transparency International, 2008). Indeed, the association between criminal groups and politicians in the various states of the region “threaten their socio-economic transformation, their democratization and the process of integration into Euro-Atlantic structures” (Stojarova, 2007). It is claimed that “while economic progress obviously has led to a certain ‘normalization’, the fact remains that organized crime is still often linked with (persons in) state institutions” (Benedek, 2010: 10).

According to one senior United Nations Mission in Kosovo official, “when we talk of organized crime in Kosovo, we are very much dealing with politicians, [and] ministers” (UN Office on Drugs and Crime, 2008: 10). “Under these conditions, the fight against organized crime faces many problems such as the reluctance of local organs to deal with the criminal structures and involvement by the elite in illegal activities” (Stojarova, 2007: 96). For example, it is alleged that “the former Serbian Prime Minister Zoran Djindjic’s attempts to purge the security services from criminal elements led to his assassination in March 2003” (Anastasijevic, 2010: 155). The assassination of Djindjic proved that criminal structures allied with or supported by state security institutions can undermine the stability of a country (Ağır, 2014: 80). Moreover, activities of criminal organizations represent a very negative influence on the economic development particularly by investing great sums of illegally earned money into legal businesses.

Accordingly, "the post-conflict era of the Balkans has been exploited by organized crime groups to carry out a variety of activities, which produced dirty money to be laundered in the licit economy" (Ağır, 2014: 81).

Connected to organized crime networks, human-trafficking is another non-traditional security issue. Human trafficking is perceived as a serious organized crime requiring a human security approach. The destruction of social fabric caused by the war, coupled with massive migrations, and the economic collapse, worked together to create fertile ground for dealers in human beings. Balkans region is simultaneously the source, the transit route, and the destination for the trafficking of human beings. It is estimated that 120,000 victims of human trafficking or more are coming to the EU through and from the Balkans each year (UN Office on Drugs and Crime, 2008: 15). Therefore, the illegal trafficking towards Western Europe increases the risks to the security of the entire continent.

Since organized crime transcends national borders by moving to the EU, it brings with it the threat of violence and conflict, and poses a relevant security threat to the EU. Apart from its links with organized crime, terrorism has deep roots in the Balkans and could easily find fertile soil in national and ethnic conflicts, as well as in the consequences of recently ended wars. Minority groups, if unsatisfied with their status, or strengthened nationalist movements may become pray of the organizers of terrorist activities (Vukadinovic, 1999: 12). From the viewpoint of Western researchers and policy analysts the threat of terrorism in the Balkans region stems mainly from the aftermath of Bosnian wars and the fact that as a result of these wars radical Islam has entered the Bosnian and other Balkan areas through different routes (Ağır, 2014: 83). In particular after 9/11, concerns have been raised as regards the possible infiltration of Balkan countries by international terrorist groups such as Al Qaeda (International Crisis Group, 2001). Whilst on 17 October 2001 the Embassies of the USA and the United Kingdom in Sarajevo were closed down under threat of terrorist attacks, in 2004 the International Strategic Studies Association came forward with allegations that the London and Madrid bombings had links to Bosnia (International Strategic Studies Association, 2004).

The distinction between organized crime and terrorism is made by reference to their ends; criminals seek profits while terrorists have political motives and specifically seek to weaken the state. The existence of trans-state nationalist, ethnic, and religious movements and their transborder identity networks provide settings conductive to cooperation between terrorist organizations and criminals. Accordingly, terrorism and organized crime are very strongly related to each other in the Balkans; one cannot function without another. The link between the Albanian mafia and the Kosovo Liberation Army (KLA) during the Kosovo conflict seems to be a good example. Tamara Makarenko cites a study that describes the funding of KLA activities through mafia drug money and the protection that the Albanian mafia enjoyed by the KLA in turn to carry out its smuggling of heroin into Western Europe (Makarenko, 2004: 57). In general terms, the collaboration between organized crime and terrorism undermine confidence in state structures and threaten the security of individuals and communities.

The wars in former Yugoslavia left massive quantities of weapons and other military hardware outside of effective government control. In addition, great numbers of firearms were imported into the region during the Yugoslav conflicts. The partial collapse of the Albanian state in 1997 also fuelled the smuggling of weapons in the region. In this respect, SALW contribute to the continued proliferation of terrorist and criminal elements, by acting as the enablers of violence. However, the situation has certainly much

improved since the time of active conflicts. Firearms trafficking is not even mentioned in the Council of Europe's situation reports on organized crime in the region (UN Office on Drugs and Crime, 2008: 84). But Iztok Prezelj emphasises that any major political and security destabilization could immediately revert the positive trend in the field of SALW (Prezelj, 2010: 207-226). Accordingly, in the environment of high unemployment, wild privatization, fast democratization, corruption, unsolved war-related issues, painful memories, freely moving war criminals and internally displaced people and refugees, the availability of SALW may create some alternative windows of opportunity for solving problems by violence (Prezelj, 2010: 210). The key victims of proliferation of SALW are actually individuals in the region. Therefore, the human security should be explicitly emphasised when dealing with the SALW problem.

Instruments of the EU for Achieving Human Security

When looking at the field of crisis management in the light of the human security concept, it is not only about intervening where a ceasefire is concerned, but also integrates civilian and non-corecive methods such as security sector reform, sustainable development, state-building, and mediation and negotiation efforts by parties external to conflicts (Liotta, Owen, 2006: 91). Thus, apart from the changing referent object, human security promotes different means to achieve security. As opposed to the hard power of the military, security should be provided by soft power, long-term cooperation and preventive measures (Ağır, 2014: 370). The EU has used some instruments to enhance security and democratic consolidation in the Balkans: 1) Stability Pact as a framework for multilateral regional cooperation, 2) Stabilization and Association Process (SAP) as the Union's potential strategy for Southeastern enlargement, and 3) CFSP/ESDP instruments for conflict prevention, crisis management and post-conflict rehabilitation (Zarin, 2007: 514). In addition to these three instruments, the EU's Community Assistance for Reconstruction, Development and Stabilisation (CARDS) programme played crucial roles in transforming of security structures in the region.

In the respect of the stabilization need of the region, the Stability Pact was signed in Cologne on 10 June 1999, in response to the EU's call to adopt a comprehensive platform for stability and development in the region. In essence, its aims are stated as follows; "bringing about mature democratic processes, based on free and fair elections, grounded in the rule of law and full respect for human rights and fundamental freedoms, including the rights of persons belonging to national minorities, the deepening and strengthening of civil society, preserving the multinational and multiethnic diversity of countries in the region and protecting minorities; and ensuring the safe and free return of all refugees and displaced persons in order to achieve stability in the whole region" (Hombach, 2000: 5-21; Latawski, Smith, 2003: 73).

In the founding document, the EU undertakes to draw the Balkans "closer to the perspective of full integration into its structures", including eventual full membership (see Hombach, 2000). It was at the Feira European Council of June 2000 that, for the first time, the prospect of EU membership has been extended to Western Balkans countries. In this respect, as a contribution to the Stability Pact and an interim step towards membership, in November 2000 the EU also launched the SAP at the Zagreb EU-Balkan Summit as a new instrument for Western Balkan countries. And then, during the EU-Western Balkans Summit which was held 21 June 2003 in Thessaloniki, it was stated that the future of the Balkans is within the EU (Thessaloniki Summit, 2003). Consequently, the EU has recognized the Former Yugoslav Republic of Macedonia (FYROM) as a

candidate country and Albania, BiH, Kosovo, Montenegro, and Serbia as potential candidates. In order to be admitted, these countries have to comply with the EU political, economical as well as legal requirements (known as the Copenhagen Criteria) and adopt the *acquis communautaire*, which delineates the total accumulation of EU laws and standards.

The SAP aims to enhance institution building, economic reconstruction, and regional cooperation, preparing the countries for future EU membership. However, before launching of the SAP, on 29 April 1997, the EU General Affairs Council adopted the so-called "Regional Approach", establishing political and economic conditionality for the development of bilateral relations with the Western Balkan countries. In this context, it has been added some specific criteria: full co-operation with the International Criminal Tribunal for the former Yugoslavia, respect for human and minority rights, inter-ethnic reconciliation, returns of refugees and internally displaced persons, and a visible commitment to regional cooperation (European Commision, 2003: 5). Thus, the EU added further preconditions to the already well-established Copenhagen Criteria by enlarging the scope of political conditions. Inspite of EU conditionality, the prospect of the EU membership is the major unifying factor in the Balkans, and it represents a powerful leverage for the much needed reforms. As a closure of the SAP, through a new generation of Stabilisation and Association Agreements (SAA), it is intended to increase economic, political and social cooperation between the EU and the five countries (Albania, BiH, Croatia, the Federal Republic of Yugoslavia and FYROM) which by the time have no contractual relationship with the EU. Consequently, in regard to the Western Balkans the EU applied short-term crisis management instruments that do not eliminate threats to human security at least up to the creation of SAP and the Stability Pact.

While the EU makes effort to include the concept of human security as an organizing framework for its security policy, the Balkans has been a test bed, first for the CFSP and then the ESDP. Through these initiatives the EU has sought to introduce a comprehensive approach to post-conflict settlement. BiH and FYROM serve as the primary area of the concentration of CFSP instruments and as the main source of experience for the improvement of European "trademark techniques" in pacification as well as normative transformation (Törö, 2006: 69). The EU's first military crisis management operation entitled as Operation Concordia was conducted in the FYROM in 2003. With the security situation stabilized, Concordia was replaced by an EU police mission, Proxima. This mission began on December 15, 2003, and lasted for two years. It worked primarily to support the rule of law through monitoring and advising the Macedonian police. On December 2, 2004, the NATO-led Stabilisation Force in BiH was replaced by an EU-led Operation EUFOR-Althea, which is the largest crisis management operation of the EU to date.

In addition to these operations in BiH and FYROM, in a regional context, the EU assistance in the framework of its CARDS programme has undoubtedly been the key instrument in addressing deficiencies in the development of security strategies of countries of the Balkans, especially in the realm of security sector reform (SSR) (Greco, 2004: 65). SSR is of crucial importance, because in post-conflict situations the security sector is often linked with organized crime and therefore rather a threat to citizens than a provider of protection. SSR includes the process of transforming or establishing new security institutions, including the army, police, judiciary and intelligence agencies. The goal is to create a functioning democratic state and society in which the citizens are able

to live without fear, whose human rights and fundamental freedoms are guaranteed and whose property rights are protected.

The army, police, intelligence agencies and other security sector agencies engaging in widespread abuses, organized crime and corruption became frequent cases in the countries of the Balkans in recent decades. Indeed, despite the financial and institutional efforts made by the EU, it can be concluded that on local level, the main obstacle in fighting organized crime is the unreformed security sector. In terms of regional level, the forms of cooperation among the states of the region in fighting crime have mostly been bilateral or Interpol-based, but that is not enough (Vukadinovic, 1999: 14). Because, transnational organized crime is a complex security threat that demands a multi-layered approach and response. Dejan Anastasijevic concludes that there is no comprehensive strategy to address the problem of organized crime neither locally, nor in the EU, although organized crime in the Western Balkans is widely recognized as the main threat against stability in the region and in Europe (Anastasijevic, 2010).

It is argued that top-down approach of the EU's institution-building strategy has its limits and should be balanced with bottom-up policies aimed at enhanced citizen participation and pro-reform consensus building (Bechev, Svetlozar, 2005: 3). In this context, the Barcelona Report puts particular emphasis on the bottom-up approach: "on communication, consultation, dialogue and partnership with the local population in order to improve early warning, intelligence gathering, mobilisation of local support, implementation and sustainability" (The Barcelona Report, 2004: 13-14). "This is not just a moral issue", is noted in the Barcelona Report, "it is also a matter of effectiveness" (The Barcelona Report, 2004: 17). Most of the threats targeting the physical integrity and dignity of human beings are locally produced and unique to the region. Therefore, a bottom-up approach which would provide participation of civil society in agenda making process is necessary, rather than setting up a human security agenda in Brussels (Ovalı, 2009: 177).

In terms of implementation of EU's human security perspective, Petar Atanasov proposes three priorities, particularly for the Western Balkans (Atanasov, 2008: 18). For him, priority number one in achieving human security is certainly human rights. Although the principle is obvious, there are deeply rooted institutional and cultural obstacles that must be overcome for this principle to be implemented in the reality (Atanasov, 2008: 18). Priority number two is human development. Atanasov explains this priority as follows: "This priority is a long-term one, difficult to realize over a short period of time. Human development, along with the human rights, is based on the development of democratic society in the region" (Atanasov, 2008: 18). For Atanasov, priority number three is the balance between liberalism and multiculturalism as a policy. This is particularly relevant at a sub-national level, i.e. for the minority communities and the communities in general, and "communal security sould be seen as a crucial prerequisite for complete attainment of human security" (Atanasov, 2008: 18-19).

Conclusion

During the first years of the 1990s, the EU did not develop a specific policy towards the Balkans but tried to apply policy originally designed for the Central and Eastern Europe countries. However, Delevic argues that "the wars that kept exploding on the territory of the former Yugoslavia and the EU's failed efforts to put out fires in particular countries clearly demonstrated the extent to which the achievement of lasting stability required a coherent approach that would provide a regional context" (Delevic,

2007: 22-23). Therefore, in order to tackle with the post-conflict situations, the EU prefers to follow a more comprehensive political framework which is in line with the necessities of human security conception. Ağır states that "through the documents of *European Security Strategy: A Secure Europe in Better World* and *A Human Security Doctrine for Europe*, the EU has started to securitize the human dimension of security" (Ağır, 2014: 371). During the last decade of the 20th century, Western Balkans' countries experienced situations of tension, which have been accompanied with armed conflicts, violence and ethnic cleansing, flows of refugees, etc., which constituted the main sources for jeopardizing human security. While successful in stabilizing the region, international involvement has nevertheless failed to tackle the underlying conditions which stand in the way of its full economic and societal recovery that would underpin a lasting peace. Therefore, a human security approach became essential both in the peace-making process and in security arrangements (Ovalı, 2009: 171).

The Western Balkans countries faced a 'triple transition' which is not comparable with any other Central or East European experience: (1) from war to peace, (2) from humanitarian aid to sustainable development and (3) from a socialist political system to a free market economy (Troncota, 2011: 65). Herd and Aldis explain this process as "the transition away from nationalism, dictatorship, and war towards peace, democracy, and a Europe an future". However, the process of European integration for all of the Balkans cannot be completed if soft security threats are still present in the region (Herd, Aldis, 2005: 148). Because, these kind of threats originated from the region reflect negatively on the process of European integration and the establishment of a security community.

In this respect, the key instrument for the implementation of human security doctrine is the process of enlargement of the EU. Because, the prospects of EU membership for the Western Balkans countries play a key role in human security promotion and its specific implementation. Thus, integration process can have a desecuritising effect on the sources of instability and insecurity in the Western Balkans. On the other hand, another major policy instrument for achieving integration should be the reform of the region's weak states. Without this, many efforts to absorb the region into the European space are likely to prove counterproductive (Krastev, 1999: 8). So, one of the basic prerequisites for improvement of human security is the improvement of the political, economic and social conditions in the countries of the region.

Indeed, the effectiveness of the EU's approach in the region will be determined to the extent that it successfully counters human insecurities in the region. Only then will the fears of spill-over effects of security problems originated from the Balkans be partly dispersed. Connected to this, the EU should keep engaged in several ways: by providing assistance and expertise, by insisting on regional cooperation and by prioritizing anti-corruption measures and reforms of security sector. All in all, human security can be promoted best by a combination of conditionality and European perspective. But, it still remains to be seen whether comprehensive European conflict prevention, crisis management and post-conflict reconstruction engagements and policies can achieve the human security in the Western Balkans.

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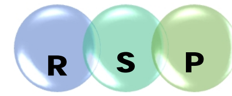

ORIGINAL PAPER

The West European Communist Parties and the Emergence of their Political Identity. Case study: The Belgian Communist Party

Adrian Cojanu*

Abstract
Although they were situated in a democratic, politically pluralistic environment, the position of the West European communist parties was similar to that of the parties in the Soviet block, as they were subordinated to Kremlin and connected both ideologically and doctrinally to the Soviet model of constructing socialism. Starting with the 60s, in the West European communism, the political identity of these parties is changing. The détente between the East and West in the early 70s would create a favourable context for the affirmation of the West European communist parties on their own political scene. From that moment on, collaboration with the socialists and the social-democrats would be necessary. Moreover, the West European communist parties also needed a change of their Soviet-inspired political discourse. The implementation of communism had to be reinterpreted. Communism had to be adapted to the concrete historical and political realities in their own states. Therefore, on the international communist movement's level, the consolidation of the political identity had to be marked by the emancipation from the Soviet tutorship. The need for unity of the Left political forces in Western Europe, the disagreement with both power poles of the Cold War, together with the approach of the Euro-communism thesis, they were all aspects of the centrifugal tendencies towards Moscow's policy and of the affirming of their own political identity. The identity struggles of the West European communism did not bypass the Belgian Communist Party (BCP). In the case study of this article, the author analyses and interprets the transcripts of the meetings between the Romanian Communist Party and the Belgian Communist Party. Using as research method the document analysis, the study reveals the West European communist parties' efforts to affirm their identities.

Keywords: *political identity, West European communist parties, Euro-communism, unity of the Left, Belgian Communist Party*

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Introduction

The contacts between the Belgian and the Romanian communists certainly took place in the context of the international meetings or on different occasions of participating at one or the other of the two parties conferences, while the official Romanian-Belgian party policy talks did not begin earlier than 1966, being very intense up to the end of the 70's. We must stress the fact that during these years, the international communist movement was facing many issues. On the other hand one could see this as N. Ceausescu planning to use these relations as a strategy to achieve maximum political benefits in his relationship with Moscow (Copilaş, 2011: 3). From the point of view of the efficiency of those meetings, we should recall the position on which the Belgian communists used to carry out the dialogues. Especially within the early meetings with the Romanian communists, the BCP was laying stress on the open attitude they had regarding "the meetings with comrade parties", no matter on which side of the Iron Curtain they might be (ANIC, fund CC al PCR, secția Relații Externe, dosier no. 78/1967: 4). Also, in order for those talks to be fruitful, they supported the idea of counselling by another communist party. On an international level, that period of the cold war was characterized by the USA involvement in the Vietnam War and the eastern conflict, by the Sino-Soviet issue, by the issues specific to Western communist parties in their attempts to build their own identity, to reconsider their position to Moscow or by the idea of creating left wing fronts to make it possible for them to achieve government power (Anton, 2007: 155). An analysis and an interpretation of some frequent topics during the Romanian-Belgian meetings, such as the European security in the context of international security and cooperation, the struggle against imperialist forces, the building of socialism by the unification of the left wing forces or topics connected to the eurocommunist thesis, can highlight for us, to a certain extent, the position of Romanian or Belgian communists in the matters of the international communist movement. On the other hand, these topics of discussion between the two communist parties can show the emancipation tendencies of the Western parties in relation with the power centers of the Cold War, as well as the attempts to gain independence from Moscow, within the communist movement (Bracke, 2002: 8).

The attempt to identify these topics in the talks between the Romanian and the Belgian communists required first of all a study of the Romanian national archives-the central committee of the Romanian Communist Party files-the foreign relations section. We must state that the literature in this field approached only the relations between the RCP and the Belgian left wing groups only slightly, therefore, the direct study of the transcripts was the main source of analysis. Concerning the special studies used here I think that the study *Nicolae Ceaușescu and the international communist movement (1967-1976),* by Cezar Stanciu, should be mentioned as being very useful for the proper understanding of the international background of the communist movement, of the RCP's activities in its relation to Western communist parties and last but not least of the themes debated during their talks. The studies of some authors such as Maud Bracke or Emanuel Copilaș also brought their contribution to the analysis of certain concepts (e.g. eurocommunism), typical for the communist movement, which i also came across when studying the dialogues between RCP and BCP. Also, I was offered useful information on the situation of the internal political stage of BCP by the Belgian political sciences magazine *Courier Hebdomadaire du CRISP.*

The issue of the European security

Like the other Soviet group countries, for the RCP, the building of European security required, as a starting point, a recognition of the historical realities emerged after the second world war, as well as a recognition of the two German states - The Federal German Republic and The Democratic German Republic. In a dialogue with Marc Drumaux, member of the Political Bureau of the Central Committee of the BCP, Alexandru Draghici[1] made a brief summary of the measures agreed upon by the RCP in the matter of the European security, more precisely: the dismantling of all military basses on other states' territory, the withdrawal of American troops from Europe as well as that of all troops in the national perimeters or the simultaneous dismantling of the NATO military group as well as that of the Warsaw Treaty (ANIC, fund CC al PCR, secția Relații Externe, dosier no. 78/1967: 30).

The European security issue was the topic of the Romanian-Belgian talks as early as the first meeting between the two parties, in 1966 (Miloiu, 2004: 86). During that meeting, Marc Drumaux[2] showed interest in the way RCP would react to the matter of European security. As said before, prior to that meeting, the Conference of the Warsaw Treaty socialist states had taken place in Bucharest, where two important documents had been agreed upon: one concerning European security, and the other regarding the Vietnam War. Drumaux interlocutor, Mihai Dalea[3] made a detailed presentation of RCP's position towards those documents and, implicitly, towards the issue of European security. For the Romanian communists, the signing of those documents by all the states attending the Bucharest conference was a real success, as it stood for an example of….". Mobilisation of all the progressive and peace-loving forces in Europe,(….) a document meant to support all the forces in favour of the dissolution of the NATO pact, therefore a document meant against the German militarism, against retribution" (ANIC, fund CC al PCR, secția Relații Externe, dosier no. 101/1966: 5). In the 60's, the problem of European security formed the topic of many debates within the left wing area in Belgium, also. In the light of European security treaty, the Belgian social-democrats believed that, as long as the Soviet Union would sign the treaty, certain guarantees from the U.S. Had to be obtained. This point of view was also shared by the Belgian communists, because the USSR was not only a European power, but an Asian one as well. On the other hand, the American presence in Europe was seen by the BCP as a real threat to the European security, as it could „encourage the militarist vengeful forces in Europe" (ANIC, fund CC al PCR, secția Relații Externe, dosier no. 101/1966: 16).Within the same meeting with M. Dalea, M. Drumaux saw as the only solution the withdrawal of both American and Soviet troops from Europe, while, in the meantime, the provisions of the upcoming treaty on European security were to specifically include the guarantee that the great powers would never threaten the European security.

Therefore, the matter of European security was quite complex and involved in its equation not only the American domination, but the Soviet presence in Europe as well (Constantiniu, 2010: 32). M. Drumaux's point of view on the NATO and Soviet military presence on the European continent was shared by the Romanian communist leaders as well, as I am going to explain in the next chapter.

The NATO issue in the Romanian-Belgian meetings

Ever since the first post-war decade, Belgium's foreign policy was focused on the cooperation between the United States and Europe. One of the authors of this political view was the Belgian politician, Paul Hanri Spaak, also known as the founding member of the European Community. P. H. Spaak's figure is also linked with the dawn of The Northern Atlantic Treaty, Belgium being one of the twelve signing states in April 1949. P. H. Spaak was openly supporting a common defense system for Europe and USA, being actually a middleman between the two, a supporter of the American involvement on the European continent (Stanciu, 2015: 66).

Considering the Belgium governments' pro-American position designed by Spaak, we can understand the BCP's tension as a communist party in the matter of European security, of the communist fight against American imperialist domination. Moreover, the relocation of the NATO headquarters from Paris to Brussels in 1966 sharpened the Belgian communists' focus on the NATO presence in Europe (Retegan, 2002: 9).

Regarding the RCP, the Commission on Security and Cooperation in Europe (CSCE) could, in their view, constitute a form of limitation for the influence of the great powers (USA and USSR). That way, believed the Romanian communist leaders, the transition from the bipolar world, typical to the Cold War, to a multipolar one, could be ensured. Also, from an economical perspective, for the RCP, the CSCE process had to represent an alternative of the economic integration through which all economic barriers imposed by the European Economic Community (CE) would be removed (Stanciu, 2014b: 276). However, the Romanian communist leader did not see the common market as an impossible obstacle, even though he found several flaws in it (ANIC, fund CC al PCR, secția Relații Externe, dosier no. 197/1974: 12). For Ceausescu, on the other hand, the dismantling of military blocks was seen as mandatory for the goal of the European states' unity, as well as for that of national sovereignty (ANIC, fund CC al PCR, secția Relații Externe, dosier no. 197/1974:13).

The meeting in February 1967 between the Romanian ministry of foreign affairs, Corneliu Mănescu, and his Belgian peer, Pierre Harmel, shows us the Belgian government's position of that time, regarding European security and, implicitly the NATO issue. Regarding the treaty of nuclear non-proliferation negotiated at that time by the Soviets and the Americans, the Romanian and Belgian foreign affairs ministers agreed that the nuclear states should offer guarantees regarding the a refraining from the use of the atomic bomb. There were, on the other hand, divergent views between the two ministers concerning the presence in Europe of the two military blocks. The Romanian side, represented by Corneliu Mănescu, supported the simultaneous dismantling of both the NATO alliance and the Warsaw Treaty, since maintaining these military entities in Europe was perceived by the RCP as a form of domination of strong states over small ones. On the other hand, the Belgian foreign affairs minister supported the idea that the two military entities were not but a guarantee of European security (Stanciu, 2015:70). Therefore, with the Socialist Republic of Romania, the foreign affairs minister's view agreed perfectly with the one of the party, this being a perfectly understandable aspect in a political system with a unique party, with no absolutely no opposition. The BCP's situation was completely different, their views totally opposing the government policy most times, such as the case was in matters regarding the European security.

It is easy to see that the issue of gaining independence from the military entities' supervision was present not only in the Soviet communists' speech, but also in the one

delivered by the Western communist parties. With the Belgian communists, Belgium's possible detachment from the NATO alliance, was an old issue, as we have already pointed out, even since the year NAO was founded, in 1949. This topic became more heated in the 60's during the talks on European security, because the Belgian government's relations with the NATO alliance were very solid (Dreyfus, 2000: 129). Actually, as Drumaux stated, the Belgian state had become a real NATO policy representative in Western Europe (ANIC, fund CC al PCR, secția Relații Externe, dosier no. 78/1967: 7). Concerning its allegiance to NATO, for the Belgian communists it only stood for a form of domination by the American imperialist policy. Actually, Jan Debrouwere, a BCP delegation member in Bucharest, in 1971, is quite open in this regard: "as you may well imagine, Belgium's allegiance to NATO had negative consequences in the matter of national sovereignty. It is, in fact, a form of submission to the American imperialist policy…" (ANIC, fund CC al PCR, secția Relații Externe, dosier no. 80/1971: 55). For the BCP, the NATO issue was much more complex than the extent to which it was analyzed in the Belgian political context. The Belgian communists' struggles were also linked to the Belgian socialist parties; relations with NATO. In a discussion with M. Mănescu in 1967, M. Drumaux expressed his discontent of the socialists' policy, which, in his opinion, supported the foreign policy of the "bourgeois" parties, in power in Belgium, concerning NATO (ANIC, fund CC al PCR, secția Relații Externe, dosier nr. 78/1967:11). Drumaux believed that this political attitude of the socialists would lead to a scission of the labouring class, and, implicitly, of their political views. Under these circumstances, in the BCP's view, the unification of a left wing front had become an immediate objective.

The unity of left wing forces in Belgium

As the Commission on Security and Cooperation in Europe (CSCE) was getting started, the tendency to bring together a strong left wing pole in Europe emerged. The reason for such tendency was founded on the decrease of the right wing parties' influence on the political stage in Western Europe, on the CSCE's leaning towards the left wing side as well as on the easier fashion in which communists had access to a governmental left wing coalition (Stanciu, 2015:73). All these goals of the communists required their collaboration with the socialists or social-democrats. These struggles of the Western communist parties were not indifferent to the RCP, who, for these reasons among others, would keep closer contacts to their parties. Both Western communists and socialists were aware that a potential collaboration or alliance between them would lead to an elective advantage, and, implicitly, to an easier access to government power. The victory by the communist and social democrat coalition in the elections in Finland in 1966 proved that such alliances were a certain political success.

The study of the Romanian national archives shows us that N. Ceaușescu played an active role in the Western world left wing political area. More precisely, he would show interest in the unification of the left wing forces in Western European states. Ceausescu saw these unification actions by the left wing forces as a successful way in which socialism was being built in the Western countries. On the other hand, such alliances required that the traditional relations between communists and socialists be reconsidered. We must add that this cooperation between European communists and socialists depended on certain USSR perceptions on the international politics, such as the American domination in Western Europe.

Moscow did not condone such forms of allegiance, because the social-democrat European parties were seen as being very close to capitalism as well as very tolerant to the American influence in Europe (Niculescu, 1997:89). The differences in opinion between the social-democrats/socialists and the communists were caused by a different view on how the ideology was to be applied. Both supported the ideology of the social classes' clash in the process of achieving socialism, but their views on the way this had to be carried out led to different opinions. However, the background of the relations between communists and socialists had also seen moments of actual cooperation, were we to recall the so-called "people's fronts" during the 30's, which stood for the expression of political alliances that were set on opposing the increasingly strong extreme right wing in Europe at that time.

In the years following World War II, European socialists and social-democrats were exposed by Moscow as being "traitors" of the working class' interests (Jdanov, 1947: 248). On the other hand, in the 40's, communist parties in Western Europe (such as the French Communist Party or the Italian Communist Party) were excluded from the government coalitions they had been part of. Finally, in order to better understand the communists' position to the socialists and social-democrats, we have to recall the meetings held by the communist and labour parties in Moscow in 1957 and 1960, where the social-democrat movement was seen as a tool in the hands of imperialism, thus betraying, obviously, the interests of the working class.

The problem of the allegiance between the communists and social-democrats also emerged with the Belgian parties, but a unification of the left wing forces was quite difficult to achieve. First of all, the Belgian socialists were divided into several parties. During the meeting in Bucharest, M. Drumaux explained to Corneliu Mănescu the situation of the Belgian Socialism, how divided the socialists, social-democrats, the Walloon socialists, the Flemish socialists, Christian social-democrats, etc were.

The BCP's presence on the Belgian scene had been quite discrete even since the 50's. Actually, since the reformation of the Political Bureau in 1954, the party's leaders are much more radical and much less tolerant to another allegiance with the socialists. The BCP's influence over the electors faded constantly, which led to a search for new alliances with left wing forces, during the 60's. Union strikes occur in Belgium, in the early 60's. In this context, Belgian communists were antagonizing the anti-union measures taken by the government coalition, formed by social-Christians and socialists.

Therefore, between 1961 and 1965, the BCP was quite invigorated on the internal political stage (Gotovitch, 1997:34). More precisely, the BCP strengthens its elective position through a growing popularity among unionists. Between 1968 and 1981, frictions occur among the Belgian communists, which would block a possible political assertion of the BCP-either internally or internationally-even though that was a favorable period for the Western communist parties. However, the 70's are characterized by a relative stability of the BCP on the political scene, gaining an elective constant result of more than 5% in the Walloon region. From the point of view of mass popularity, the BCP's political situation during the 60's and the 70's may indicate the reason for which they would look for alliances with other Belgian left wing forces.

During most of the meetings with the Belgian socialists and communists, the RCP showed a constant interest in their vision of unity. In one or the other of these parties' struggles regarding possible elective assessments as outcome of such alliances. Just as well, the BCP was interested in Ceaușescu's policy of supporting the collaboration between socialists and communists. The BCP manifested great interest in the Belgian

socialists. This interest of the BCP is very well highlighted during the discussions occurring in Bucharest, in September 1971, when R. Dussart, (a prominent member of the BCP), in a dialogue with Paul Niculescu Mizil, presents the situation of the Belgian left wing. In Dussart's opinion, the Belgian socialist party, despite being a very powerful party on the Belgian political scene, was not capable to cross the limits traced by reformist policies.

Therefore, in the BCP's opinion, the BSP was not following the guidelines of a transforming policy through which an actual socialist perspective, in the communist ideological sense, could be envisioned. Moreover, Belgian communists were worried by the election defeat in the parliament polls by the social-democrats, and, implicitly, of the loss of key-positions in the political life, losses which the BCP could not compensate. In other words, Belgian communists saw these losses of "forces" as a defeat of the left wing, including them. Bud the attitude and relation of the BSP to communists was also communicated to N. Ceaușescu in April 1972 by the president of the Belgian socialists, Edmond Leburton who stated that "If personal relations between us are good, then political relations are inexistent"(ANIC, fund CC al PCR - secția Relații Externe, dossier no. 26/1972: 29).

The Belgian communists were aware of the good relations between the BSP and the Romanian communists. Aware of that fact and worried for the fate of socialism in Belgium, R. Dussart asked the RCP, in 1971, to mediate a collaboration or possible alliance with the socialists, because, as he said: "We are in favor of regrouping the popular forces in Belgium, with no exclusivity whatsoever…yet, we notice that there are big difficulties in creating this regrouping. This is the reason why we believe that regrouping the progressive forces is only possible by following a short and medium-term political program, which allows the entire working class to appreciate the situation and enables them to understand that they must organize themselves for having not only social but also political conquests…" (ANIC, fund CC al PCR - secția Relații Externe, dossier no. 80/1971: 8).

The importance of the relations that the BSP wished to develop with the BCP, as well as the importance of the role played by the RCP in such allegiances is highlighted by R. Dussart: "You are the only governing party to maintain serious relations with the Social – Democrat Party. This is why we draw attention on these contacts which you have with them and on the explanations which we want to offer to each other" (ANIC, fund CC al PCR - secția Relații Externe, dossier no. 80/1971:7). [...]"you may play a certain part so that, along with the actions of the Belgium Communist Party, one may reach political mutations inside the socialist party" (ANIC, fund CC al PCR - secția Relații Externe, dossier no. 80/1971: 7).

During the same meeting, Dussart stresses the importance of the role the RCP could play in its relations with the SBP, suggesting the Romanian communists to have a new attitude towards the BSP, even a strategy in their meetings with them: "...the relations of the Romanian comrades with the Belgian Socialist Party should however follow a new axis [...] I think that the Romanian comrades may now express some exigencies in their relation with the Socialist Party as well. It is about understanding what the Belgian socialists intend to do in the context of the Belgian nation, in order to bring new content to the politics in Belgium, content which may orient the Socialist party, along with all the progressive forces, towards stages leading to socialism, I would even say that one day our Romanian comrades may see the distances dividing the social-democrats from the communist party, or, the convergences between them and that one day it may become

possible for the Romanian Communist Party and the Belgian Social Democrat Party to reach a political agreement....” (ANIC, fund CC al PCR - secția Relații Externe, dossier no. 80/1971: 11). It is easy to understand that the Romanian side assured R. Dussart of their support in the BCP’s efforts to achieve a unification of the left wing forces in Belgium. Such dialogues between the leaders of the left-wing parties in Belgium and the Romanian communists were frequent. In terms of the socialism status in Belgium, they played rather an informative role concerning the left-wing situation in the Belgian state rather than a concrete role. The influence of the RCP upon these parties was minimal; it was hard to believe that an intervention by Ceaușescu in one political party or another would have led to forming such coalition (Stanciu, 2014b: 256).

The approach of the eurocommunism thesis in the RCP-BCP meetings

By eurocommunism we mean the political trend emerged within the Western communist world, trend that was still manifesting within the marxist-leninist ideological limits, while advocating an adaptation of the communist ideological background to the realities and requirements imposed by the singularities of the Western states. One of the basic eurocommunist ideas was a peaceful transition to socialism, through other means than the insurrectional ones, supported by the Bolsheviks (Stanciu, 2014b: 363). Another feature of eurocommunism was supporting the idea that socialism would be built in a political background in the sense of Western democracy, eaning a diverse, parliament-based framework, where access to power was achieved through open elections (Radu, 2004: 95). Therefore, the building of communism within a pluralist, legit framework, typical to Western countries meant a step-by-step construction of socialism, spared of the labouring masses dictatorship. These reforming ideas were first initiated, as early as the 60’s, by the main Western communist parties (ICP, SCP, FCP) (Pons, 2006: 24). These ideas were later integrated in the concept of eurommunism. The context of the times was marked by Moscow’s failure to reunite, as a monolith, the international communist movement, at the international meeting in 1969. This led to a decrease in Moscow’s pressure, especially that on the Western communist parties. This political trend didn’t fail to influence the small Belgian communist party, which, along with the Western communist parties, tried to identify their own ways and methods of assertion (Stanciu, 2014b: 300).

The transcripts of the talks between the RCP and the BCP show us that the eurocommunist ideas were present in the communist political life in Belgium. It’s interesting that, despite having no support whatsoever for these eurocommunist ideas, Ceaușescu was going to support them, as long as they would contribute to a strengthening of the autonomy of communist parties as well as to the weakening of the Soviet domination over world communism, which was certainly in the RCP’s interest also.

Ceausescu’s attitude to this trend is not that important for our study, but, the fact that the notion of eurocommunism was present within the Romanian-Belgian discussion agenda, can be a clue as to the Belgian communists’ interest in finding new ways of political assertion and emancipation.

Conclusions

The issues related to international and European security, the theme of the left wing unification in the Western states or that of eurocommunism ere, mainly, debate subjects between the RCP and Western left wing political forces whose opinions weighed heavily within the communist movement in Western Europe, such as the ICP,

the SCP, the FCP. As already stated, such topics of discussion show us that the "dissident" tendencies towards Moscow, manifested by the important communist parties in the West, were also shared by the smaller ones on the European political scene, such as the BCP. Like the other Western European communist parties, the BCP was focused on collaborating with the Belgian socialists. The BCP was aware that joining left wing alliances could lead to a political advantage. Especially considering the fact that their electoral ratings had reached a worrying level for a party that wanted to play an important role, not only internally but also internationally. Approaching these internal political realities, of political diversity, also required that the communists gave up the international type of solidarity imposed by Moscow. Through those actions, the Belgian communists were actually taking a step further to distance themselves from the USSR.

The BCP, on its effort to consolidate its identity, was going to sign up to the "reforming" ideas supported by the great political parties in Western Europe. That kind of ideas, such as building communism through other means than the insurrectional ones, accepting the diverse political background, as well as the other specific conditions already traditionally existing in the Western European states, were also going to be approached in the talks between the RCP and the BCP. This "communism of their own", theoretically named *eurocommunsim*, was going to be advocated by Ceaușescu during the talks with the Belgian communists. For the Romanian leader, these "dissident" theses were acceptable as long as the communist parties could promote through them their own interest and could assert their sovereignty from Moscow .

The conclusion to be drawn would be that the discussions between the RCP and the BCP were rather a kind of informative, consultative type of meetings. Each of those parties was actually interested in the other one's activity, on both the internal and the international level of the communist movement. The mutual knowledge of these parties' position in the current world issues, such as those regarding European safety or the eurocommunist theses, could become a motive for encouragement in the common effort to get past the cold war's bi-polar situation, or to achieve emancipation from the Soviet control.

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Notes:

1. Romanian communist official, vice prime-minister between March 18 1961- July 27 1965 and December 9 1967- April 26 1968.
2. Member of the Belgian delegation and vicepresident of the BCP.
3. Romanian communist official, member of the Central Committee of the RCP between 1948-1984.

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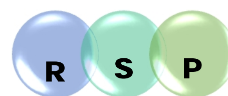

ORIGINAL PAPER

Direct Democracy in Romania after 1989: Particularities of the Formal-Legal and Practical Aspects

Valentina Marinescu*

Abstract

The problems of direct democracy are an extremely important subject of study by present-day political scientists, sociologists, and legal scholars. Its continuous relevance is closely connected with the dynamics of democratic processes taking place in the world and with the sensitivity of the existing democratic solutions constantly jeopardized by social, economic, or political conflicts. Not without significance is also the question of democratic solutions being in short supply in the world. In the case of Romania few theoretical approaches were made in order to explain the pecularities of direct democracy in comparison with the classical (”canonical”) models which exist in the Academic literature. The main methods of analysis used in the paper will be secondary analysis of social documents and a genetic method applied on historical and cultural events and processes which took place in Romania after 1989. In this paper the analysis will be structured on the following axes: 1. The analysis of the formal-legal dimension of direct democracy in Romania – this section will be focused on examining legal acts (Constitutions, laws) that determine the legislative reality investigated, in particular those regulating the functioning of the institutions of the people's assembly, referendum, citizens' initiative, and popular referendum (popular veto); 2. The review of legal acts related to the institutions of direct democracy in Romania. In the conclusions we seek to answer at the following questions: Whether and to what extent the forms of direct democracy are used Romania; Wheter direct democratic institutions are an effective way in which the sovereign (the people) expresses its will in individual states, both at local and national level in Romanian case.

Keywords: *direct democracy, Romania, legal acts, formal-legal aspects of democracy, institutions*

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Theoretical framework

The continuous relevance of direct democracy for various fields of scientific research (political sciences, sociology, legal studies) is closely connected with the dynamics of democratic processes taking place in the world and with the sensitivity of the existing democratic solutions constantly jeopardized by social, economic, or political conflicts. Not without significance is also the question of democratic solutions being in short supply in the world. Vast literature on the subject indicates that scholars try to meet the social demand by continuing to analyze the problems of direct democracy in the contemporary world (Butler and Ranney, 1978; Butler and Ranney, 1994). Of special interest to scholars were the following fields of research: 1. The implementation of solutions of direct democracy on the level of individual countries, in particular the United States of America and Switzerland; 2. The influence of institutions of direct democracy on socio-political life; 3. The challenges to direct democracy associated with globalization; 4. The use of new communication technologies in the sphere of direct democracy (Feld, Kirchgässner, 2000). The present article tries to fill a gap in the existing literature on direct democracy in Eastern Europe by focusing a specific case: the characteristics of direct democracy in Romania after 1989.

Instruments of direct democracy

According to the existing literature (Mény, Surel, 2002), the instruments that give citizens the right to be directly involved in the political decision making process are (Maduz, 2010): 1. "The referendum" – it refers to the situation in which "the vote of the electorate is required by the legal on an issue of public policy" (Maduz, 2010); 2. "The citizens' initiative" – in this case, "the citizens initiate a vote of the electorate on a proposal outlined by them" (Maduz, 2010); 3. "The recall". As an instrument of direct democracy it "covers the situation in which citizens are allowed to demand a vote of the electorate on the issue which pertains to the fact that an elected representative of them should (or not) be removed from the office before the end of his/her office's term" (Maduz, 2010).

The Romanian case

Unlike the other East-Central European countries, where the transition from communist rule to democracy was the result of peaceful movements or negotiations around a round table, Romania experienced a violent change of regime in December 1989 (Datculescu, 1999). After the change of the political system in December 1989, the political system which function in Romania may be described as a representative democracy, governed by the directly elected President and Parliament (semi-presidential system), according to the provisions of the new Constitution (Camera Deputaților, 1991).

The research hypothesis

In the case of Romania few theoretical approaches were made in order to explain the pecularities of direct democracy in comparison with the classical ("canonical") models which exist in the Academic literature (Matsusaka, 2005). The paper will seek fill the existing gap and try to verify the following research hypothesis: "the use of instruments of direct democracy in the process of exercising power is an indicator of the political awareness of the Romanian society."

Methodology

The main methods of analysis used in the paper were secondary analysis of social documents and the institutional-legal method applied on legal acts, historical recordings of the forms of direct democracy (people's assembly, referendum, citizens' initiative, and popular referendum-popular veto) that were used in Romania after 1989.

Instruments of direct democracy according to the Romanian Constitution

The new Romanian Constitution was adopted by referendum, on 8 December 1991 (Datculescu, 1999). On a turnout of 66%, 53% voted in favour of the new constitution (Datculescu, 1999). As regards the provisions of Romanian Constitution on the subject-matters of referendums and popular initiative one has to start from the fact that, according to Article 72, paragraph 3, line (c), the organization and fulfilling of the referendum is regulated through organic law. At the same time, Article 73 of the Constitution about the legislative initiative provides that (Camera Deputaților, 1991): "legislative initiative belongs to: the Government; every member of the Parliament; at least 250,000 citizens entitled to vote (coming from at least 1/4 of the counties, and at least 10,000 signatures per county or the city of Bucharest)". Article 90 of the same fundamental law of Romania provides that (Camera Deputaților, 1991): "The President of Romania, after consulting the Parliament, may ask the people to express its will, through referendum, in matters of national interest". In the Article 95 it is stated that (Camera Deputaților 1991): "The president may be suspended, in case of severe break of law, by theParliament, through a decision taken by majority, after having asked the advice of the Constitutional Court. The suspension of the president has to be proposed by at least 1/3 of the number of deputies and senators. If the dismissal proposal is approved, in a maximum of 30 days there is organized a eferendum for the dismissal of the President". Also, in the Article 146 provides that (Camera Deputaților, 1991): "The revision of the Constitution may be initiated: by the President of Romania at the proposal of the Government; by at least 1/4 of the deputies or of the senators; by at least 500,000 citizens entitled to vote (coming from at least 1/2 of the counties and at least 20,000 signatures per county or for the city of Bucharest)". And in Article 147 it is stated that (Camera Deputaților, 1991): "The proposal or project of revision of the Constitution must be adopted by Parliament with majority of at least 2/3 of the number of members of each House, or at least 3/4 of all members of Parliament (after the procedure of median), gathered in common meeting. The revision is final after being approved through referendum, organized in a maximum of 30 days after the adoption of the proposal/project of revision."

Other laws regarding direct democracy in Romania

If the Constitution had the set the general famework of functioning the direct democracy in Romania the punctual legal acts which refers to the functioning of popular referendum (as instrument of direct democracy) were adopted later. In 22 February 1999 the Romanian Chamber of Deputies and the Romanian Senate adopted the "Law regarding the organization and fulfilling of the referendum", that was advanced for promulgation to the President of Romania. On 2 April 1999, the president Emil Constantinescu asked the Constitutional Court to analyze the constitutionality of a number of the provisions of this law. The Constitutional Court, in the debate held on 5 May 1999 decided that a part of these provisions were unconstitutional and sent the

decision to the presidents of the Chamber of Deputies and of the Senate, in order to start the procedure of re-examination of the law. Only after one year, in 2000, the law was re-formulated and has been adopted by both Chambers of the Romanian Parliament and, subsequently, the President had promulgated it (Monitorul Oficial, 2000).

Alongside with the Law 3/2000 on the organization and holding of referendum (Monitorul Oficial, 2000) the general functioning of the dirct democracy's instruments in Romania was also regulated by the Decree-Law 92/1990 for the election of the Parliament and of the President of Romania (Monitorul Oficial, 1990). According to the Decree-Law 92/1990 (Article 3) (Monitorul Oficial, 1990): "The Parliament of Romania constituted of the Chamber of Deputies and the Senate, as well as the President of Romania, are elected by universal, equal, direct and secret, freely expressed vote". In the same vein, instruments of direct democracy are put into function at the local level. The Law 215/2001 of the local public administration states in Article 5 that (Monitorul Oficial 2001): "The authorities of public administration, fulfilling the local autonomy in communes and cities are the local councils, functioning as deliberative authorities, and the mayors, functioning as executive authorities. […]". The same Law (215/2001) provides in Article 13 that (Monitorul Oficial, 2001): "The councils of communes and cities are constituted of councilors elected through universal, equal, direct secret and freely expressed vote, under the conditions of the law regarding the local elections."

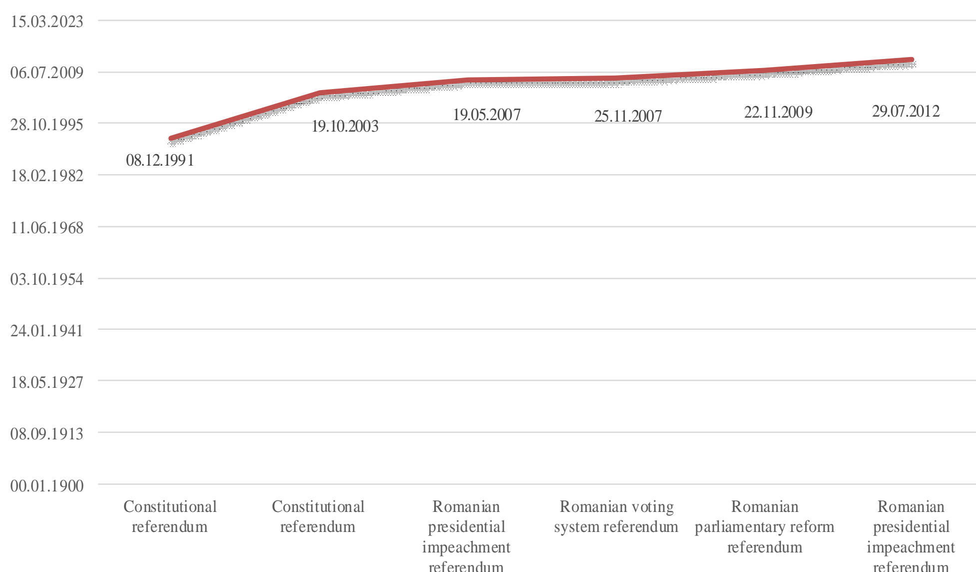
Subject-matters of popular votes in Romania

As stated in the Romanian Constitution (Camera Deputaților, 1991), the national referendum represents the form and means of direct consulting and expression of the sovereign will of the Romanian people in the following matters (Camera Deputaților, 1991): 1. problems of national interest; 2. dismissal of the President; 3. Revision of the Constitution on problems of national interest. But what may represent "problems of national interest", given the fact that it was not given a general definition of this broad term? During the years the debates in the public sphere had pointed out several problems which can be assessed as being "of national interest" in Romania's case: 1. There had been fervent debates regarding the revision of the Constitution in what concerned the parliamentary immunity. According to the Constitution (Camera Deputaților, 1991): "A deputy or a senator may not be arrested, searched or sent on trial, criminal or civil, without the agreement of the Chamber of Deputies, respectively of the Senate, after having been organized hearings on the matter". There existed various proposals for the revision of the Constitution, but the popular belief is that "members of Parliament take advantage of their position to avoid criminal or civil charges and trials" (Culic, 2000). 2. Another public debate regarded the possibility of revising the Constitution in the matter of the form of government – that is, Romania should be a republic or a monachy? The debate was not so frequent in the last years but even at present certain monarchist groups would like to see King Michael 1 back on the throne of Romania. Also, certain public personalities suggested that there should be held a referendum regarding this issue.

Romanian national referendums

During the last twenty-six years there have been several instances in which referendum as an instrument of direct democracy was used in Romania.

Figure 1. Chronology of Romanian national referendums (1990-2016)



Source: Own compilation of the author

As can be noticed in the above Figure 1, one can differentiate two constitutional reforms (in 1991 and 2003), two refrendums for the impeachement of the president (in 2007 and 2012), one referendum for the change of the voting system (in 2007) and a parliamentary reform referendum (in 2009).

Romanian constitutional referendums: 1991 and 2003

According to the general number of voters recorded at the national level in the moment of the referendums related to Constitution. Thus, according to the offficial data, there was an increase of 12% in the number of voters who approved the constitutional reforms in Romania: from 79.1% in 1991 to 91.1% in 2003. Thus, the first constitutional referendum was held in Romania on 8 December 1991 and lead to the approval of the new constitution by 79.1% of voters (Datculescu, 1999). At the same time, the second constitutional referendum which was held in Romania on 18 and 19 October 2003 lead to the approval of the proposed amendments to the constitution by 91.1% of voters.

Table 1. Romanian constitutional referendums: 1991 and 2003

	1991		2003	
	Choice	Votes%	Choice	Votes%
For	8,464,624	79.1	3,947,212	81.36
Against	2,235,085	20.9	784,640	16.17
Invalid/blank votes	248,759	–	119,618	2.46

Total	10,948,468	100	4,851,470	100
Registered voters/turnout		67.3		26.51

Source: Nohlen, Stöver, 2000; Dinita, 2012

At a closer look, the turnout proved that instead of getting stronger in time, this instrument of direct democracy had become weaker. In other words, from the total of 67.3% registered in 1991 twelve years later only 25.5% voters were present in the referendum day of the Constitutional reform (Dinita, 2012). The decrease in turnout had had important impact on the results for another type of referendum in Romania: the presidential impeachment referendums.

The Romanian presidential impeachment referendums: 2007 and 2012

In early 2007, president Traian Băsescu was proposed for impeachment by the members of the opposition parties in the Parliament for allegedly unconstitutional conduct. As a result of the impeachment vote by the parliament, president Traian Băsescu was suspended from his function as president on April 19, 2007 and a national referendum was held on 19 May 2007 to decide by popular vote whether to dismiss the president (Asociatia ProDemocrația, 2008). The question printed on the ballots was (Asociatia ProDemocrația, 2008): "Do you agree with the removal of the President of Romania, Mr. Traian Băsescu, from office?". The question was modified to include the name of the president even though article 9 in the law of referendum (Asociatia ProDemocrația, 2008) already established the content of the question without names of presidents. With 75.06% of the total persons who voted on the referendum day the president remained in function. On 29 July 2012 a second referendum on impeaching the Romanian President took place (Romanian Academic Society, 2012). It was organised after the Parlaiment's vote of impeaching president Băsescu at the beginning of July 2012 (Romanian Academic Society, 2012). Voters were asked the question (Romanian Academic Society, 2012): "Do you agree with the dismissal of the President of Romania, Mr Traian Băsescu?". In the day of the vote – July 19, 2012 – the general turnout was of 45.92% with a ±3% error margin (Romanian Academic Society, 2012). This was based on data from 2,889 of the 18,242 polling stations (Romanian Academic Society, 2012) and it did not take into account the special electoral lists for citizens voting outside their residence area (especially those on vacation throughout the country), unmovable and abroad (Romanian Academic Society, 2012). Due to the fact that the turnout was less than 50% the results of the 2012 referendum were declared invalid (Romanian Academic Society, 2012) and the president Traian Băsescu remained in function until the presidential elections of 2014.

Table 2. The Romanian presidential impeachment referendums: 2007 and 2012

	2007		2012	
	Choice	Votes%	Choice	Votes%
Yes	2,013,099	24.94	7,403,836	88.70
No	6,059,315	75.06	943,375	11.30
Total votes	8,135,272	100.00	8,459,053	100
Registered voters/turnout		44.45		46.24

Source: Romanian Academic Society, 2012

The issue rose by the provisions of the Referendum Law 3/2000 (Monitorul Oficial 2000) as regards the neccessary number of votes in the turnout proved that the instruments of direct democracy has to be further refined at the national level in Romanian case.

Direct democracy at the local level

As a specific form of democracy, local democracy enclosed also elements of direct democracy and one element of this kind is "the principle of consultation of citizens on matters of local interest which tooks the shape of local referendums" (Soós, Tóka, Wright, 2002). The local referendum is based on the following thesis: The principle of consultation of citizens on matters of local as a component of local autonomy "gives the right to local collectivities to intervene directly in the administration at the local level in the same way as is the case with the national issues" (Dragoş, Neamţu, 2007). From a theoretical perspective (Devas, Delay, 2006), the local referendum as an element of direct democracy "empower the local communities to intervene directly in resolving issues of local interest, to change representatives and/or elected persons in order to protect the inrerest of the community as a whole" (Dragoş, Neamţu, 2007; Devas, Delay, 2006).

Legal framework of the dirct democracy at the local level in Romania

In Romania the organisation of local referendum is regulated through Law 3/2000 regarding the organization and holding of a referendum, the same law that regulates the organization of national referendums (Monitorul Oficial, 2000). Article 13 of this law states that (Monitorul Oficial, 2000): "(1) Issues of particular interest in the territorial administrative units and territorial-administrative subdivisions of municipalities may be subject to the residents' approval by local referendum in the condition of this law. (2) A local referendum can be organized in all the villages and towns of the commune or city or only in some of them. If the referendum is at the county level, it can take place in all municipalities and cities in the county or only some of them that are directly concerned". In the next article (Article 14) of the same general law (Law 3/2000) it is provided that (Monitorul Oficial, 2000): "(1) The issues subject to referendum shall be determined by local or county councils, as appropriate, on a proposal from the mayor or the president of the county council. (2) All citizens are called upon to decide "yes" or "no" on the question submitted to referendum, deciding by majority of votes cast at the respective administrative-territorial unit".

General issues of the Romanian direct democracy at the local level

As in the case of putting in function instrument of direct democracy at the national level one can notice the existence of some issues raised by the use of those instruments at the local level. Thus, according to opinion pools made in the last twenty-six years, in general, Romanian population believes it does not have a significant say in the decisions taken at local level. The general attitude towards local administration and local government was and remains one of high distrust. People feel and frequently complaint that the local administration and local government are unwilling or unable to satisfy their requests or wishes. After the accession of Romania at the European Union as a full member (2006) the use of direct democracy's instrument at the local level was more frequent than in the past (Coulson, Campbell, 2013). Much more, in recent years, especially in rural areas or small localities, there often take place popular consultations,

where are discussed public matters and are made decisions affecting the whole population (Baldersheim, Illner, Wollmann, 2013). There also has been an increase in the number of cases when different political personalities suggested that the public will should be consulted in taking decisions affecting the local population (Baldersheim, Illner, Wollmann, 2013). One such instance in which direct democracy's instruments were involved was the case of anti-fracking movements in Romania 2013-2016.

The use of local referendum – the Pungesti case study

At the end of 2013 and in the first months of 2014 in Pungesti village (Vaslui County) a protest movement (”revolt”) took place after Chevron obtained a building permit for the location of first derrick for shale drilling in Vaslui County (Vesalon, Creţan, 2015). Three years later – in March 2016 – a referendum on "local interest's issues" was organised in Pungesti (Vesalon, Creţan, 2015). Although the results of the referendum are still under debate in Court (Vesalon, Creţan, 2015), the Pungesti case showed some strenght and weakiness of the Romanian direct democracy's instruments at the local level.

Chronology of the Pungesti movement

On 14 October 2013 a manifestation of the people from Pungesti against Chevron started with 150 protesters. At the beginning of the action the protesters had only blocked the access of Chevron machineries to install the derrick near the village (Goussev, Devey, Schwarzenburg and Althaus, 2014). In short time, after four days, the actions had taken a more dramatic shape: more than 500 villagers of Pungești and surrounding localities, joined by activists from other parts of Romania, formed a human shield in front of the Chevron outlets (Goussev, Devey, Schwarzenburg and Althaus, 2014). After several clashes with the police and gendarmes, the protesters installed tents and set up a place of "continued protest" (Goussev, Devey, Schwarzenburg and Althaus, 2014). A TV channel – TV Pungesti – was set up on the place (Goussev, Devey, Schwarzenburg, Althaus, 2014) and it covered the protests from Pingesti all day long (24 hours per day), reaching in one month around 75,000 views on the Internet (Goussev, Devey, Schwarzenburg and Althaus, 2014). About one month later, despite the fact that Chevron representatives announced the suspension of works in the area, the civil conflicts have re-emerged (Vesalon, Creţan, 2015). The protest had lead again on violent clashes between the protesters and the gendarmes, the protesters blocking again the road and trying to obstruct the access of Chevron equipment on the concessioned land (Goussev, Devey, Schwarzenburg and Althaus, 2014). Referring to the events from December 2013, Maria-Nicoleta Andreescu, executive director of the Helsinki Committee Association for the defence of human rights in Romania, had declared (Vesalon and Creţan, 2015): "There are important signs that indicate that the gendarmes' actions were at least abusive if not illegal. It is very clear that by restricting the access of the press in the area the authorities did not allow the public to be informed". As a result of ongoing protests which had covered one week, on 8 December, Chevron announced that it has suspended the work in this area (Vesalon and Creţan, 2015).

Despite the fact that Chevron stopped its work in the area, Pungesti had became a symbol of the Romanian anti-globalisation movement, alongside with Rosia Montana. Thus, protests of solidarity with the "Pungesti revolt" took place in Bucharest, Cluj-Napoca, Timișoara, and Sibiu (Kadar, 2014; Vesalon, Creţan, 2015). The media coverage of the "Pungesti revolt" and accompanying movements was impressive and last more than two years.

The local referendum in Pungesti

In October 2013 the Pungesti local council agreed to hold a local referendum about "the use or banning of shale gas exploration and exploitation in the commune" (Ziare.com, 2016a). Furthermore, "one of the Pungesti local councilors demanded that thee resignation of the mayor has to be added to the questions asked for the referendum" (Ziare.com, 2016a). In the meantime, representatives of the Chevron Company announced, on 17 October, that they will suspend work on shale gas exploration in Siliștea, Pungești commune. The statement mentions that the company's priority is (Ziare.com, 2016a): "To conduct these activities in a safe and environmentally responsible manner". Despite the fact that Chevron had ceased to operate in the Vaslui County, a referendum was held in Pungesti on March 20, 2016 on the issue of the dismissal of the mayor in office, since he was held responsible with the agreement between local administration and Chevron Company. The referendum had registered a turnout of 34.3%, of which one third voted for the dismissal of the mayor in office. The result has caused new tensions within the community due to low turnout of the vote and the regulations regarding the neccessary results to validate a local referendum.

According to the law, the local referendum is regulated in Romania both by the Referendum Law (Law 3/2000) and the Local Government Act (Law 215/2001). To be more specific, while the first law (Law 3/2000) provides that the referendum is valid if it participates in at least 30% of people registered in permanent electoral lists, the second one (Law 215/2001) requires a quorum of 50% plus one from the total constituency in order to validate a local referendum. At present the final verdict concerning the results of the local referendum in Pungesti are still under Court's debate (Ziare.com, 2016b).

Conclusions

As the existing data and the present analysis sugessts, direct democracy is a real instrument in Romania especially at the national level. In this case direct democracy is used mainly as a "weapon" in political battle and not as a structural way of expresssing people's empowerment. At the same time, at the local level, one can notice signs of grass-roots movements which used instruments and methods of direct democracy but the general image of it at this level is still weak and fragmented. Also, the present analysis and the set of data we used did not alow us to conclude that we can speak about the use of instruments of direct democracy in the process of exercising power an indicator of the political awareness of the Romanian society. As a result, the research hypothesis was not confirmed by the set of data and our analysis.

Directions for future research

The double result of the Romanian presidential impeachment referendums (2007 and 2012) raised several questions. One of them is if in the Romanian context the tensions between parliament, government and president, which are likely to occur in semi-presidential arrangements, favour or not the use of presidential impeachment as a method of dealing with political conflicts. A possible answer is that although the Romanian semi-presidential system is predisposed to conflicts between the president, parliament and government especially when the head of state has to carry out his/her mandate while having to deal with a hostile parliamentary majority, we can not point to a strict causal relationship between the tendencies of the semi-presidential form of government and the practice of presidential suspension (Dimulescu, 2010). At the same

time there, there is a clear need for more comparative analysis at the European and international (world-wide) levels to offer a more comprehensive answer at the above-question. There are alos several questions that have to be addressed in the next step of the research: 1. What are the relations between the national and local levels of exercising direct democracy in Romania? In this case, we assume that there is a clear need for a mixed approach (local vs. national) to explain the pecularities of the refrendums in Romania. 2. What is the impact of the process of accession of Romania to the European Union on the development of direct democracy in this country? To answer this peculiar research question more comprehensive and in-depth analysis at the regional (Eastern-European) and continental (European) levels are needed.

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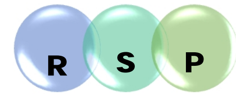

ORIGINAL PAPER

Romania: A Case-Study of Regional and Global Integration Ongoing Process - the Legal, Economic, and Social Implications Facing Countries such as Romania in Ongoing Integration Process

Samson Masalu Peter Paschal*

Abstract
This paper aims at looking into the key aspects of regional economy, as well as its responses to worldwide trends, while underscoring the elements that serve to enhance or decrease the benefits of globalization. Furthermore, it endeavors to handle policy options by considering the priorities focused on by the cohesion; these include social, legal and economic elements.

Keywords: *regional, global integration, economic, social, Romania*

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Background of the Study: legal, economic and social implications after Romania's regional and global integration

Rapid technological developments, liberalization of trade and prices, and the rising significance of supranational regulations, facilitate the perpetual integration of nations within the system of globalization. Therefore, competition between regions and countries has progressively intensified. The European Union's (EU) newly integrated member nations, a majority of which include Eastern and Central European countries that were earlier communists, faced a particular situation, with regards to the global context, for several years. That is, these countries were in between the two phases of globalization and transition towards globalization. This essentially and immensely impacted their economies. Advancing in the process of transition was complemented by total participation in world economy, profiting from the returns from globalization, and enabling nations and their economies to grab fresh opportunities. The results, however, were divergent, depending on the types of macroeconomic models adopted for this purpose by developed, and developing, nations (Ionescu, Hasegan, 2009).

Joining the EU has had its effects on Romania. Several measures have been implemented by Europe that altered its economic standing. Currently, the EU constitutes a shared currency (except for Denmark, Sweden and the UK), and single market. It also puts certain socio-economic policies into effect, which, to a rising extent, impact member nations' national economies. Romania needs to cope with many economic integration facets. The first involves increased trade of services and goods in the intra-Euro region. However, Europe wasn't transforming into a European Fortress, but only supplementing international integration. This can be seen from the following estimate: goods import and export in the extra-Euro market rose from roughly 24% GDP (1998) to about 33% (2006). Secondly, economic integration in EU involves financial integration- free capital movement because of using the same currency (Euro). Third comes the free labor mobility, however, obstacles in this facet are yet to be overcome. Much is left to be done to enhance labor movements, trade of services, and to lessen structural rigidities. This necessitates greater economic integration (Ikani, n.d). Contributions to the EU budget have to be paid by Romania, which led to issues in national budget planning. This is because the country had to unearth resources to cover this cost. As well, Romania had to meet the nominal budget deficit criteria, according to which, any budget deficit should be less than 3%, to be able to adopt Euro as national currency (Incaltarau, Maha, 2010). Further, since Romania joined the EU, its contributions to EU co-funded ventures and the Union's budget have increased the country's budget deficit from 1.7% GDP (2006) to 4.9% (2008) and 7.4% (2009) (Orgonas, 2010).

Statement of Problem

In a Gallup Romania poll in April, 2006, more than 75% of poll participants asserted that the country had been ill-equipped, particularly from an economic perspective, for joining EU. Being an EU member state, Romania adopts and executes EU policies. As per the 2007-2013 budget of the EU, it will have 3 policy priorities, defined as given below (Oprea, Meşniţă, 2007: 17): regional policies – that emphasize social and economic progress; foreign policies – to increase the role of EU among candidate countries, non-member nations and third states; thematic policies – domestic policies backed by programs for the community. These concern health, agriculture, fisheries, energy, information technology, rural development, research and development, environment, training, education, etc. Romania holds the following posts in European

institutions: a Court of Justice judge, a European Commissioner, a Court of First Instance judge, a State Court, 35 European Parliament members, 15 Committee of the Regions members and 15 Economic and Social Committee members. Further, the Romanian National Bank now forms a part of European System of Central Banks. Its governor is a full-time member of the European Central Bank's General Council and committees (Incaltarau, Maha, 2010).

Purpose of the study

The study's focus is implications for Global and Regional Integration in tackling economic, social and legal issues faced by nations, such as Romania, in the current century. The paper deals with the following fundamental research questions: What are the legal issues Romania encounters in the current century with respect to the challenge of regional and global integration?; What are the economic issues Romania comes across in the present century with regards to the challenge of regional and global integration?; What social issues does Romania come across in this century with regards to the challenge of regional and global integration?

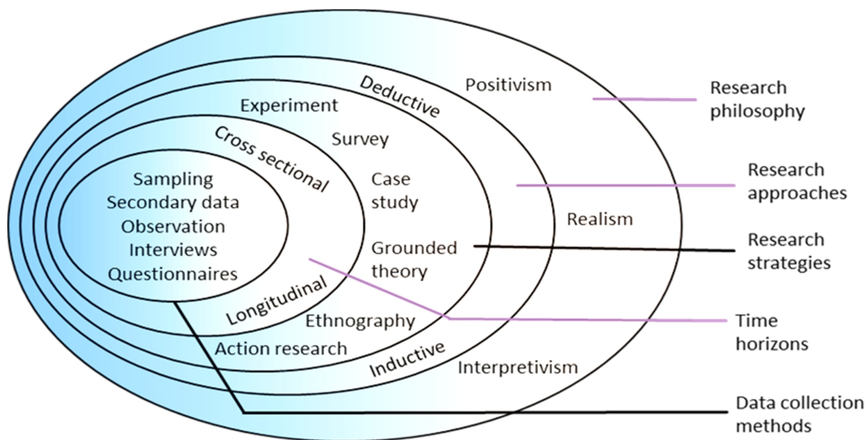
Significance of the study

Research on regional and global integration does not provide any sound theoretical bases, nor do they offer any new, innovative methodologies. Moreover, handling and resolving problems that spring from integration is a neglected subject. Though governments have recognized the importance and effects of integration, most of them fail to recognize this phenomenon's scope and realm. As well, choosing the most effective strategy to adopt is difficult, because of availability of numerous models and theories, and the progressively rising technology paradigm. Such governments fail to take advantage of global integration's essence, and thus, fail to maximize their country's values, which unquestionably remain non-existent and inactive. For example, Romania's economy was a functioning market economy in 2004, but still couldn't compete on the single European market (European Commission 2004 Regular Report on Romania's Progress towards Accession). The following criteria are to be met for an economy to earn the status of 'functioning market economy': balance of demand with supply is attained through confrontation in free market; trade and prices must be liberalized; no barriers to entry (new firms) or exit (bankruptcy); enforcing of contracts and regulations, and assurance of legal system, which incorporates property rights; macroeconomic stability, which includes sustainable public capitals and price stability; consensus on major economic policy facets; sufficient development of financial sector for redirecting savings to production sector (Reports on Progress towards Accession by each of the candidate countries, 1998). The basic question concerns how Romania undergoes a smooth transition from point A to B in a swift and efficient manner. This research concentrates on, and explains, implications for Global and Regional Integration in tackling economic, social and legal issues faced by nations, such as Romania, in the current century. Integration denotes steady approximation of Romania's social and political rights, along with economic structures and legal rights. To those of EU, not merely becoming an EU member. This process, for Romania, started in 1993, with the signing of the European Agreement and continued following Romania's joining of the EU (Incaltarau, Maha, 2010).

Methodology

This section deals with accomplishment of two goals: 1) Describing the methodology adopted for the study, and 2) Justification of the methodology chosen. The main sub-sections here include: Research philosophy; Research approach; Research type and Time line; Data Collection Methods; Quantitative Validity; Sampling Strategy; Data Analysis. The basic purpose behind sub-dividing this section is for clearly demonstrating all issues, aspects and applications of the study, to make it useful, well-designed and practical (Cohen, Manion, Morrison, 2007). Additionally, this section enables the investigator to provide an exploratory, practical abstract of this study's goals and aims, as elucidated by the following 'research process onion' (Saunders et al., 2012: 83).

Figure 1. The 'Research Onion'



Source: Saunders et al., 2012: 83.

Research Philosophy

It was brought to light by Trochim (2006) that most research is grounded on the notion that accomplishing research objectives will help academicians to logically understand our world, together with deciphering the differences in opinion that may be present in diverse communities. Two key schools of thought drive this belief: 1) Positivism which rebukes metaphysics: researchers of this school claim that every study should be based on describing experiences; and, 2) Post-Positivism, or a type of constructivist perspective. According to this, individual perceptions lead to the belief that this world and its organisms act in a particular manner. Both of the above are considerably significant in the realm of traditional research.

Science, along the lines of the positivist approach, would enable researchers to attain the real logic and truth behind the world, in order to better direct one's actions. Positivists always depend on ascertaining natural laws by way of direct analysis and management. A majority of positivists contend that the objectivity issue is an indoctrinated trait of a person who adopted scientific approaches. On the other hand, post-

positivists claim that nobody can ever truly continue being unbiased in their standpoint of some certain experience; consequently, they are of the view that every personal viewpoint is, to some degree, skewed and prejudiced. According to them, unbiased-ness is only a social experience (Trochim, 2006). This approach works very efficiently in fulfilling this research's aims. Hence, post-positivism is employed as the fundamental philosophy of the study.

Research Approach

Two chief approaches to research are present: deductive reasoning and inductive reasoning (Trochim, 2006). The former, also called as 'top-down' method, works from a broader goal to a more specialized objective. The latter, also called 'bottom-up' approach, works the other way around, beginning from a specialized to generalized objective, and to widespread ideas and practices. To accomplish this study's goals, the inductive approach will be adopted.

Research type and Time line

A research study's timeline is associated directly with its format. Mainly two key research study formats exist: 1) Longitudinal and 2) Cross-sectional studies.

In case of longitudinal studies, the researcher's concentration is spread out across a large time spectrum, with many independent and dependent variables involved. Modifications transpiring through the course of the research are also considered before concrete conclusions are made. On the other hand, in case of cross-sectional research, the researcher's concentration is limited within one time-frame and only a part of the entire phenomenon under study is acquired by the researcher (Trochim, 2006). This study, bearing in mind its available time-frame, makes use of the longitudinal format for assessing outcomes.

Data Collection Methods

Two methods of data collection are available: 1) quantitative: or numeric depiction, classification and analysis of data; and 2) qualitative: involving distinct intangible elements. This can include sound recordings, photographs, videos etc. Qualitative techniques are more widely employed than quantitative. This study's researcher employed numerical statistical analysis (quantitative data).

Almost all studies, whether quantitative or qualitative, adopt one or more of the methodologies listed below for data collection: Structured interview; Unstructured interview; Semi-structured interview; Survey: may include interviews as well as questionnaires; Questionnaire (Trochim, 2006). For achieving the goals of this research, unstructured surveys (interviews) were used.

Qualitative Validity

To reduce the likelihood of obtaining wrong answers, researchers should take into account the extent to which the study would be effective and practical, while designing its structure (Saunders et al., 2012). Reliability refers to the likelihood that other research will reach an identical inference by employing similar methods, and by calculating using similar devices. In reality, reliability issues reveal errors and quandaries in the accuracy and precision of the device utilized for calculation/measurement in the research (Bouma, 2010). In keeping with this line of thought, the problems pertaining to bias associated with reliability are explained here. These can be categorized into two

types: the first is researcher bias. In this case, body language, tone, and observations of the researcher may cause bias, leading the interviewee to react differently to questions put forth (Saunders et al., 2012). This study will concentrate on questionnaire designing and preparation, so as to not engender in interviewees the beliefs and perspectives of the researcher. Furthermore, the researcher should aim to form a bond of trust with the interviewee, to minimize validity and reliability doubts. The second kind of bias, called respondent's bias, is primarily produced by interviewee's views about the researcher (Saunders et al., 2012). In the case of this study, despite the researcher's striving to create a bond of trust before initiating the questionnaire, it is apparent that research subjects will realize the sensitive nature of particular questions and might decide on not answering or revealing their actual thoughts on such questions. Additionally, it may also be contended that subjects don't respond to questions in an accurate, precise manner, and may try to exaggerate answers to depict a positive image.

Validity may be defined as the accuracy and precision with which a variable fits into the context. Validity issues are usually intensified in case of survey designs, because they evaluate the opinions and values of interviewees (Bouma, 2010). Given this research's objectives and outcomes, it is practical to turn case studies into simpler hypothetical propositions (Yin, 2013). This, however, shouldn't extend to encompass large populations; any study's goals should be to design and relate theories, not assess frequencies. On the contrary, according to researchers, social sciences don't have any set standards. Numerous variables may impact a study's results; therefore, it is unrealistic to promise that future research on this particular topic will produce the very same outcomes.

Sampling Strategy

A small size of sample will be utilized for conducting interviews (n=8) in this study, because a smaller sample size is more efficient while interpreting and analyzing the setting and conditions of a particular fact (Saunders et al., 2012). Participants of the study will be enrolled via personal contacts (through the social enclave of the researcher) and e-mail. Candidates will be sent e-mails at selected Romanian institutions. Phone calls and e-mails to follow up will certainly be made for ensuring sufficient sampling in all strata.

Data Analysis

Qualitative data collection is conducted using a standardized technique that is relatively different from that of quantitative data. Categorizing of data for in-depth analysis is vital, despite several different schemes and customs for data organization and calculation (Saunders et al., 2012). A diverse-ranged data analysis scheme will be employed in this study, which depends heavily on hypothetical proposals. This means the study will conduct former and present propositions, on which (1) objective and purpose; and (2) study design, was set (Yin, 2013). The aim of carrying out data analysis and outcomes of the survey will be predominantly listed in the identical order in which theories are described in literature. Where the study is discussed, the researcher will aim at describing research questions and objectives which transformed the study's density and assiduity (Saunders et al., 2012).

Therefore, positioning of data will be carried out according to theoretical structures and order, and dissected according to sensitivity with which data corresponds. In certain parts of data dissection process, the researcher may encounter theories never cited in existing theories. These concepts will be comprehensively explained later, and

proposition regarding how well to relate them with existing theories will be made. It is asserted that collection and analysis of data, and developing and verifying relations and inferences, are a highly interactive and interconnected series of processes (Saunders et al, 2012). This allows the researcher absolute freedom to segregate significant relations and vital interaction during data collection. Furthermore, data analysis for this research begins not just after data collection, but all through the process of surveying (Saunders et al, 2012).

Some aspect of Integration Challenges

Acquis Communautaire (and flawless function of Executive branch)

One of the challenges of integration is the regulation of Government and the Executive Branch Powers. Due to the fact that "acquis communautaire" demands that a country has a stable democracy (but what is stable is the question of interpretation), capacity to implement EU laws and policies and competitive market economy. It is problematic to verify if these requirements have been met as argued by Heather Grabbe in EU Conditionality and Acquis Communautaire in international Political Science Review journal. It is important that Executive branch of any Government functions flawlessly without the need of interference from EU to ensure that development of the country in all aspects is made. This means that they should be given a certain degree of freedom and the ability to implement the rules and regulations formed in legislative process. The Executives are the ones who run most of the business plans and programs of governments and they are also the ones who have to ensure compliance of various global and local rules and regulations. There are concerns that Executives often work under certain overregulated legislative constraints. The present study aims to look in comparative manner, a critical way into the varying circumstances under which the Executives function and the rules and regulations that govern their functioning in Romania and United Kingdom affect or not their efficiency. In the end, the study will enable us to give a critical answer to the theoretical dilemma if proper and efficient functioning of the Executives , are always a matter of political apparatus management skills and interests or may be also related to improper regulatory bindings that limit efficiency. Burns Paul argues that in the United Kingdom, the government is aware of the over- regulating issue and is in the process of reducing some of the applicable regulations on Executives to allow smoother and yet competitive implementation of government plans and programs with a high degree of transparency. He states further that Romania is following the same process except that the country is now coming out of a long period of regulated markets and it is in the process of a proper European Union integration as a member state. This means that the country would have to develop its regulatory system through the legislative process and achieve efficiency in the implementation process through the executive branch of the government. However, there is still a high degree of regulatory burden on the Executives which are to be analyzed in the present study. Though the overregulation issue, in Romania there are also allegations and concerns of central control and some degree of corruption that is hindering the smooth process of implementation of developmental programs (Stan, 2012). Whilst both the United Kingdom and Romania are trying to make functioning for the executive simpler by relaxation of rules and regulations, there is a growing dilemma about how much **of** relaxation (devolving powers) would be appropriate given the present context of situations in both countries (Parker, Philip, 2007). Rather than compelling the Executive

to implement the “acquis communautaire” before any integration, it is important that the governments (which seek to join any organization including EU) decide on how much free hand the Executives should be given in order to increase efficiency of policy and service delivery and the degree of control, through rules and regulations that need to be imposed so that the necessity of transparency remains fulfilled.

Transparency (EU policy implementation)

One is left to wonder as to the question of how do the authorities (in a country such as Romania) strike a balance between ease of functionality and transparency in EU policy implementation, say for example by striking a balance between mandatory regulatory compliance and ease of functions for the Executive Branch of the government through easing of rules and regulation? In Romania, Parker and Philip argue that the President is the chief of the state as well as the head of the executive in the country. The Executive Branch in Romania has the task of implementing laws and comprises the Government, the President and public authorities including the police and the armed forces. The control over the Executive (regulating its powers or sanctioning its abuses of powers) is exerted by the Parliament as it checks the work of the Government and the administrative institutions. The executive including the government has to justify itself to the Parliament in respect of everything that the Executive does or the government causes the Executives to do (Liebert, Condrey, Goncharov, 2013). As compared to the UK, the position is the same where the monarchy is, by constitution, the head of the executive while the functioning of the executive is done by the prime minister of the country. The entire executive is answerable to the Parliament – the legislative body of the country. The Government or the apex executive body can be dismissed by the head of the constitution or the legislative body – the Parliament. The executive does not have powers over the legislative. Unlike in the United Kingdom, in Romania the Executive can exert some degree of control over the legislative in a way that the laws passed by the Parliament can be checked by specialized Courts and declared null and void if they are found to be unconstitutional. As in Romania, the administration, one of the wings of the executive, is checked by the courts of public law which include the Administrative Court, the Constitutional Court and the Asylum Court. The Romanian constitution contains strict rules on the manner in which tasks can be assigned to the administration or the judiciary and make amendments and change if required. For example, the above mentioned courts only have the right to impose fines that exceed a certain amount. A report by the Bureau of Democracy, Human Rights and Labor of the United States Department of State claimed that there are widespread allegations of major human rights problems in Romania that included trafficking of persons for labor, sexual exploitation, and forced begging. These were supposed to be overseen by the Executive of the country headed by the president and executional head, the Prime Minister. The report series titled ‘Country Reports on Human Rights Practices for 2011’ stated further that the significant societal discrimination against Roma and government corruption was result of the political influence on the executive and sometimes even the Judiciary (USA Bureau of Democracy 2015).

There are several problems with the Romanian Executive in terms of imposing rules and regulations. Plagued by strict regulations emanating from the concept of a social state, the regulations continue to impinge on the proper execution of developmental programs which includes the development of economy. There are allegations that the Executive of the country suffer from inefficiency due to corrupt public administration

which flows from the excessive rules and regulations to be followed. There are also numerous administrative obstacles that people are confronted with, excessive and unstable regulations, interest groups enforcing legislative change and extensive bureaucratic influence and very complex paperwork. These are some of the issues that the Romanian government is trying to do away with at present in order to be compatible with the norms for gaining access to European Union membership. On the other hand, the United Kingdom government has been a part of the European Union since its inception and its open market has been fostered by relaxed regulation and control of the legislative on the Executive. The government, the primary Executive body of the country, has more or less free hand to implement programs and projects. The United Kingdom Executive is not plagued by the problems that the Executive branch in Romania has to face. However there are demands for more relaxation of regulations of the Executive, especially in the context of easing the opportunities in the economy. This becomes evident from the words of the British Prime Minister when he says the following words to all Cabinet Ministers on 6 April 2015 (Better Regulation Framework Manual 2015): "*We need to tackle regulation with vigour to free businesses to compete and create jobs, and give people greater freedom and personal responsibility ….I want us to be the first Government in modern history to leave office having reduced the overall burden of regulation, rather than increasing it*". This clearly states the intention of the British government and their efforts to reduce the dilemma that executive branch face in the United Kingdom - whether to concentrate in productive work or to comply excessive regulations. Therefore, it can be said that the situation in United Kingdom and Romania are not much different even though the context of the efforts of easing the regulatory compliance requirement for Executives is entirely different in the two countries. Herein, lays the dilemma for Executive Branch of the government as well as for the legislative. The balancing act is not easy and a large section of the Executive Branch feels that some regulations are ineffective and unnecessary and the process of complying with them costs time and money which can result in restricted growth. While government want to ensure all regulation are fair and effective through regulatory compliance, the red tape culture (in both countries) can also make implementing developmental programs formed by the legislative very challenging for the Executive Branch. Here, the question is how to strike an effective and the right balance between protecting people's health and safety and freeing business and the Executive Branch from unnecessary compliance and regulations. Both governments (United Kingdom and Romania) need to follow a process of balancing policy and legislative issues. Nevertheless, the governments also need to review the effectiveness of EU regulations and accordingly reduce regulatory compliance for the Executive. This would ultimately reduce the cost of project and program implementation and enhance the growth of the countries. Moreover, a balanced regulated Executive system would create an authentic framework which would enable Romania to overcome corruption and bad management within Executive institutions, issues which have been on recent screening of criminal authorities in Romania: sovereignty and the law, it is argued by UK's Matthew Elliott of vote to leave the EU campaign that laws are made overseas by dictates passed down from Brussels and rulings upheld by the European Court of Justice. Romanian courts aren't sovereign and so are British courts and the rest of the 28 member states (Vote to Leave April 2016); crime fighting - others such the UK government argues that is better to vote to stay in European Union, doing so will entitle us to the European Arrest Warrant which cuts out the need for long and complicated extradition procedures and allows criminals to be brought to justice across the EU (UK

Government Position April 2016); sovereignty and the law, it is argued by those in favour of vote to leave that laws are made overseas by dictates passed down from Brussels and rulings upheld by the European Court of Justice. Romanian courts aren't sovereign and so are British courts and the rest of the 28 member states (Vote to leave April 2016). EU is seen lacking democracy- EU Parliament is elected but the commission (which propose legislation, directives, regulations, decisions) is not – EU laws supersede legislation made by individual states' parliaments, some see the system as undemocratic (BBC "UK and the EU: Better off out or in ? " February 2016); integration is the continuation of political influence from EU headquarters and the power of political decision making is weaken through directives, decision, opinions, regulations and procedures. Syrian refuges crisis and the effect of EU Justice and Home affairs Council (Romania was opposed to set quotas) EU wanted to relocate 120,000 refugees, Romania will need to take some 6000 migrants (Balkan insider 2015), but the president wanted to take only 1785 refuges (Popescu, 2016).

Conclusion

This study's aim is to assess the implications for Global and Regional Integration in tackling legal, economic and social faced by nations, such as Romania, in the current century. It will be in line with the work values of the practitioner, will commit itself to justice, and will value human dignity. The research will be expected to aim at enhancing the smooth integration of Romania, instead of merely satisfying the researcher's interests. The study is expected to contribute in increasing current practice knowledge and offer a pedestal for more advances and future discussions.

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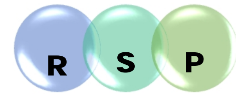

ORIGINAL PAPER

The Extinctive Prescription: the Solutions of the Romanian Civil Code and the UNIDROIT Principles Applicable to International Commercial Contracts

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Abstract
Bringing a civil action before a court is a means of achieving the legal protection of the rights of natural and legal persons. The security and stability of civil legal relations have imposed a legal time limit within which the holder of the right must act legally to defend his right. The failure to comply with such a legal time limit entails the mechanism of extinctive prescription. The institution of the extinctive prescription is regulated in all national legislations, as well as international conventions governing the relations of international trade law. The UNIDROIT Principles applicable to international commercial contracts establish numerous rules on limitation periods.

Keywords: *civil action, right of action, right, legal protection of rights, extinctive prescription*

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Preliminary issues

It is a truism that the material or substantive laws recognize the civil rights of natural and legal persons, and these rights correspond to correlative obligations (V.M. Ciobanu, 1996, p. 8). When individual rights are infringed or their correlative obligations are not performed, the holder of the right may commence legal proceedings for the protection of his rights and legitimate interests, as no law can restrict this right (art. 21 of the Romanian Constitution). A civil action is the most important legal means for the protection of civil rights and legitimate interests of a person. But the general interest and social stability require that the holder of the right should use the civil action within a certain time limit; if the right to bring an action before a court is not exercised within the time limit provided by law, it is extinguished by the extinctive prescription (Dogaru, Cercel, 2007: 235). The extinctive prescription is not a specific institution of modern law. In Roman law, the institution of prescription (in the two forms - extinctive and acquisitive) was one of the most effective legal means to protect individual rights. Medieval law and later modern law took over the prescription from Roman law, "being regulated, for the first time and in a unitary way, by the 1804 Code of Napoleon" (M. Nicolae, 2004: 15).

In Romanian law, the extinctive prescription was first regulated by the Calimach Code and the Caragea Code, then the Civil Code of 1864 and Decree no. 167/1958 on the extinctive prescription, and is currently regulated by the Civil Code of 2009. The extinctive prescription is regulated in all national legislations and international conventions on international trade law relations. The UNIDROIT Principles applicable to international commercial contracts establish numerous rules on limitation periods (The International Institute for the Unification of Private Law, commonly known as UNIDROIT is an intergovernmental independent organization whose aim is to harmonize the private law of the Member States, the adoption by its members of uniform rules of private law, the unification of law internationally. The activity of UNIDROIT mainly consists in developing model laws and international conventions. UNIDROIT has more than 60 members, all European Union member states having this quality).

The extinctive prescription in Romanian law. General considerations

The phrase "extinctive prescription" has two meanings: the former refers to the civil law institution bearing that name, i.e. the body of legal rules governing the extinction of the material right to action of the holder of the claim right who did not exercise it within the limitation period in order to make the passive subject perform the obligation corresponding to the civil right; the latter meaning refers to the extinction of the right to action which was not exercised within the time limit; this meaning is taken into account by the Romanian legislature when defining the extinctive prescription (Beleiu, 2007 : 236; Dogaru, Cercel, 2007 : 237). Considering the provisions of art. 2500 of the Civil Code (in its essence, identical to that contained in art. 1 of Decree no. 167/1958) establishing the object and effect of the extinctive prescription ["The material right to action (...) shall be extinguished by prescription if not exercised within the time limit established by law" (the phrase "the material right to action", used by the legislature in this context, refers to the right of the right holder to obtain, through the jurisdictional bodies, the protection of his right by the coercive bodies of the state; therefore, it has been argued that the material right to action represents a component of the right. Civil procedural law makes use of the phrase "right to action in the procedural sense", which involves the right of the right holder to bring an action before jurisdictional bodies when

his right is violated; for an analysis of the distinction between the material right to action and the right to action in the procedural sense, see Ciobanu, 1996: 251-259)], we can say that the extinctive prescription is a means of extinguishing the material right to action not exercised within the time limit (Beleiu, 2007: 236; Dogaru, Cercel, 2007: 236; Chelaru, 2003: 185-186).

On the legal nature of the extinctive prescription, it has been argued that, since the extinctive prescription is regulated in all branches of law, its legal nature should be established for each branch of law. As regards the legal nature of the extinctive prescription in civil law, there were several opinions expressed (Cantacuzino, 1998 : 492-494; Hamangiu, Rosetti-Bălănescu, Băicoianu, 1928: 717-719; Gh. Beleiu, 2007 : 240-241; Dogaru, Cercel, 2007: 241-242; Nicolae: 40-55; Boroi, Stănciulescu, 2012: 278-279): in one opinion, the extinctive prescription is a sanction of civil law that covers only the material right to action, not the civil right, which outlives the effect of the prescription; in another opinion, the extinctive prescription is a legal means of transforming the civil right and its correlative civil obligation, which change from perfect (provided by "action"), into imperfect (natural); finally, in a majority opinion, that we also assume, the extinctive prescription is a means of removing tort liability, as the passive subject of the legal relationship cannot be constrained by the court to perform the obligation correlative to the civil right.

The nature of the legal rules governing the extinctive prescription

The legal rules of the 1864 Civil Code that regulated the extinctive prescription were dispositive in nature (usually, the civil law rules are dispositive), thus the extinctive prescription exception could be raised by the party interested in supporting the discharge of the obligation. In this respect, the provisions of art. 1841 of the old Civil Code are clear (in accordance with which "In civil matters, judges cannot apply the prescription if the person concerned has not raised this defence"), art. 1842 (in accordance with which the debtor could oppose the prescription at any time of the judgment until a final decision has been delivered), art. 1843 (in accordance with which "The creditors and any other person concerned may oppose the prescription to their debtor or co-debtor, even if the debtor, co-debtor or owner waives it") and art. 1838 (in accordance with which "No prescription may be waived until its expiration"). However, the doctrine considered the extinctive prescription an institution of public order in the system of the 1864 Civil Code (Hamangiu, Rosetti-Bălănescu, Băicoianu, 1997: 390).

Instead, the rules of Decree no. 167/1958 on the extinctive prescription are imperative, the extinctive prescription being qualified by the doctrine as an institution of public order, since the interest protected by these legal rules is general, it concerns the community. The imperative nature of these legal norms determined the inadmissibility of derogation, by the agreement of the parties to the legal relationship, from the rules governing the extinctive prescription (the parties could not establish limitation periods other than the legal ones, they could not remove the causes of suspension or interruption of the course of the extinctive prescription, they could not remove the effects of the extinctive prescription, declaring certain rights to action as not subject to prescription, etc.); the universal nature of the interest protected by the legal rules governing the extinctive prescription, so the imperative character of the legal rules governing the extinctive prescription, imposed the obligation of the courts to inform the parties on the extinctive prescription defence and to apply, ex officio, the rules on the extinctive prescription. In this respect, art. 1 of Decree no. 167/1958 provides that "Any provision

that deviates from the legal regulation of prescription shall be void" (therefore, the clauses of the contracts concluded under the old regulation would have been affected by absolute nullity if they had established limitation periods other than those provided by law, if they had established another date on which the extinctive prescription started, causes of suspension or interruption of the extinctive prescription other than those provided by law), and in accordance with art. 18 of Decree. no. 167/1958 "The court and the arbitral body have the obligation, ex officio, to investigate whether the right to action or compulsory enforcement has expired". The 2009 Civil Code regulates the legal regime of the extinctive prescription both by dispositive norms and imperative norms. However, the extinctive prescription is not regulated as an institution of public order (as happened in the previous Code), but as an institution of private order (G. Boroi, L. Stănciulescu, 2012, p. 277.

Dispositive norms on the extinctive prescription

Modification of limitation periods. The contracting parties may derogate from the legal regime of the extinctive prescription, within the limits allowed by law. So that such an agreement may be valid (contractual clause), there are two requirements to be met: first, the contracting parties should have full legal capacity to exercise rights; secondly, there must be an express agreement of the contracting parties [considering that the law provides the requirement for the existence of the mutual agreement of the contracting parties for regulating the legal regime of the extinctive prescription, legal scholars have expressed the justified opinion that, in case of a unilateral act, "it is impossible to lay down clauses derogating from the legal regime of the extinctive prescription, unless such clauses are agreed upon by the beneficiary of the unilateral act" (Terzea, in Baias, Chelaru, Constantinovici, Macovei, 2012: 2517)]. If these legal requirements are met, the contracting parties may modify the length of the limitation periods or the running of these periods by setting the beginning or by modifying the legal grounds for suspension or interruption [art. 2515(3) of the Civil Code]. The length of these periods may be reduced or extended, but the new duration cannot be less than one year or more than 10 years, except for the limitation periods of 10 years or longer, which can be extended up to 20 years [art. 2515(4) of the Civil Code.].

Imperative norms on the extinctive prescription

The 2009 Civil Code 2009 prohibits certain contractual clauses, the sanction for violating the legal interdiction being the absolute nullity of the agreement or unlawful contractual clause. Thus: a) art. 2515, paragraph (2) of the Civil Code prohibits any clause whereby, either directly or indirectly, an action would be declared not subject to prescription, though, by law, it is subject to prescription, or conversely, an action declared not subject to prescription, by law, would be considered subject to prescription; b) art. 2515, paragraph (5) of the Civil Code prohibits the clauses whereby the parties derogate from the legal regime of the extinctive prescription (in the sense that they modify the length of the prescription periods or the course of prescription by setting the beginning or by modifying the legal grounds for suspension or interruption) in the case of rights to action of which the parties cannot dispose and the actions derived from non-negotiated contracts, insurance contracts and contracts subject to consumer protection legislation; c) art. 2515, paragraph (4) of the Civil Code prohibits the clauses reducing the length of the prescription periods to less than a year, the clauses extending the length of the prescription periods to more than 10 years (in the case of prescription periods of less than 10 years),

the clause extending the prescription period to more than 20 years (in the case of prescription periods of 10 years or more than 10 years).

The persons that may raise the extinctive prescription

As for raising the extinctive prescription, art. 2512(1) of the Civil Code provides that "The prescription may be raised only by the one for the benefit of which it runs, either personally or by proxy, and without being bound to produce any contrary title or to have acted in good faith"; if the defence of prescription is waived by the representative of the one for the benefit of which the prescription runs, the latter must have a special power of attorney, as waiving prescription is considered a dispositive act. Exceptionally, the extinctive prescription may be raised by others; in this respect, art. 2514 C of the Civil Code provides that "The co-debtors of a joint and several obligation and the fidejussors may raise the prescription, even if one of the debtors has failed to do so by negligence or has waived it. So may do the creditors of the person concerned, as well as any other person concerned". Legal literature has shown that the creditors of the debtor that neglects to raise the extinctive prescription may invoke it by way of an indirect action and the creditors of the debtor that has waived the extinctive prescription may require the abolition of the waiver by way of a revocatory action and then raise the extinctive prescription by way of an indirect action (Terzea, in Baias, Chelaru, Constantinovici, Macovei, 2012: 2516). Pursuant to art. 2512 C. civ., the competent court cannot apply the extinctive prescription ex officio, even if the defence of prescription was in the interest of the state or its administrative-territorial units. The court cannot inform the parties on the exception of extinctive prescription so that the parties may discuss it, based on the active role, since it is an exception which is personal in nature, and not an exception of public order, and on the other hand, at the procedural level, raising this exception is relevant as to the principle of availability, each party having the possibility of disposing, during the lawsuit, of his rights (Nicolae, 2010: 1158). The prescription may be raised either in the main proceedings, by filing a declaratory action, or as an exception, filed by the beneficiary of the prescription; as for the exception of prescription, it has been argued in the doctrine that it is an exception of material law, a substantive exception, not of procedural law, because it concerns an individual civil right (right to action) and not a procedural right, arising during the proceedings (Nicolae, 2004: 595). The prescription may be raised by the entitled party only before the first instance court, by a defence or, in its absence, at the latest at the first hearing to which the parties are legally summoned (art. 2513 of the Civil Code.).

Waiving the extinctive prescription

The one for the benefit of which the prescription runs may waive the prescription; the waiver may concern both the expired prescription, and the benefit of the time elapsed for the prescription which began, but did not expire (art. 2017 thesis II of the Civil Code). So that the act of waiver will be valid, the prescription period must have begun to run (art. 2017 thesis I of the Civil Code), since the anticipated waiver of the right to raise the extinctive prescription, lacking its object, is subject to absolute nullity. Another requirement for the validity of the act of waiving the prescription is that the one renouncing must have full legal capacity to exercise rights (art. 2509 of the Civil Code) as the legislature considers that the legal document waiving prescription is an act of disposal; therefore, the act of waiving the prescription carried out by a person without legal capacity to exercise rights or with limited legal capacity is subject to annulment, and

relative nullity may be raised as an action only within the time limit provided by law, and raising the exception of prescription is not time barred (art. 1249 of the Civil Code).

The waiver may be express or implied (art. 2508 of the Civil Code). Express waiver may be in writing (by an act under private signature or deed) or orally. Implied waiver must be unquestionable, it can only result from unequivocal agreement; the following acts of the debtor have the value of implied waiver of the right to raise the extinctive prescription: voluntary performance of an obligation after the prescription period has expired (art. 2506, paragraph 4 of the Civil Code); guarantees for the benefit of the right holder whose claim has expired (art. 2506 paragraph 5 of the Civil Code). It has been noted in the doctrine and case law that the following acts of the debtor have the significance of implied waiver: payment of a deposit or part of the debt, a payment offer or request for a payment time limit, exercise of the withdrawal of disputed objects (Alexandresco, 1915: 62). Instead, the following do not have the value of a waiver: the act of the debtor to have raised the exception of nullity of the contract, the act of requesting the benefit of performance he is entitled to receive, resulting from a mutually binding agreement (Alexandresco, 1915: 62).

The waiver of prescription has the effect of losing any possibility for the debtor to raise the extinctive prescription he renounced; in this situation a new prescription period begins. If the debtor waives the benefit of the time elapsed before that date, such a waiver is the acknowledgement of the creditor’s right (art. 2510 of the Civil Code), in which case, as provided by law, there is an interruption of the limitation period with the consequence of the beginning of a new period of limitation. The effects of waiving the extinctive prescription affect only the person that made use of it. In case of joint and several obligations, the waiver of one of the co-debtors shall have no effect with regard to the other co-debtors (art. 2511 of the Civil Code); the latter still have the right to raise the extinctive prescription, in accordance with art. 1441(1) of the Civil Code. Similarly, if the debtor’s obligation was secured by a fidejussor, the latter is entitled to invoke the benefit of extinctive prescription, even if the debtor has waived this defence (art. 2511 of the Civil Code).

Principles of the effect of the extinctive prescription

The effect of the extinctive prescription (extinction of the right to action in the material sense) is governed by two principles, expressly provided by art. 2503 of the Civil Code: a) with the lapse of the right to action as to a principal right, there is another right that is extinguished, the one concerning accessory rights; therefore, if the action regarding the principal right has not been time barred, the accessory right concerning interest, personal or real security; excluding mortgages (Boroi, Stănciulescu, 2012, p. 281). Conversely, in the case of penalties agreed to by a criminal clause, considering the double legal nature of it (autonomous and accessory convention), the prescription of the right to action as to the principal right does not entail the prescription of the right to action for the payment of conventional penalties (M. Nicolae, 2010, p. 664). The regulation of the principle mentioned above (which is an application of the *accesorium sequitur principale* rule) has two consequences: the impossibility of prescribing the main right has the effect of the impossibility of prescribing the accessory right; the lapse of the right to action regarding an accessory right does not determine the lapse of the right to action regarding the main right (Dogaru, Cercel, 2007: 251); b) if a debtor has the obligation of performing obligations successively, the right to action with regard to each type of performance is extinguished by a special prescription, even if the debtor continues to perform what he

owes, except when successive performance refers, by its purpose, resulting from the law or convention, to a whole; in the application of this principle one must take into account the incidence of the first principle governing this matter, because the prescription of the main right entails the prescription of all successive performance making the object of the accessory claim right, and thus it becomes useless to verify whether the extinctive prescription operated or not for the performance (S.C.J., comm. section, Dec. no. 4881/2001, in Curierul Judiciar no. 4/2002: 33-34).

Interruption of the extinctive prescription

The interruption of the extinctive prescription is that change in the running of the prescription which consists in annulling the period elapsed before the occurrence of an interruption cause and the beginning of a new limitation period (Dogaru, Cercel, 2007: 279; Boroi, Stănciulescu, 2012: 314).The causes of interruption must intervene after the extinctive prescription began and before the expiration of the limitation period. Pursuant to art. 2537 of the Civil Code, the prescription is interrupted due to: a) the acknowledgment of the right whose action is time barred, by the one for the benefit of which the prescription runs or through a voluntary act of performance; b) the lodging of a claim form or arbitration application (even if the application has been filed with a court or an incompetent arbitral body), by registering as a bankruptcy creditor in insolvency proceedings, by filing an application to intervene in the recovery pursuit started by other creditors or by raising the exception of the right to action which is time barred; c) the commencement of civil legal proceedings by a party during the prosecution or before the court before the beginning of the judicial investigation; where compensation is granted, by law, ex officio, the prosecution interrupts the running of prescription, even if no civil proceedings have been commenced; d) any act whereby the one for the benefit of which the prescription runs is notified; e) as provided by law. The interruption of the prescription has the effect of extinguishing the prescription that had begun before the cause of interruption occurred; after the interruption a new limitation period begins to run.

Suspension of the extinctive prescription

The suspension of the extinctive prescription refers to the change in its running, which consists in automatically ceasing the running of the prescription throughout the situations restrictively provided by law, that make it impossible for the holder of the right to action to act (Dogaru, Cercel, 2007 : 275; Boroi, Stănciulescu, 2012: 310). Pursuant to art. 2532 of the Civil Code, which regulates the general causes for the suspension of the prescription, the prescription does not begin and, if it has begun, it is suspended in the following cases: 1. between spouses, during their marriage, and if they are not separated as matter of fact; 2. between parents, guardian or administrator and those lacking legal capacity to exercise rights or with limited legal capacity or between administrators and those they represent, as long as protection lasts and the accounts have not been provided and approved; 3. between any person which, by law, or on the basis of a judgment or a legal act, administers the property of others and those whose property is thus managed, as long as the management has not ceased and the accounts have not been provided and approved; 4. if someone lacks legal capacity to exercise rights or has limited legal capacity, as long as he has no representative or legal guardian, unless otherwise provided by law; 5. if the debtor deliberately conceals that the debt exists or is legally enforceable; 6. throughout the negotiations to settle disputes amicably, but only if the parties negotiated in the last six months before the expiration of the limitation period; 7. if the

person entitled to action must or can, under the law or contract, use a certain preliminary procedure, such as administrative complaint, seeking reconciliation or the like, while not aware or entitled to know the result of that procedure, but no more than 3 months from the commencement of the proceedings, unless otherwise provided by law or contract; 8. if the holder of the right or the one that violated it is part of the Romanian armed forces, as long as they are in a state of mobilization or war. Civilians who are in the armed forces for operational reasons imposed by the necessities of war are also included; 9. if the one against which the limitation period runs or is about to run is prevented by an act of force majeure from interrupting the period, as long as this impediment still exists ; temporary force majeure is not a cause of suspension of the limitation period unless it occurred in the last 6 months before the expiration of the limitation period; 10. in other cases provided by law.

The effects of the suspension of the limitation period are: a) from the date on which the cause of suspension has ceased, the limitation period begins to run again, the time elapsed before the suspension also being calculated; b) the limitation shall expire 6 months after the suspension has ceased, except for the 6-month or shorter limitation periods which shall expire one month after the suspension has ceased.

The extinctive prescription in international trade relations

In legal relations with foreign elements, the extinctive prescription of the right to action is subject to the law applicable to the right itself (art. 2663 of the Civil Code.). Since the prescription is qualified in Romanian private international law, as a matter of substance of the contract, it is subject to the law governing the substance of the legal relation. So, depending on the reference that the conflict rule makes, the limitation may be subject either to Romanian law or to a foreign legal system, applicable in respect of lex causae (Sitaru, 2008: 629).

Even if, under the conflict rule, the Romanian law was applicable to a legal relation with foreign elements, on the basis of the principle of availability, the contracting parties may remove the Romanian law from application, with various possibilities in this respect (D.A. Sitaru, 2008, p.630): a) they may submit their contract to a foreign legal system, through a clause of selection of applicable law (pactum de lege utenda); b) they may choose arbitration in equity as a way of settling their dispute, situation in which the arbitrators have the option to remove the effects of the limitation period; c) they may waive the effects of the limitation period, either expressly or impliedly; in this regard it has been decided in the arbitral practice that the party which has voluntarily paid the requested amount, although by the counterclaim it was requested to reject the arbitral action against him as barred, is considered to have waived the defence of limitation impliedly (Award of the Arbitral Court of Bucharest, no. 30/1981, in Repertoriul practicii arbitrale române de comerţ exterior, 1987, pp. 105-106). The party for the benefit of which the limitation runs may not invoke it, situation in which the competent jurisdictional body cannot apply the limitation period ex officio (art. 2512 of the Civil Code.); this solution of the Romanian law complies with that enshrined in the Convention of New York, which, in art. 24, entitled "Consequences of the expiration of the limitation period", provides that "Expiration of the limitation period shall be taken into consideration in any legal proceedings only if invoked by a party to such proceedings". If Romanian law is the law applicable to a particular legal relation with foreign elements, the provisions of the Civil Code referring to the extinctive prescription (contained

primarily in Book VI, entitled "On the extinctive prescription, loss and calculation of time limits") are applicable as general law.

Limitation periods as provided by the UNDROIT Principles

General considerations on the UNDROIT Principles

The UNIDROIT Principles represent an international "codification" of the general principles of contract law. They aim to provide a set of rules adapted to the needs of international trade. The UNUDROIT Principles differ from international conventions, in that they are not binding, they do not require the approval of governments, as they addresses international legal and economic environments and are applicable as a consequence of the option of the parties to an international commercial contract. For example, under the principle of freedom of will, the parties to an international commercial contract may agree that the UNIDROIT Principles should be the applicable law to their contract.

The first version of the UNIDROIT Principles appeared in 1994 and was a success, which made the UNIDROIT Governing Council take steps for the development of a second edition which was to complete the first edition with new topics of interest to the international legal and economic community (the translation into Romanian of the 1994 UNIDROIT Principles was carried out by a group of lawyers within the civil-law society Şova & asociaţii, 2002); thus, the second version published in 2004 included new rules on the authority of agents, third party rights, set-off, assignment of rights, transfer of obligations and assignment of contracts, limitation periods (the translation into Romanian of the 2004 UNIDROIT Principles was carried out by Ene and Oprea, 2006). The year 2010 witnessed the publication of the third version of the UNIDROIT Principles, which did not aim to review previous editions, but to supplement them with new rules, such as those relating to reinstatement in case of non-performance, prohibitions, conditional obligations, the plurality of obligors and obliges (the translation into Romanian of the 2010 UNIDROIT Principles was carried out by Bobei, 2015). Limitation periods are regulated in Chapter 10 of the UNIDROIT Principles, a chapter added in 2010, with the publication of the second version of the "Principles".

The complementary nature of limitation periods

The limitation periods provided by the UNIDROIT Principles are complementary in nature. The principle of autonomy of the contracting parties concerning the limitation periods enables them to modify the limitation periods applicable to rights arising from the contract concluded according to their needs. In this respect, art. 10.3 provides that "The parties may modify the limitation periods". But one party should not take advantage of the other by reducing or increasing the length of limitation periods, therefore the UNIDROIT Principles limit the changes that the parties may make: a) the general limitation period cannot be shortened to less than one year; b) the maximum limitation period cannot be shortened to less than four years; c) the maximum limitation period cannot be extended to more than fifteen years. In the comment following art. 10.3 it is specified that the modification of limitation periods may be agreed upon by the parties either before or after the commencement of the limitation period. The UNIDROIT Principles establish a general limitation period of three years and a maximum limitation period of ten years, beginning at different moments (art. 10.2). Thus, the three-year period begins when the obligee knows the facts enabling him to exercise the right (subjective

moment) or when he ought to know the facts (objective moment). The maximum limitation period of ten years starts on the day after the day the right can be exercised, i.e. it is legally enforceable; this is the objective moment, and that the obligee knew or not the fact enabling him to exercise its right has no significance (For illustrations on the beginning of the two limitation periods, see Principiile UNIDROIT privind contractele comerciale internaţionale 2010, Bobei, 2015: 361-362).

Effects of the expiration of the limitation period

The UNIDROIT Principles start from the premise that the expiration of a period within which one must exercise a right does not extinguish the right, but it is a means of defence; thus, pursuant to art. 10.9 (1), "The expiration of the limitation period does not extinguish the right". Therefore, the effect of the limitation is only the extinction of the right to action. But the expiration of the limitation period takes effect only if the obligor asserts it as a defence art. 10.9 (2); so the effects of the expiration of the limitation period do not occur automatically, but the obligor must raise it as a defence. No judicial body (judicial or arbitral court) has the obligation to invoke ex officio the limitation or allow the parties to discuss this defence. According to the comment following article 10.9 it is possible that the limitation of the right to may be the subject of a declaratory judgment.

The first effect of the fact that the right is not extinguished by the limitation is that a right may be invoked as a defence any time, even after the expiration of the limitation period referring to it (art. 10.9 (3). After the expiration of the limitation period the right of the obligee still exists, but an action for the performance of this right is barred by the fact that the obligor invoked the expiration of the limitation period; instead, the obligee may assert a right of retention on the basis of a right extinguished by the limitation. The comment relating to art. 10.9 (3) contains the following illustration in this respect: A leases a printing press to B for a period of ten years. A has the obligation to maintain the press in working condition and to undertake repairs, except defects caused by B's negligence in using the machine. The machine breaks down, but A refuses to pay the repairs done. A does not react and B does not insist. Five years later, when the lease expires, B requests again the restitution of the costs of the repairs. A refuses and raises the extinction of B's right by the expiration of the limitation period, but he requests the return of the printing press. B is entitled to damages for A's breach of contract and may refuse to return the printing press, having a right of retention until the award of damages. The second effect of the fact that the right is not extinguished by limitation is that the obligee may exercise the right of set-off until the obligor has asserted the expiration of the limitation period (art. 10.10). The comment relating to this article resumes the illustration discussed above (following art. 10.9), specifying that if A requests not only the return of the printing press, but also the payment of the unpaid rent, B is entitled to set-off its counterclaim for damages against this monetary claim, although the limitation period expired.

Instead, after the obligor has asserted the expiration of the limitation as a defence, the obligee can no longer exercise the right of set-off. In the second example contained in the comment relating to art. 10.10, it is shown that the facts are the same as in Illustration 1, but we presume that B requests the payment of damages and threatens to sue four years after it had had the repairs done, and as A invokes the time bar, B can no longer set off its claim for damages. A third effect of the fact that the right is not extinguished by limitation is that in case an obligation has been discharged, the mere expiration of the limitation period does not confer any right of restitution (art. 10.11).The

action for restitution of the obligor, which discharged its obligation after the lapse of the limitation period, lodged on the basis of unjust enrichment principles can be paralyzed by the obligee invoking its right, which still exists after the extinction of the right to action. In the comment of art.10.11, it is shown that even if the limitation period has expired, restitutionary claims can be based on grounds other than performance, for instance, when the payor claims to have paid a debt which does not exist due to a mistake. The second illustration following art. 10.11 advances the hypothesis that bank B lends a sum of money to A, and the latter repays the loan before the date provided by the loan agreement, but neither side is aware of it; four years later, B requests payment from A again, and A complies with the request and pays; A can recover the second payment because the obligation had been previously extinguished by performance.

Interruption of the limitation period

Most legal systems allow the parties or other circumstances to modify the running of the limitation period. The modification of the limitation period can take place either as a consequence of the interruption of the limitation period, or as a result of its suspension. As a consequence of the interruption of the limitation period, a new general limitation period begins to run. *The acknowledgement of the obligor is the only case of interruption of the limitation period regulated by the UNIDROIT Principles*; therefore art. 10.4, regulating the interruption of the limitation period, is called “New limitation period by acknowledgement”. In accordance with art. 10.4 (1), if the obligor acknowledges the right of the obligee before the expiration of the general limitation period (the general limitation period of three years), a new general limitation period begins to run on the first day after the day of the acknowledgment of the right. The illustration in the comment of the paragraph is the following: A defectively performs a construction contract concluded with B, and in October B informs A about the non-conformities, without receiving a reply from A. Two years later, B notifies A again, threatening with an action for damages. A acknowledges the non-conformities of the performance and promises to remedy them. The next day, a new general limitation period begins to run for B’s right to damages. The maximum limitation period (ten years) remains unchanged, it does not begin to run again, but it may be exceeded by the beginning of a new general limitation period (art. 10.4, paragraph 2). Thus, if the acknowledgement takes place during the maximum limitation period, it is not interrupted, but it may be extended by up to 3 years if the acknowledgement took place seven years after the beginning of the maximum period, but before the expiration of the maximum limitation period. The illustration in the comment of this paragraph is the following: A defectively performs a construction contract concluded with B, and B discovers the defects in the construction work of A nine years after the end of the work; the defects could not have been discovered earlier. A acknowledges the defects. A new general limitation period begins to run from the moment of the acknowledgement, so the length of the limitation period amounts to 12 years. If the parties altered the limitation periods by mutual agreement, in accordance with art. 10.3 of the UNIDROIT Principles, the acknowledgement has the effect of the beginning of a new limitation period equal to the interrupted one. If, for example, the parties reduced to one year the length of the general limitation period, the acknowledgement determines the beginning of a period of one year.

The interruption of the limitation may occur several times, if the obligor acknowledges successively the obligee’s claims (Sitaru, 2008: 640). According to the comment of art. 10.4, (comment entitled “Novation and other acts creating a new

obligation"), the acknowledgment does not create a new obligation, and accessory rights are not extinguished. If the limitation period had already expired at the time of the acknowledgement, the acknowledgement does not retroactively invalidate this defence, i.e. it does not remove the effects of the expiration of the limitation period. But, at the time of the expiration of the limitation period, the parties may create a new obligation by "novation" or a unilateral act of the obligor or by the fact that the obligor waives this defence; the parties may also prolong the length of the obligee's right beyond the end of the maximum limitation period, as provided by art. 10.2(2).

Suspension of the limitation period

During the running of the limitation period, a series of situations may occur and prevent the holder of the claim right from acting. Such situations have the effect of suspending the running of the limitation period, i.e. they stop the running of the limitation period throughout the situation preventing the holder of the right from acting. In other words, the suspension of the limitation period has the effect that the period running before the occurrence of the suspension cause will be deducted from the applicable limitation period , the remaining period beginning to run from the expiration of the suspension period. The running of the limitation period is suspended in judicial or arbitral proceedings or in an alternative dispute resolution procedure, and if the obligee is prevented from acting for reasons not depending on it (force majeure, death or incapacity).

Under art. 10.5, the running of the limitation period is suspended: a) when the obligee performs any act, by starting judicial proceedings or in judicial proceedings already instituted (for instance, a counterclaim), which is recognized by the law of the court as asserting its right against the obligor; b) when the obligee, in the case of the obligor's insolvency, has asserted its own right in the insolvency proceedings; c) when the obligee, in the case of proceedings for dissolution of the entity which is the obligor, has asserted its rights in the dissolution proceedings. In such cases, the suspension of the running of the limitation period lasts until a final judgment has been issued or until the proceedings have been otherwise terminated (for instance, the withdrawal of the complaint by the obligee). On the suspension of the limitation period by judicial proceedings, in the comment relating to this article, it is specified that the procedural law of the court (lex fori) determines the requirements for the interruption of judicial proceedings, if a counterclaim is tantamount to the instituting of judicial proceedings in regard to those claims; likewise, the procedural law of the court before which the action has been brought establishes the requirements for the termination of proceedings by a final judgment or by any other means, and decides whether the litigation comes to an end without a final decision on the merits (for instance, the withdrawal of the complaint or a settlement of the parties). Insolvency and dissolution proceedings are considered judicial proceedings under art. 10.5, and the commencement and termination of these proceedings are established by the law governing those proceedings. On the suspension of the limitation period by arbitral proceedings, art. 10.6 provides that arbitration has the same effect as judicial proceedings, i.e. the suspension of the running of the limitation period, the explanations given in the comment relating to this article being similar to those relating to art. 10.5.

As for the suspension of the limitation by alternative dispute resolution proceedings, art. 10.7 states that the provisions on the suspension of the limitation by judicial and arbitral proceedings apply with appropriate modifications, to any other

proceedings in which the parties seek the assistance of a third party in order to reach an amicable settlement of their dispute. The comment relating to this article mentions that, prior to instituting legal or arbitral proceedings, the parties may agree on conciliation or other forms of alternative dispute resolution; but negotiations do not automatically suspend the running of the limitation period unless the parties mention this effect in the content of an express agreement.

The suspension of the limitation period in case of force majeure, death or incapacity is governed by art. 10.8 of the UNIDROIT Principles, which provides: if the obligee has been prevented from causing the limitation period to cease to run by an impediment that is beyond the control of the obligee and that it could neither avoid nor overcome, the general limitation period is suspended so as not to expire before one year after that impediment has ceased to exist.

If the impediment that prevents the obligee from causing the limitation period to cease to run consists of the incapacity or death of the obligee or the death of the obligor, the suspension of the limitation ceases with the appointment of a representative of the incapacitated person or the deceased or its estate or when a successor has inherited the respective party's position; in such cases, too, the general limitation period is suspended and it will not expire before the one-year period after the impediment has ceased to exist. The comment of this regulation contains the following illustration: A lends an amount of money to B, money which is due to be repaid on 1 January. A dies 35 months after the date for repayment, without requesting the restitution of the amount. Under the law of succession applicable to A's estate, the court must appoint an administrator that also has the obligation to collect outstanding debts. The court appoints the administrator after two years. He has one month left (of the three-year limitation period), plus an extra one-year period to pursue the restitution of the loan against B. The comment of art. 10.8 illustrates this with events that justify the suspension of the limitation period, such as war, natural disasters; instead, the imprisonment of a person does not suspend the running of the limitation period (since the event preventing the obligee from exercising its own right must not be subject to control by that obligee) unless the imprisonment could have been avoided, such as, for example, the case of a war prisoner.

Only the running of the general limitation period may be suspended. If the maximum limitation period expired before the obligee had exercised its right, this right can be paralyzed by raising the exception of the expiration of the maximum limitation period.The comment of this regulation provides the following example: A's lawyer plans to sue B, an engineering firm, for professional malpractice by B's employees. The limitation period expires on 1 December, and A's lawyer has completed the complaint on 25 November, intending to file it by mail with the competent court. On 24 November, a terrorist attack makes traffic cease, thus preventing A from filing the complaint in due time. The limitation period ceases to run and will not expire before one year after some public services have been restored in A's country. If the disruption of all means of communication in A's country lasts for ten years, A's right is barred by the expiration of the maximum limitation period.

Conclusions

The regulation of the extinctive prescription in the new Romanian Civil Code shares certain principles with the UNIDROIT Principles, both as an expression of legal liberalism. We will highlight below some of the arguments that can be presented in order to support this idea: if the legal provisions prior to 1 October 2011 (Decree 167/1958)

regulated the extinctive prescription as an institution of public order, the provisions of the new Civil Code give the prescription the character of private order. This assertion has as a landmark the provisions in accordance with which the competent jurisdictional body cannot apply this limitation ex officio, even if the raising of the defence of limitation is in the interest of the state or of its administrative-territorial units. In all cases, the defence of limitation may be raised only by the one for the benefit of which it runs (art. 10.9 of the UNIDROIT Principles, art. 2512 of the Romanian Civil Code). As for the effects that the lapse of time has on rights, the Civil Code, like the UNIDROIT Principles, enshrines the idea that the expiration of the limitation period does not extinguish the right, but only the right to action. The joint effect of this principle is that in case of performance in order to discharge an obligation, the mere expiration of the limitation period does not confer any right of restitution (art. 10.11 of the UNIDROIT Principles, art. 2506 par. 3 of the Romanian Civil Code).

Another principle enshrined by both the Romanian law and the UNIDROIT Principles is the possibility for the parties to modify limitation periods with observance of the restrictions expressly and specifically provided. The complementary nature of most legal rules governing the extinctive prescription, deriving from the character of private order of the extinctive prescription institution, allows the parties that have full legal capacity to exercise rights, within the limits and conditions provided by law, to modify, by express agreement, the duration of limitation periods or to modify the running of the limitation period by establishing its beginning or by altering the legal grounds for suspending or interrupting it, if applicable (art. 10.3 of the UNIDROIT Principles, art. 2513 of the Romanian Civil Code). Likewise, both the Romanian Civil Code and the UNIDROIT Principles enshrine the idea that the acknowledgement of the creditor's right by the debtor is a cause of interruption of the limitation period and the idea that the effect of the interruption of the limitation period is the running of a new limitation period (art. 10.4 of Principles UNIDROIT, art. 2537, 2538 and 2541 of the Romanian Civil Code).

As for the suspension of the limitation period, both the Romanian Civil Code and the UNIDROIT Principles consider as suspension grounds the existence of judicial or arbitral proceedings or alternative dispute resolution proceedings and the fact that the creditor is prevented from acting for reasons not depending on him (e.g. force majeure). Another enshrined rule specifies that the effect of suspending the limitation period is that, after the cause of suspension has ceased, the limitation period begins to run again from that date, the time elapsed before the suspension also being calculated for the expiration of the limitation period (art. 10.5-10.8 of the UNIDROIT Principles, art. 2532 and 2534 of the Romanian Civil Code).

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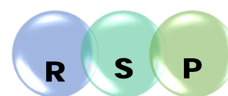

ORIGINAL PAPER

The Role of the School Principal in Increasing Students' Success

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Abstract
Increasing students' success in school has recently become an issue that arouses interest to all relevant factors in education. Students' success depends not only on themselves, but also on other factors, especially the principal of the school, whose supporting and communicating role significantly affects the success of students. The principal is the one who with his leading role creates better conditions and opportunities for students' freedom of choice. The principal's reward for students' success and their achievements increases considerably the motivation and the sense of self-confidence on students, thus creating prerequisites for the best achievements of students. The commitment of the school principal in increasing school's success consists of supporting the initiatives, cooperation, communication and constant motivation of students and teachers. The principal is the key to success in students' achievement. The purpose of this study is to understand the role of the school principal in increasing students' success from teachers and school principal's perceptions. For this study, we used quantitative methods combined with the qualitative and semi-structured interviews, and the techniques used for the implementation of research were: semi-structured questionnaire, recordings with multimedia tools and a structured questionnaire surveys. The results show that the principal of the school collaborates with teachers and students, and supports them in increasing success at school, but not at satisfactory level. From the results we can conclude that if the school principal increases his cooperation and supports teachers and students, students' success will be in a greater level.

Keywords: *role of the school principal, increasing success, teachers' perceptions*

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Introduction

A great attention is being paid to the issue of leadership and management in pre-university education in Kosovo by the MEST (Ministry of Education, Science and Technology), which has issued a new administrative instruction on the criteria for selecting the school principal and vice-principal. Also the public University of Prishtina and other private Universities have oriented their programs in education leadership and management, thus committing themselves to raise the quality of education through training the cadres for leadership and more efficient management in pre-university education. Local and international non-governmental organizations also provide educational leadership training in order for school principals to be more qualitative. Leadership does not mean being just a leader and everything else will be done itself. The leader should be an agent of changes, the one who cooperates with the others in order to achieve the required goal. Leadership is not inherited. It is achieved through learning. According to Malik (2001), "Leadership is not inherited". This paper presents information related to the role of school principals in theoretical and empirical terms. Based on the results obtained from interviews, surveys, and the literature review, we strongly believe that this research gives sufficient information to reflect the role of the school principal in increasing students' success.

The new mission of the school principal

The new mission of the school principal can only be achieved if we list things in a way which enable us to go forward with the means we have and with reasonable steps, which in itself will involve our work, teachers work and students' work in enriching the culture of the school. The principals as school leaders should initiate changes and plan school development with the aim of preparing students for carrying out difficult tasks in knowledge-based society. The school vision must be formulated by the school principal jointly with all parties involved, so that everyone is motivated in its realization by working together in providing the best possible education for students. The principal should also prepare a list of priorities and innovations every year in order to change the school image and culture, thus bringing freshness to the students, so they will not feel inferior with the students from other countries and will not feel monotonous of their school. The school principal under the American system of education "represents a leader whose main role is to carry this mission to the staff, parents and students. He is the hard worker, the one who come the first at school and the last one that leaves it. He is the one who resolves all issues; he is the best informed. The principal supports and inspires success, quality and order, contacts the teachers, observes the implementation of the curriculum, gives advice, possesses ideas, vision, and encourages excellence and support towards the development of teachers and students" (Jashari, 2010b: 223).

The school principal's role

The principal is an eminent and influential person in the educational process. His/her task is very responsible and his/her role is to motivate teachers, lead them, manage and evaluate the whole learning and teaching process. The principal in cooperation with teachers, students and parents should make concrete and long-term plans in order to increase the success of students and the quality of education. Apart from that, s/he should familiarize them with new systems and new technologies that contribute in increasing the quality in education. This for traditional principals seems almost difficult to be accepted, because they do not find changes as something positive, whilst they keep more defensive

attitude towards changes. They do not make long-term plans. They do not prefer the implementation of new methods and the introduction of technology in practice. They see it as an obstacle rather than a help. For the school principal to be successful and influential in increasing students' success, s/he should focus on creating a motivation to the staff so that they work effectively. Apart from that, s/he should contribute to the professional development of teachers in creating an environment where staff and students are motivated to work harder and mobilize the staff to plan and implement changes that lead to better teaching and higher standards, etc. (Ligacaj, 2015). For school principals who are confident in their role and want to make changes, this role is obviously complex and meaningful. Chapter 7 and 8 of the book 'The New Meaning of Changes in Education' which deals with the reforms in education conveys a very good message for school principals. This based on the study that was carried out in the schools whose students have had greater success in school when they had three good teachers during three academic years, whereas for school principals, it is even easier to have three good teachers within a day or year, if they encourage teachers toward professional development (Fullan, 2001: 228). To better elaborate this study, we will focus on a few questions: Where should substantial changes in the schools of Kosovo be done? Who should encourage and support these developments in schools? One should analyze the results, the fruits of the steps that consist with the objectives of changes, goals and projects, and reforms to be initiated. The philosophical composition of the idea of development has to do with the attempt of its progress, the effects of working with students, or said in another way, what must we do in order for our children to acquire knowledge more effectively. To achieve this, we must mention the areas where changes should be made. This should be done in these areas: The development of working conditions, improvement and their progress; Construction of new mission of principals and teachers, and development planning to achieve academic success. All these preparations should be done and lead by the principal. The American sociology of education about the successes of principals in schools bases on the philosophy that: "No one should ask permission to make ones school better and more successful."

What do authors say about the role of school principal

Regarding principal's role and image, authors have written several books. According to Devetaku and Mehmet (2013), "The principal provides all students with a qualitative education through equal access to school, through various curricular and extracurricular activities, and by providing a good and safe environment to learn and teach, thus involving students in all processes that are of great importance and interest to them." A group of authors also claim that, "It should be noted that the principal is the key person at school, since with a strong leader in teaching, the one who plans and organizes the staff pedagogically and directs all the school processes, a school with a low level can be transformed into a school with high progress" (Hyseni, Mita, Salihaj, Pupovci, 2003: 7). Fullan (2001) claims that, "The principal is a goalkeeper of changes." Regarding school management, one of the greatest experts in this field, Jashari in his book writes, "The management primarily deals with the school principal and management structures, but he is dedicated to all employees and represents a part of the whole culture and has a great impact on every teacher and student" (Jashari, 2005). The role of the school principal comes into consideration in some aspects and segments, among which we highlight: "process management (efficiency, forecasting and planning), management

projects, designing programs, financial management, school equipment, quality management: teaching methods, students' success and progress" (Murati, 2009: 51).

According to Jonier (2004), successful leaders admit that people of school are the most important ones. To achieve changes, the leaders must believe that people are the most important asset of the organization. In order for changes to take place in schools, the leader creates a better environment; therefore, a leader constantly scans the environment, where changes must occur (Pejza, 1985). Besides, Maxwell, 2006 links the changing of the organization with the change of the leader, where he states that, 'If you change the leader, you have changed the organization... Change means development.' (Maxwell, 2006) Effective principals strive against lack of coherence. (Bruk, 1988, cited by Fullan, 2001).

The school principal's skills

Leading issues in educational system in the Republic of Kosovo are discussed, and are in constant observation of the public opinion. It is known that the biggest critics of the school and school principals including teachers are parents. Once, parents directed their complaints to the minister or the municipality. Today, complaints are mostly done through communication technologies, mobile phones and electronic mail. This allows easy access to the media and public opinion on the work and leadership of the school. But we are interested in another aspect of talent for leadership, critical assessment of its talent and training. For Schools and MEST in Kosovo, this issue seems to be secondary. This is noticeable after taking responsibilities in primary and secondary education from the municipalities of Kosovo on February 20, 2008. Now we have a situation where the responsibilities are divided and as one of the foreign authors says, nor centralization nor decentralization have success. Centralization has excessive control, decentralization creates chaos. Leaders lose their way when they take the responsibility themselves. But leadership should not only be developed to the principal, but to all teachers and students too. But, actually, the leadership development and organizational design should be a leader's crucial skill. The ability to lead a change reflects the most precious gift of him. (Fullan, 2001).

Individual features of the school principal

The school principals are not like the leaders of other organizations, such as the leader or the manager of a farm, a car workshop, or nursing home, where sometimes the leader is guided by routine. Education theorists hold the opinions that: the leader - the school principal is a leader because he articulates the reality. He is one of the community, family, has his own biography, knows well the district, and he is a visionary; s/he creates the vision, sees farther than others, plans the future; s/he knows, has the duty and commitment to communicate with the school district, community, municipality, ministry; s/he motivates, inspires and guides towards achieving and realizing the vision; the leader deals with the important work, leads with valuables staff, and includes them in leadership too. The leader has followers, followers follow him/her, but good principal listens and learns carefully many things from them, because in this way he listens to their demands" (Jashari, 2010a).

Differences between the manager and the school principal

According to Cuban (1988), Bolman and Deal (1997), the scientific theory and the practice describe the difference between leadership and management as follows: the

leader influences the others toward action, performance and the achievement of the desired success; the management is used effectively for the organization of daily school life; the leader is enthusiastic, charismatic, and visionary; the manager has the power, the highest position, and the ability to reward and punish. With leadership we understand the way how activities and the work of an institution, enterprise, organization, school, or party is organized. With management, in this context, we understand the action that the leader undertakes in his/her organization and management (Murati, 2009: 21).

How can the school principal be a good leader?

The principal is responsible for everything that takes place in school, starting from the application of laws, the quality of the development in the educational process, cooperation with teachers, students and the community. Thus, the school principal is responsible for all activities in the school, and especially on him/her depend the success or failure of the school. The principal should cooperate and coordinate activities with the higher authorities, as MEST, the office for inspection, and parents and community. An important role in this cooperation plays the teacher, because he is the leading partner. Without the teacher, the principal would be like "a bird without wings". So, one of the main factors is building the right relationship between the principal and teachers (Laska, 2009: 12).

Leadership styles

Fullan, 2001 in his book, 'The new meaning of changes in education' emphasizes that Goleman (2000), after analyzing the data from 3871 businesses of the Hay / McBer, has come across six types of leadership, out of which two have negative influence and the other four have positive influence in creating a favorable climate and educational achievements for students: the first style of leadership is done unwillingly ("requires order implementation or "do as I say"), other kind of leadership ("mobilizes people toward a vision, or "Come with me") (Goleman, 2000) cited by Fullan (2001); the second style of leadership has been defined as a style of performing activities together at schools ("creates harmony and builds emotional connection, or "people above all") (Goleman, 2000) cited by Fullan (2001). The third style is the style of leadership that maintains the principles in practice ("toughen the dealing through participation, or "what do you think") (Goleman, 2000) cited by Fullan (2001). Another style appoints the development of workflow management ("sets high standards of work, or "do as I do, at this very moment"). (Goleman, 2000) cited by Fullan (2001). The last style is the style where the leader is able to guide and prepare the relevant factors for work in the future ("prepares people for the future, or "try it") (Goleman, 2000) cited by Fullan (2001). Of these six styles of leadership, Goleman considered that two style one and four have negative effect in the creation of a climate at school.

The school principal's role in communication and cooperation

In the following analysis we will discuss the school principal's role in communication and cooperation with the School Council, Students Council and Parents Council. The school goals are achieved through the communication between the school principal and the school staff. But, this is also done by taking into consideration their opinions on certain decisions. In order to have a better leadership and management, communication is considered as one of the main factors. The school principal through communication with the School Council, Students Council and Parents Council increases

the quality of work system. One of the key elements which enhance trust and respect is achieved through regular meetings between the principal, School Council, Students Council, school staff and parents. The achievement of goals set by the school for a better school management, for improving the quality of teaching and learning, and for increasing students' success cannot be achieved only if the school principal maintains this intention, but this can only be achieved if this is everyone's goal and through effective communication. Further, effective communication increases the responsibilities by working together; reduces errors, since the information are transmitted within the group on a routine basis; avoids mistakes, because mistakes can be detected more easily by talking about projects, teaching, etc.; distributes the responsibility to more people; promotes cooperation with the school staff, thus increasing the willingness to take responsibility; supports students; establishes partnership between parents and school - school is not anymore a "black box"; creates a new culture of communication in the school; helps to understand different visions, views, and opinions. Communication is very important not only for the educational process, but also for everyday school activities. It contributes in resolving disputes, conflicts and different issues at school. The school principal's contribution in counseling teachers and students to solve problems can be reached through several steps. These steps are: Stop, Look, Listen and Respond (Figure 1). Figure 2 shows the steps to be followed by the school principal while assisting teachers and students solving their problems.

Figure 1. The school principal's contribution in counseling teachers and students (several steps: Stop, Look, Listen and Respond)

STOP	When a teacher/student says something, stop and pay him/her attention! Paying attention, even briefly, drives the speaker to realize that you are listening to them and they are important.
LOOK	Make eye contact with the ones you communicate. This may require you to decline in their level. A facial expression can encourage children to share their feelings and concerns.
LISTEN	Pay attention to what people with whom you communicate say, thus listening to them! Listen carefully to what children actually say, and also what you are trying to say! Facial expressions and body language give enough information about the words you hear.
RESPOND	Once you stopped, looked and listened, it is time to respond depending on what the student said.

Figure 2. The school principal's contribution in counseling teachers and students (upcoming steps)

Paraphrase	**What you hear makes the speakers feel that they are clearly heard and the feelings they expressed are acceptable.**
Give examples	When appropriate, ask questions that will push the student to think for a solution or the upcoming step. "How can you assure us that you will not forget your homework again?", "What have you learned from this experience?," "How would you change this if you did this again?", "What do you like most in your writing? Tell us why?"

How would the communication and cooperation be effective

One of the most important ways of effective communication is achieved through active listening. If the teacher listens actively to his/her students, students will feel that they should focus in learning. School principal's assistance in counseling teachers and students in solving their problems can be achieved through several steps. These steps are: Stop, Look, Listen and Respond, as discussed earlier in this study. Good cooperation: increases teachers and students' support for teaching and learning; supports the school principal and school staff to achieve a higher quality; creates opportunity for new teaching and learning, such as, in practical aspects in institutions; helps in financing and organizing excursions, and developing teaching and learning materials; creates a new school culture and school profile; gives students the opportunity to learn more about their skills, and plan their professional career; meets the requirements of the education legislation (especially in the context of decentralization). The positive relationship between the school principal and the staff can be achieved only if effective communication and cooperation between them exists. This communication contributes to better intentions and efforts of the school. Apart from that, it contributes to a better quality of teaching and learning, to a better students' performance, school culture, a better school managing, inclusion, health, and safety. But, the main and the most important actors of the school in communication and cooperation are teachers, because teachers are the agents of changes. According to Fullan, teaching and learning is the heart of a school. In modern schools, teachers maintain different functions, such as, they are teaching experts, educators and motivators, leaders and managers of the educational processes, supporters, children's educational partners, consultants, evaluators, etc. This means that we are dealing with very important school actors. (Mattheis *et al.*, 2012: 6-13).

The school principal supervision in educational process

The first one to supervise and control classes is the school principal. This is his/her primary task. Any negligence in this respect is a disadvantage in educational process of the school, and also a disadvantage of the authority of the school principal. Some principals think they have no obligation to carry out this very important task. The principal's supervision in classes should reach the following objectives: First, s/he should know the school, teachers, students, school authorities; Secondly, s/he should recognize the broader opinion, parents, higher education staff, media, etc.; Through supervision of educational process, the principal should know: Whether and how the curriculum was implemented; teaching methods; the discipline of students and teachers; what hinders the progress of teaching in general and in particular; how the evaluation process on students is done and what methods and forms are practiced, etc. After the supervision, comes a significant stage, which is the principal's discussion with the teacher over the course of supervised classes, where the positive and negative sides should be highlighted. (Gashi, 2003).

Data analysis

Microsoft Excel was used for the questionnaires, whereas interviews were taped, transcribed and printed.

Results

These interviews were realized with two school principals in two different municipalities of Kosova, in Gjilan and Viti, while the questionnaires were conducted

with 40 teachers of these schools. These interviews and questionnaires took place in July 2015.

Quantitative data

In the scale 1 - 5, we have presented the quantitative data of the respondents of our survey. Number 1 is 'I don't agree', number 2 is 'I disagree', number 3 is 'Sometimes I agree', number 4 is 'I agree', and number 5 is 'I completely agree'.

Table 1. Results of the survey carried out with the Gymnasium teachers of "Zenel Hajdini" – Gjilan (July 2015)

The school principal is considered as one of the main factors in increasing students' success. However, this cannot be achieved if s/he does not communicate and cooperate effectively with the school staff. The following questions are intended to gather data on the school principal's role in increasing students' success	I completely agree	I agree	Sometimes I agree	I disagree	I don't agree
1. The principal takes into account teachers' views/opinions.	6|30%	5|25%	9|45%		
2. The principal takes into account students' views/opinions.	1|5%	4|20%	15|75%		
3. The principal consults with teachers about success.	12|60%	5|25%	3|15%		
4. The principal consults with students about success.	7|35%	7|35%	6|30%		
5. The principal supports every teachers' initiative regarding the educational process.	16|80%	3|15%	1|5%		
6. The principal supports every students' initiative regarding the educational process.	16|80%	4|20%			
7. The principal communicates and cooperates with teachers.	4|20%	14|70%	2|10%		
8. The principal communicates and cooperates with students.	2|10%	3|15%	15|75%		
9. The principal rewards students for their achievements and successes.	20|100%				
10. The principal motivates students to participate in various school competitions.	17|85%	3|15%			
11. The principal encourages teachers towards professional development.	20|100%				
12. The principal meets teachers and discusses about issues that concern them.	12|60%	6|30%	2|10%		
13. The principal meets students and discusses about issues that concern them.	3|15%	3|15%	14|70%		

14. The principal consults with teachers about problems and possibilities of solving them.	11|55%	7|35%	2|10%		

Table 2. Results of the survey carried out with the Gymnasium teachers of "Kuvendi i Lezhës" - Viti (July 2015)

The school principal is considered as one of the main factors in increasing students' success. However, this cannot be achieved if s/he does not communicate and cooperate effectively with the school staff. The following questions are intended to gather data on the school principal's role in increasing students' success	I completely agree	I agree	I sometimes agree, sometimes not	I disagree	I don't agree
1. The principal takes into account teachers' views/opinions.	1|5%	7|35%	6|30%	6|30	
2. The principal takes into account students' views/opinions.	6|30%	8|40%	6|30%		
3. The principal consults with teachers about success.	2|10%	5|25%	9|45%	4|20	
4. The principal consults with students about success.	6|30%	7|35%	7|35%		
5. The principal supports every teachers' initiative regarding the educational process.	5|25%	6|30%	9|45%		
6. The principal supports every students' initiative regarding the educational process.	5|25%	8|40%	5|25%	2|10	
7. The principal communicates and cooperates with teachers.	4|20%	6|30%	7|35%	3|15	
8. The principal communicates and cooperates with students.	6|30%	10|50%	4|20%		
9. The principal rewards students for their achievements and successes.	7|35%	5|25%	7|35%	1|5	
10. The principal motivates students to participate in various school	3|15%	7|35%	7|35%	3|15	
11. The principal encourages teachers towards professional development.	4|20%	3|15%	6|30%	7|35	
12. The principal meets teachers and discusses about issues that concern	2|10%	5|25%	8|40%	5|25	
13. The principal meets students and discusses about issues that concern	6|30%	7|35%	5|25%	2|10	
14. The principal consults with teachers about problems and possibilities of solving them.	2|10%	4|20%	9|40%	5|25	

From the results obtained through interviews and surveys of two gymnasium schools in the region of Gjilan, we find that the principal plays an important role in increasing students' success. However, it is evident that there exists a lack of cooperation between the principal, teachers and students in order to increase students' success. At the same time, we see that students do not have enough support from the principal to achieve a better success at school. We also find that the level of cooperation between teachers and the school principal in larger cities is better than in smaller ones. The results of the survey reflect that the principals of appropriate profiles have significantly greater role in increasing students' success rather than those of inappropriate profiles.

Qualitative data

From the interviews carried out with school principals it is evident that the role of the principal is very important and influential in increasing students' success. According to them this is achieved if the principal of the school takes into account the views of teachers and students, as well as consults with them in order to increase students' success. He should also support the initiatives and good ideas of teachers and students and communicate and cooperate with them in a good way. The school principal should always reward students for their academic achievements, with symbolic gifts, festival events and motivate them to participate in various school competitions through professional activities, where each teacher gives input in his own field. He should also encourage teachers towards gaining professional development and meet and discuss with teachers and students the problems that concern them. They should also meet with head teachers and head students, and consult with them about the problems and possibilities of solving them. They also say that there should be a special budget in order for students to be more motivated for their academic achievements. On the issue of teachers' training, they say that they did not bring great results, because many teachers have such certificates and were not successful in their professional and implementation in practices. The implementation of new methods in many cases is difficult to be applied even though teachers are efficient. This is due to the large number of students within a class.

Conclusions and recommendations

Based on the results obtained from the study we can conclude that: the school principal takes into account the opinions and views of teachers and students, but not at satisfactory level; they partially consult with teachers and students regarding students' success; they partially support the initiatives of teachers and students regarding educational process; they reward students for their academic achievements with modest prizes; they partially motivate students to participate in various school competitions; they partially encourage teachers towards professional development; they meet teachers and students very rarely in order to discuss the problems they face; training for teachers have a positive impact on their professional development, but they are not sufficiently implemented in practice.

As recommendations, school principals should consider more often students and teachers' views/opinions; they should consult much more with teachers and students thus contribute in increase students' success; they should support teachers' initiatives regarding educational process; they should reward students much more regarding their academic achievements; they should support students much more to participate in various school competitions; they should encourage teachers much more towards professional development and application of new methods; they should meet more often with teachers

and students and discuss the problems and possibilities of solving them; they should create an environment where staff and students are motivated to work much more; they should create a special budget from MEST, and plan to motivate and reward students for their achievements.

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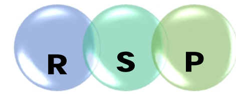

ORIGINAL PAPER

Translation as Transplant in Contemporary Law

Adela Teodorescu Calotă*

Abstract

The present paper aims at exploring legal translation under the more comprehensive umbrella-concept of 'legal transplant'. The main objective hereby pursued is to depart from an analysis of the theory of legal translation based on linguistics, to a larger framework which allows for a consideration of other crucially important elements to be accounted for in the process of translating law. Thus, understanding the cultural, social, political, economic, historical, geographical and identity-related peculiarities of a given legal system is indispensable in the process of legal translation. The above are all key factors which either allow the success or bring about the failure of the transplant. By adopting an interdisciplinary methodological framework, the present paper reaches the conclusion that the process of translating, or 'transplanting', law from one legal system to another is inextricably linked to non-linguistic phenomena, to be carefully taken into account, if a successful outcome is desired.

Keywords: *Legal translation, legal transplant, 'legal irritants', legal culture, 'forms without substance'*

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Clarifying Terms: Translation & Legal Translation

Nothing is quite so straightforward today, in the age of 'globalisation' and 'Europeanization', as it used to be (or perhaps, some may point out, straightforwardness, simplicity have never at all been regarded as attributes of language or, for that matter, of translation; they may, at most be coveted goals outlined in slogans and recommendations). The concept of 'translation' echoes rich complexities and an incredible large and volatile spectrum of analysis, as do its conceptualisations. The many layers of conceptualisation mount to converge on and support a three-pillared structure, composed of the *whats* (*what is translation?*), the *whos* (*who translates? and whom is it translated to?*) and the *whys* (*why and for what purposes do we translate?*).

The answer to the question '*what is translation?*' is as broad and intricate as the notion of 'translation' itself. We could refer to translation as a "process of a product" and hereby include "literary translation, technical translation, SUBTITLING and MACHINE TRANSLATION" (Shuttleworth, Cowie 2014); we could define it as "the transfer of written texts [which] also includes INTERPRETING" (Shuttleworth, Cowie 2014); we could metaphorically compare translation to a GAME or MAP and acknowledge the existence of such peculiar activities as 'diagrammatic translation', 'inter-semiotic translation', 'paraphrase' and 'pseudotranslation' (Shuttleworth, Cowie 2014). Meaning and equivalence are recurrently referred to as essential defining markers. Thus, translation has been viewed as "'the replacement of textual material in one language (SL) by equivalent textual material in another language (TL)'" (Sager, 1965: 20 in Shuttleworth, Cowie 2014). Sager Jakobson understood "translation in semiotic terms as 'an interpretation of verbal signs by means of some other language'" (1959/1966: 233 in Shuttleworth, Cowie 2014). A further definition belongs to Nida & Taber and underlines that "translating consists in reproducing in the receptor language the closest natural equivalent of the source-language message, first in terms of meaning and secondly in terms of style (1969/1982: 12 in Shuttleworth, Cowie 2014)". Source and target texts and cultures have also been mentioned in relation to the process of translation, as follows: "translation is the production of a functional target text maintaining a relationship with a given source text that is specified according to the intended or demanded function of the target text (translation skopos)" (Nord, 1991: 28 in Shuttleworth, Cowie 2014).

The concept of 'translation' is admittedly fuzzy and the theories which approach it have a veil of ambiguity about them, due to lack of consensus "over any universal principles of translation" (Shuttleworth, Cowie 2014) and to the interconnectedness of the term with an array of confusing notions (interpretation, transfer, transformation, negotiation, appropriation, equivalence, take-over, reproduction etc.) which are either subservient to it or partially or completely altering. 'Everything [is and] must be translated' in the *infra-*, *micro-*, *macro-* and *supra-world* of language, culture and communication – "everything must be permanently translated, submitted to translation. Everything must be translated, i.e. everything must be at all times reflexively negotiated, appropriated, transformed, subjectivized. To take over without translation means to take over reflexively, without thought, economically, fast culture, i.e. ephemeral cultural life, to swallow anything (in every sense) without chewing and digestion. […] TRANSLATION IS THE NEW PARADIGM AND THE NEW POLITICAL SCIENCE, the only one commensurate with the globalisation of the world" (Ghiu, 2015: 15). It is essential that we comprehend the concept of 'translation' not merely from the perspective of linguistics and semiotics, but in its entirety and complexity, as immovable part of the

fabric of contemporary social, political and cultural realities; as inextricably linked to traditions and mentalities; and as carved deep into history – because translation "emanates only from and as history: it is purely contingent, that is why it must be continuous and explicit […]. Translations are themselves historical, they age and must be restored" (Calotă, 2015: 12, Interview with Bogdan Ghiu).

The art of translation is today a mundane extension of communication and cultures; much as we may philosophy with regard to it, there is nothing philosophical about translation, as it is no longer the appanage of the elites, but a necessity, a fact, a tool for the many to decode and recode meanings, to 'translate translations' – "language itself is translation [;…] there are no languages, there are only idioms, *uses*" (Ghiu, 2015: 35-36), and to conquer as 'subjects' or fall as 'objects' – "WHOEVER TRANSLATES WIELDS, RULES – or at least is not unconsciously mastered, is merry, has more changes to be respected, is subject, not object" (Ghiu, 2015: 16).

The concept of 'legal translation' has been in the spotlight for quite a while, but its tapestry is only now beginning to fully surface in the context of the enlargement of the European Union, within the frame of which 28 Member States and national legal systems and 24 official and working languages are harboured. The peculiarities and difficulties related to the distinct, sometimes merely deceivingly similar legal systems, cultures, languages, to which add the issue of the EU law, which is, "quite simply, a *new* legal language" (McAuliffe, 2009: 106), that of the Eurospeak or Eurojargon (French) – which is "reflect[ed] in Eurotexts […], i.e. a reduced vocabulary, meanings that tend to be universal, reduced inventory of grammatical forms (…)" (Snell-Hornby, 2006: 142), as well as the issue of interpretation, alongside the closely related topic of subjectivity – all acts of interpretation involve a certain degree of subjectivity, intention and deliberateness, i.e. "defining the meaning of words involves choice and is not a completely value-free process" (Paunio, Lindroos-Hovinheimo, 2010: 398) and the linked matter of the "interaction of those cognitive factors that directly affect the entire process, namely, knowledge, experience, processes of decision making and problem solving, […] memory, motivation or, finally, creativity, as the result of the interaction of the above factors" (Kościałkowska-Okońska, 2011: 116).

The translation of legal terminology from one source legal language into a target legal language is a complex and difficult phenomenon due, firstly to the "system-specificity of […] legal language, [i.e.] within a single language there is not only one legal language, as, for instance, there is a single chemical, economic or medical language within a certain language. A language has as many legal languages as there are systems using this language as a legal language" (de Groot, 2006: 423). The meanings of words are not only subject to the evolution and change of language(s), but also to the particularities of the 'legal culture' they are either created or developed into. To understand and translate concepts presuppo ses thorough knowledge of the legal culture they arise from, which "[…] in Legrand's depiction, is focused on the accumulated professional traditions, styles of thought and habits of practice of lawyers but [which also] extends beyond these to stress their roots and resonances in much wider aspects of cultural experience" (Cotterrell, 2003: 150). The non-legal and non-linguistic factors which have to be accounted for in the 'legal translation' equation are incredibly diverse and unsettling, perhaps at times even incomprehensible or easily overseen. We often speak about the failure of legal translation due precisely to the fact that laws are carved deep into the '*mentalité*' and the 'social context' of a particular system. Pierre Legrand introduces the concept of '*legal mentalité'*, "making the argument that the laws of a legal

culture cannot be unpicked or disentangled from the meanings that arise as a result of the distinct cognitive structure prevailing within it […]" (in Hendry, 2014: 97). 'Place' or 'social context' plays an equally fundamental role in the creation of the meaning of legal concepts. Thus, according to Legrand, "'[p]lace […] is not a mere static backdrop to legal meaning: it is a dynamic constituent of it'" (in Hendry, 2014: 97).

The translation of law is, hence, so much more than the translation of legal language; language, and related semiotic and linguistic traps and complications, are merely the thinnest of the layers that make up this complex phenomenon. It is why the present article analyses legal translation as sub-branch of the umbrella-concept of 'legal transplant'. In order to understand the profound implications of the act of translating law, its successes and failures included, we must depart from the realm of linguistics and semiotics (whilst still acknowledging its importance in the process of translation) and account for the non-linguistic factors which play an equally important role in the process of translation. In this respect, the metaphor of the 'legal transplant' provides a larger and more comprehensive methodological and theoretical framework for the purpose of enlarging the spectrum of analysis as regards the act of translating law and the hereby inclusion of key non-linguistic factors which contribute to either the success or the failure of translation.

But before moving on to a different section of the paper which will explicate the concept of 'legal transplants', there still remain two unanswered questions to be further down exposed.

The first is concerned with the '*whos*' of translation, i.e. *who translates?* and *whom is it translated to?* The actors who partake in the process of translation also actively contribute to its alteration. The profile of all parties involved in the translation of law, i.e. the 'text producers' and the 'receivers', has undergone considerable changes due to the socially culturally and linguistically resonating phenomena of globalisation and information technology. The roles of legal translators have, for instance, changed dramatically since the beginning of the 20th century, from "traditionally act[ing] as […] mediator[s] between text producers and receivers in a sterile triadic relationship [to] succeed[ing] into converting [their] passive role in the communication process into an active one, finally emerging as […] text producer[s] with new authority and responsibility" (Šarčević, 1997: 87). We, therefore, speak about a revolution of the manner in which we perceive and understand once clearly-cut, distinctive roles and responsibilities, which we now see as hybridized and heterogeneous. The distinctness between the drafter, the translator and the reader has become paler and their role-playing less clearly delineated – for instance, "in the late seventies legislative reforms in Canada led to the introduction of new bilingual drafting method which have revolutionized the role of the legal translator by transforming him/her into a co-drafter with broad decision-making authority" (Šarčević, 1997: 87). Multi-languaging, digitalization and computerization have equally out the act of translation into new perspectives. In view of these changes, the legal translator's role in now more complex, but equally more unstable; similarly, his/her "relationship with the other text producers is now a dynamic one, in which there is mutual cooperation between producers, all of whom are encouraged to interact with the actual receivers" (Šarčević, 1997: 87). Hence, the questions 'who translates' and 'whom is it translated to' can no longer be regarded in isolation, as the boundaries between text-makers (drafter and translator) and text-recipients (specialist interpreter – judge and non-specialist reader – the wider public) begin to fade away or be

somewhat differently renegotiated in the age of supranational law-making and multilingualism.

Why is law translated? Are there other reasons besides the obvious ones related to the transfer of legal information from one legal system into another so that it may be understood and appropriately applied to particular circumstances, in the light of specific interpretative techniques? We may dare say that there are, especially if we think of legal translation as an act of cultural manifestation or as an expression of social and linguistic identity. Although such concepts as culture, identity, mentality or law may be countlessly divided into further sub-concepts and related theoretically-philosophical enterprises and endeavours, there can be no doubt about their existence and interconnectedness. As long as they do not become "a priori and untreatable *fixisms*" (Smeu, 2013: 2), the above categories influence the act of translation and its performer uninterruptedly. What then appears to be simply the translation of a legal text is in fact the unexpectedly complex act of legal culture carry-over; what seems to be the quest for equivalence in legal translation may in fact signal a search for cultural, social or political similitudes and compatibility; ultimately, what only appears to be a translation of language, is in fact the translation of a language which will always carry within it the imprint of the community, alongside its historical and geographical reverberations and its 'intimate structures' reflected as identity. What ought to be finally understood in the context of this discussion is that law is essentially a worldly phenomenon, a live mechanism of regulation which responds to societal, cultural, political and economic evolution and changes. Law, so inextricably bound to the world, comes to life through language which cannot but account for the extra-legal metaphor of the world and mirror this complex relationship accordingly.

Translation as Transplant or the Language of Legal Cultures and Identities

According to Pierre Legrand, the verb 'to transplant' refers in law to "the transfer [which] occurs across jurisdictions: there is something in a given jurisdiction that is not native to it and that has been brought there from another" (Legrand, 1997: 111). There is an immediate set of question which Legrand poses after making the above statement and which is presented here for the purposes of a subsequent analogy: "What, then, is being displaced? It is the 'legal' or the 'law'. But what do we mean by the 'legal' of the 'law'?" (Legrand, 1997: 111).

If we ought to consider translation as the transplantation of concepts from one legal language into another, we should ask ourselves similar questions: what, then, is being transferred? A concept pertaining to a source legal language into its host legal language equivalent? But what exactly do we mean by the transfer of legal concepts from one language into another – i.e. do we only refer to issues of linguistics and associated challenges in legal translation (vagueness, ambiguity, approximation or untranslatability), or do we also account for the "social, historical [and] cultural substratum" (Legrand, 1997: 112) of the borrowings? To both, actually. To the need of understanding and overcoming language-related problems, adds the more compelling realisation of the fact that, via translation, circulates a multitude of sometimes irreconcilable cultural peculiarities, political views and interests, social traits, historical and geographical specificities, as well as certain identity-related values, all of which have helped shape the meaning, functions and scope of one concept within the frame a particular legal system and all of which will continue to linger on as indelible residues in the substructure of the concept, even after it has been transplanted, i.e. translated. And it is precisely due to this non-linguistic load that is being carried over during the translation process that the act of

translation sometimes fails to accomplish and the transplanted concept is referent to a 'legal irritant' (Gunther Teubner prefers to use the phrase 'legal irritant' instead of the metaphor 'legal transplant', due to lack of suggestiveness of the latter – "transplant makes sense insofar as it describes legal import/ export in organismic, not in machinistic, terms. Legal institutions cannot be easily moved from one context to the other, like the 'transfer' of a part from one machine into the other. They need careful implantation and cultivation in the environment," in Teubner, 1998: 11). Thus, "the process of translating concepts of the imported law into the language of the importing society [can] be a cause of failure" (Guțan, 2014: 296) for at least two reasons: "because it does not succeed in underlining the entire semantics and transport the entire cultural baggage of the exporting society into the importing one, or because, *per a contrario*, it brings with it too much cultural baggage into the importing society" (Guțan, 2014: 296-297).

Legal translation hence presupposes not only the import of language(s), but also the import of 'institutions and ideas' (Guțan, 2014: 286) and fragments of foreign, more or less similar legal cultures which "do not simply enter a new legal system as whole entities but rather set in motion a long and turbulent set of reactions within the host legal system that both reshape the host legal system and the transplanted law" (Riles, 2006: 796).

Ironically enough, and in spite of the general agreement that the transplant of law presupposes a displacement of a part of the original legal culture as well and a re-adaptation of that culture to the new legal environment, there is little consensus as to what exactly is meant by the phrase 'legal culture'. We all acknowledge its existence, but no one, including its coiner, N. Friedman "who has recently manifested reservation as regards the necessity of its existence, by taking into account its abstract, slippery nature and the difficulty of defining it" (in (Guțan, 2014: 328), seems to be able to confer upon it a practical definition, due precisely to the fact that it encapsulates a kaleidoscope of historical, social, cultural, political and economic nuances filtered through the individuals' power to comprehend and interpret. Legal culture can be understood as the way "in which a distinct society/ community, through intersubjective communication understands/ interprets law on the basis of the same stimuli, as well as the way in which a society/ community talks/ writes about law on the basis of the same language. […] legal culture equally considers the way in which the actors of law act in relation to their own epistemological vision in an institutionalised framework" (Guțan, 2014: 329). The referential instability of the concept of 'legal culture' is hence brought about by the ideological, epistemological, hermeneutical, linguistic, institutional, behavioural and interpretative non-legal categories. Legal culture does not solely refer to the 'internal culture' of legal specialists; "its normative power derives from the relationship between political, social and legal traditions and law, legal institutions, practice and the informal experience of legal culture – inside and outside of the legal community: deeply felt, ingrained attitudes about what law is and should be, and how it should translate into institutions, institutional roles and procedures and rules – in short, a legal system" (Brants, 2010: 2).

Legal systems create law that can and, ideally, is applied to the social reality of the day. Yet the changing nature of societies, their continuous evolution, amplifies the difficulties inherent to the interaction between one legal system and the other. It is difficult to harmonize and reconcile two legal systems, which may indeed adhere to the same legal family, but could nonetheless have evolved differently, in accordance with their own histories and necessities. It hence becomes all the more understandable that the

meaning of a word cannot "survive the journey from one legal system to another" (Legrand, 1997: 117). There is no imaginable way in which a concept, be it faithfully transposed from the original legal culture (if at all proper to that importing legal culture), can remain unfettered upon entry into the host legal system. This is due to the fact that, "'[i]n order to transport a single word without distortion, one would have to transport the entire language around it'. Indeed, '[i]n order to translate a language, or a text, without changing its meaning, one would have to transport its audience as well'" (Hoffman, 1991: 175 in Legrand, 1997: 117).

It is, therefore, the dependence of a legal concept on the source legal system of the importing society that causes confusions, ambiguities or faulty adaptions of the legal transplant. In view of this, higher importance should be granted not to the process of transplantation, or translation, in itself, which is ultimately a 'mechanical' one, but to the legal cultural background (Guțan, 2014: 292). Thus, if the imported law is so tightly linked to the initial cultural background, it will give leeway to zero malleability, will therefore be 'imposed' and will consequently become an 'irritant' (Guțan, 2014: 329). In the end, "the law of the importing society will not completely assimilate this imported law, instead it will make leeway for 'an evolutionist dynamic in which the meaning of the external rule will be rebuilt, and the internal context will suffer a fundamental change'" (Teubner, 1998: 12 in Legrand, 1997: 292), such as is the case of the process of the unification of law in the EU, burdened with legal, political and cultural conflicts and divergences. On the other hand, those legal words which come into the new culture by translation will have to bear the burden of being subjected to a "different rationality and morality" which will ceaselessly pressurise them into changing and adapting to their host system. "Thus, the imported form of words is inevitably ascribed a different, local meaning which makes it ipso facto a different rule. As the understanding of a rule changes, the meaning of the rule changes. And, as the meaning of the rule changes, the rule itself changes" (Legrand, 1997: 117).

Translation as Transplant: 'Form without Substance'?

The translation, or transplantation, of foreign concepts is not new to the Romanian legal system. Admittedly, the 'often irrational' (Guțan, 2014: 306) import of models, institutions, concepts has become ever so more important since Romania is a Member State of the European Union, the country's legal, political and economic culture thus being aligned to the requirements and challenges of a supranational system, often itself the playground of divergent political forces and interests, a "space of potentially conflicting interactions between national legal cultures and systems, on the one hand, and between the latter and European law, on the other hand" (Guțan, 2014: 306).

Nonetheless, as early as the 19th century, on the brink of a newly forming, modern legal and political Romanian culture, strongly influenced by Occidental models, there already were warnings against the thoughtless, too rapid import of foreign ideas and concepts into the yet too young Romanian legal culture. Much as today, mimesis, the lack of a thoroughly designed transitional framework which would gradually accommodate the wave of borrowings, the absence of any long term education or training which would instil the new generation of specialists with vision and knowledge regarding the old ways, as well as the new, and the more general disinformation of popular actors were prevalent. Thus, "sank up until the beginning of the 19th century in Oriental barbarism, the Romanian society began to awaken from its lethargy around 1820"… infused with the "ideas of the French Revolution"… our youth began to emigrate towards those "fountains of science

in France and Germany"… yet being only able to grasp the "outer lustre. […] not-ready as they were, our youth, stunned by the great phenomena of modern culture, could only [grasp] the effects, but not also the causes, they could only see the outer forms of civilisation, but could not [comprehend] the deeper historical fundaments, which have necessarily produced those forms and, in the absence of which, they could not have existed" (Maiorescu, 1868 in Filimon, 1998: 104).

The dangers and failure of transplants about which too little was known or a too superficial knowledge was available to the importers of the day were hence an intensely debated topic. In his 1868 article, "În contra direcției de astăzi în cultura română" ["Against the Contemporary Direction in Romanian Culture," *the present author's translation*], Titu Maiorescu warned against the "falsification of etymology and [Romanian] philology" (Maiorescu, 1868 in Filimon, 1998: 107), as a result of such publications written in Latin which "were aimed at showing strangers the cleanness of the language spoken by the Romanian people, but which [in fact] showed a language that has never been and will never be spoken by the Romanian people" (Maiorescu, 1868 in Filimon, 1998: 107).

Then and now, questions related to form and substance, to what a legal culture borrows, to what end and how it proceeds to adapting the imported forms (be they larger conceptual models, or smaller terminological units) bear significant relevance. Can the "assumed foreign institutional frame" be adjusted to the "internal social forces" (Schifirneț, 1996: 53) which make up the substance to which Maiorescu refers? What is more dangerous when "empty foreign forms [are] produced or translated" – "the lack of any fundament whatsoever [of the act of production or translation], or the lack of any necessity of this fundament in the public" (Maiorescu, 1978: 150 in Schifirneț, 1996: 53)? Do we simply copy, with regard to neither the borrowed nor the borrower, forms and models (for instance, Maiorescu asked himself whether the constitutionalism taken over from England could truly "adapt to the real life of the Romanian people," in Schifirneț, 1996: 54) in the absence of any effort to set the basis of our own original creations (in Schifirneț, 1996: 54)?

The translation of law hence presupposes bridging this legal language to the other, this legal culture to the other, this legal mind-set to the other. One in the absence of the other equals failure. There can be no form without substance; evolution must lie upon 'enduring fundaments' and not on the "immita[tion] and reproduct[ion] of the appearances of culture, […] confident in that the fastest [approach will also ensure the realisation] of freedom in the [post]modern state" (Maiorescu, 1978: 148 in Schifirneț, 1996: 54).

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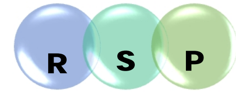

ORIGINAL PAPER

The Autonomous Administrative Authorities in the Romanian Legal System

Radu Cristian Dragomir[*]

Abstract
The autonomous administrative authorities were first created and implemented in the United States of America, this type of authorities was adopted also in Europe. The autonomous administrative authorities appeared recently in Romania, once the 1991 Constitution was adopted, exercising their attributions in full independence. The autonomous administrative authorities currently form an institutional system within the frame of public administration, having statutory guarantees and certain powers that allow them to perform actions without being politically influenced or forced in any way by different economic or professional interest groups.

Keywords: *Administrative authorities, constitution, organic law, rights, powers, non-jurisdictional*

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Introductive aspects regarding autonomous administrative authorities

The reform and modernization of governmental institutions and public administration has been a constant concern for the developed or developing economies, especially for the last three decades. In this situation, the states governments found themselves dealing with the need of identifying a solution for a series of problems such as: the need to provide with public services for lower costs, a continuous decline of budgets, the need to reform public institutions so that the desire to modernize the public administration would be complied, the difficult task of correlating the actions performed in the business environment or the private sector with the cumbersome activity developed by the public institutions. This was the moment that the autonomous administrative authorities appeared, authorities that are still forming a set of original structures developing their activity within the framework of the state administration apparatus. In this regard, the major concern of the legislator was that to establish administrative authorities and bestow them with autonomy so that they contribute to the endorsement of a governmental policy that is transparent and accountable with regards to its decision making process and method of action.

Although the term „authority" from the collocation „independent autonomous authorities" may induce a certain state of strictness and lack of correlation with democracy and the freedom of action of speech, this is only a psychological obstacle generated by the difficult transition between communism and democracy, the main role of these structures being that of overseeing compliance with the principles of the democratic state.

The origin of autonomous administrative authorities is found in the United States of America, where, in 1887 it was first debated the establishment of such authorities. This is when, through the Interstate Commerce Act, the first independent agency called Interstate Commerce Commission was founded. The goal was to create an authority that belongs to the executive power but that is (relatively) independent from the President and the executive power subordinated to the President in order to create a pole of independence within the executive power itself. Through this move began a transformation towards a greater complexity and organization of executive power (Veress, 2011). Gradually, this type of administration was adopted and integrated in Europe as well. In Romania, following the revolution of 1989 and once the Constitution was adopted in 1991, a series of distinct principles were implemented, in order to ensure regulations that were elaborated especially for a democratic state and the competent authorities that would ensure the regulation, development and compliance with the core values that a constitutional state tends to focus on. The implementation of the system of autonomous administrative authorities in Romania had as inspiration the French system, with the difference that the French legislator used the term „independent administrative authorities", whereas the Romanian legislator used the expression „autonomous administrative authorities". As any action, the initiation of autonomous authorities in the law systems did not lack its fair share of criticism, as it was considered that it may lead to the undermining of the executive power and consequentially to the state administrative activity to become unique. This criticism was without reason and could not lead to the elimination of administrative authorities with autonomous character. The autonomous administrative authorities, while not recently developed, continue to be a current concern, being from our point of view a theme of great importance today that has not been properly debated enough by the specialized literature.

The term, the regulation and classification of autonomous administrative authorities

But establishing autonomous administrative authorities, the Romanian legislator set the basis of an actual legal mosaic in view of the complexity of the functions with which it invested the institutions that fall into the category of autonomous authorities, but also the diversity of the domains that enter their area of influence. The complex nuance of independent administrative authorities is supported by the sensitivity of the fields of activity of the domains in which they operate, the rules of establishment and of running their activities as well as the powers with which they have been invested. We agree with those who believe that the presence of the autonomous administrative authorities has a great impact on solving the problems and allow a better administrative governance, by eradicating organizational inefficiency and offering fair, transparent and efficient public services. Regarding the phrase „autonomous administrative authorities", we found that in the specialized literature there is no universally accepted definition, and any attempt to define this phrase is quite cumbersome.

There were a series of opinions regarding the term of administrative authority. Therefore, some authors consider that the autonomous administrative authorities are only those control bodies that have a real power of decision, whereas other authors classify as autonomous administrative authorities even those bodies that exercise their prerogatives by other means than issuing decisions (Van Lang, Gondouin, Inserguet, 1999: 37). The French doctrine considers that the autonomous administrative authorities represent in fact „those public non-jurisdictional bodies, to which the legislator or constituent, gave the mission to monitor or organize sensitive sectors, to ensure compliance with certain rights of those administered institutions that come with guarantees and statutory powers that enable them to perform their specific responsibilities without being subject to influence from the Government" (Gentot, 1994:16, apud. Gîrleşteanu, 2011: 41). Some Romanian authors, including Professor George Gîrleşteanu, agree with the French definition due to the fact that it presents an overall vision that encompass a broader spectrum of activity carried out by the autonomous administrative authorities. As far as we are concerned, it is fair to say that, so far, the French doctrine offers the best perspective on how to define autonomous administrative authorities, but as in any other action performed, there are some abnormalities that may appear, and the autonomous administrative authorities activity is no exception to this reality, therefore, in order to prevent the abuse of power that may occur in the exercise, the documents and the decisions made, must be subject to effective control, a matter envisaged by the legislator, when he established the rule according to which all documents issued by the administrative authorities, that violate fundamental legal rights and principles, may be subject to the control of administrative contentious by the party whose interests may be prejudiced by these documents or decisions. The importance of autonomous administrative authorities results from the legislator's intention and is given by the double approach through the Romanian Constitution as well as through organic laws. Thus, art. 117 par. (3) of the fundamental law stipulates that the administrative authorities may be established by an organic law. By corroborating the provisions of art. 116 from the Constitution with art. 29 of Law no. 90/2001 on the organization and operation of the Romanian Government, subsequently amended and supplemented (Official Gazette no. 164 from 02.04.2001), we gather that the autonomous administrative authorities are organised independently of any ministries and other competent authorities that are subordinated to the Government, and the

Government maintains a collaboration relationships with the this type of authorities. The fundamental ambiguity in understanding autonomous administrative authorities is given by the fact that although related to the area of action of the Government, unlike the Ministries and other specialized organizations in its subordination, these authorities are independent and are not submitted to hierarchic control exerted by the Government this nuance making them a true legal oxymoron (Senate (France, n.d.), because although they operate and are regulated along with the other components of the Government, these authorities are not subordinated to it and cannot be controlled by the Government.

It is not without reason that along time, in French practice, these autonomous administrative authorities have been considered as unidentified legal objects or as an institutional category of an undefined contour, as a result of the fact that although included in the category of administrative institutions, they do not undergo hierarchic control from the Government their relation being one of cooperation, such as in Romania. To a great extent, the public assignments of the Government are the privilege of the Ministries under its subordination, but nevertheless, a series of these assignments are attributed, by the will of the legislator, to autonomous administrative authorities who perform public assignments independently.

In Romania all categories of autonomous administrative authorities are established on the basis of public law. This type of administrative authorities are organized in our country as central public administration bodies, the only difference is that they operate independently in view of exercising their executive powers that have as main object the law enforcement operations, ensuring the proper functioning of certain public services, in this case there is no scenario involving the existence of any designated bodies or state authorities with higher status and command, having the their own governing bodies and special responsibilities that are separated from other central administrative bodies. A number of autonomous administrative authorities are nominated by the Fundamental Law, namely: the Ombudsman (art. 58-60), the Legislative Council (art. 79), the Supreme Council of National Defence (art. 119), the Superior Council of Magistracy (art. 133-134), the Court of Auditors (art. 140), the Economic and Social Council (art. 141). There are autonomous administrative authorities that are not expressly mentioned in the Constitution, but they were created by organic laws, this category includes: the Competitiveness Council, the National Audiovisual Council, the National Integrity Agency, National News Agency AGERPRES, the National Supervisory Authority for Personal Data Processing, The Permanent Electoral Authority, Private Pension System Supervisory Commission, The National Council for the Study of the Security Archives, National Council to Prevent Discrimination, The Romanian Intelligence Service. Depending on the internal structure of autonomous administrative authorities (Gîrleşteanu, 2011: 41), there are: unique authorities, such as the Ombudsman; collegial authorities, those authorities that represent a Council operating in the name of a specific Authority or a Service. Depending on the scope of activity, the autonomous administrative authorities were qualified as qualified as bodies of the field (Iorgovan, *2005:* 437), organized as: synthesis bodies (the National Supervisory Authority for Personal Data Processing); coordination bodies (the Supreme Council of National Defence); control bodies (Court of Auditors).

The quintessence of autonomous administrative authorities is that they manage to maintain a balance between different branches of the Government (executive, legislative, and judiciary) (Iorgovan, 2005*:* 436.), representing the key to democracy and the means of building a constitutional state. The purpose of these authorities is not a

formal one, and tends rather to substantiate itself by defending and complying with the values set for the constitutional state. Although the administrative autonomous authorities operate in different fields of activity they pursue the achievement of a common goal.

The usefulness of this type of authority lies in the fact that it takes over a part of the Government responsibilities, in key areas, where there is a need for independent and impartial experts, thus without understanding that the legislator also considered the limitations of their executive powers, or the fact that the Government delegated some of its responsibilities to be carried out by other bodies. In their entirety these authorities contribute to the effectiveness of administrative measures and also to the decisional transparency of the activity carried out by the public administration. On the other hand, we must consider the fact that once these authorities were created, they have significantly limited the influence that the political system had on the public administration, even by cutting out their influence using the legislator's intention. We shall not generalize this statement as the influence of the political environment is difficult to eradicate, but a significant progress has been made in this regard.

Features of autonomous administrative authorities

The main features of autonomous administrative authorities are given by the fact that: they represent public structures, as a result of their regulatory activity as well as the purpose for which they were created. In order to achieve the purpose for which they were created, the legislator offered them guarantees of independence, so that the way they operate shall not remain subject to a purely formal nature, thereby contributing to ensuring the practical levers in operation, as well as for avoiding situations where the political environment could get involved and to be free from all pressures made by certain social or economic interest groups; they represent administrative entities that should not be confused with the jurisdictional ones. This distinction is necessary, even if for some of them, the legislator intended to give the necessary means to perform sanctioning actions, in order to facilitate their activity, this situation applies to: - Competitiveness Council – that, in order to maintain a normal competitive environment, imposes sanctions for illegal documents and actions that influence this type of environment, as well as for any type of documents and actions that may prejudice the achievement of their tasks, (Law no. 21/1996, Official Gazette no. 153 from 29.02.2016); the National Audiovisual Council has the responsibility to ensure a free expression environment and monitors the Audiovisual activity for the viewers, imposing sanctions when non-compliance with the audiovisual legislation is discovered; the Superior Council of Magistracy is the institution that acts as a guarantor for the independence of justice, imposing sanctions for disciplinary liability of judges and prosecutors; has an autonomous character by virtue of the fact that they are not to subordinated to the Government and there is no other higher hierarchical state authority to which they have to report to. However, this autonomy that was granted to them, should not be seen as a super power. Although their actions cannot be undone by another public authority that has not judicial character , it does not void the rights of the subjects from the public or private sector, that consider themselves injured by an act of the authorities to address the court by using contentious administrative proceedings. Therefore, "any person that considers him/herself aggrieved in relation to his/her rights or interests, by a public authority, through an administrative document or the unsettlement within a legal term of a legitimate request, can address the competent administrative court for the cancellation of the document, acknowledgement of the claimed right or of the legitimate interest and the remedying of the caused damage. The

legitimate interest can be both private and public" (law no.554/2004, Official Gazette no.1154 dated 7.12.2004).

The fact that these authorities depend on the terms of ensuring funding sources offered by the Government, as they are acting in the interests of the state and do not aim at achieving any revenue, therefore they do not have their own financial means, this is not against and does not affect in any way the autonomy that was granted to them. Even in these circumstances they have a financial autonomy that comes as an institutional guarantee of their independence towards the state, from which it results that they have enough resources to ensure the full exertion of their competences and that they have a position of decision regarding the method of using these resources (Gîrleşteanu, 2011: 51). The autonomous administrative authorities have their own budgets that they can use without restrictions in order to ensure the accomplishment of the goal for which they were built. This freedom cannot be absolutized as it is not unlimited, given the fact that following financial resources the control exerted by the Court of Auditors of Romania, who checks the effectiveness and transparency of the uses of these financial resources. In other words, their autonomy has in view their organic independence (who is appreciated as depending on more factors such as the method) of composition, the statutory rules and the characteristics of the mandate) as well as the functional independence (that is based on two elements: the absence of any hierarchical control over these authorities, as well as the organization and operating autonomy) (Lazăr, 2010: 54-55).

Another argument in favour of the autonomy of these authorities is given by the fact that their members dispose of a series of guarantees of the their independence and refers mainly to their irrevocable, innamovable, incompatible nature without which political mixture and those coming from various groups of interests would be hard to avoid, and once infiltrated, almost impossible to eradicate. Autonomous administrative authorities are not a conglomerate of experts organized into committees meant to establish, clarify or evaluate the facts or circumstances, or to make judgments of value, these being endowed viably with decisional powers, power investigation power of approval, power and issuing recommendation and issuing views, regulatory power, referring to the security bodies of the State and even sanctioning bodies (http://www.vie-publique.fr/decouverte-institutions/institutions/administration/organisation/etat/aai/qu-est-ce-qu-autorite-administrative-independante-aai.html). The term „powers" of autonomous administrative authorities refers to the leverages that the legislator understood to make available to autonomous administrative authorities in order to ensure that the activity they undergo is within the context of the production of actual effects and are not limited to observing facts and issuing opinions and recommendations for which no means are found to transform them into actions. The power of investigation refers to the fact that in carrying out the overall control and supervision of a specific type of sector, certain authorities must be informed of the realities in that area, in order to have ensured free access to all information and public documents, and from another perspective, these institutions actually have legal competence on conducting investigations, surveys and inspections. This power is held by the Competitiveness Council, the National Agency for Integrity, the Ombudsman, the Economic and Social Council.

The Power of Endorsement refers to those autonomous independent authorities that following the exercise that has been established for them by the legislator, they are issuing optional letters - materialized in advisory documents (Legislative Council and Economic and Social Council) or mandatory - whose absence can be considered as an

abuse of power and consequently may result in the annulment that document (the Supreme Council of National Defence).

With regards to consultative endorsements, they refer mainly to the fact that many state bodies consult autonomous administrative authorities with regards to problems from specific domains that they wish to regulate, in this case not being forced to follow the guidance given by autonomous authorities. On the other hand, there are cases in which state authorities cannot legally act until obtaining the endorsement of these authorities, even if they are not held to respect it. For a better understanding we mention the case of the Legislative Council whose main attribution is hat of analysing and endorsing normative projects in view of submitting them for legiferation or adoption.

We should mention that things are different in the case of mandatory endorsements, case in which a pubic authority invested with the power of decision must consult an autonomous administrative authority because on the contrary a decision taken without the mandatory endorsement is considered vitiated and can be cancelled for power abuse.

The strength of recommendation and the issuance of views that enjoy the recognition of the legislator, approaches the power of approval in the sense that basically aims to adopt a certain position, a certain type of approach concerning a reform or a legislative amendment. This power is the prerogative of the Ombudsman, the Competitiveness Council, the Economic and Social Council, authorities which may raise points of view, recommendations, may be referred to or may take notice in issues related to national interests. Given the fact that the recommendations do not have normative executory force, they cannot create rights and obligations for the state public authorities, if not explicitly specified otherwise by the legislator. Regulatory power is connected to the knowledge that some of the autonomous administrative authorities have concerning the proclamation of general rules and impersonal generating rights and duties for individuals and legal subjects. This power must not lead us to the thought that these authorities may replace the legislator or that they are empowered to legislate a certain industry or field, but only about their opportunity to organize compliance and enforcement of the law, this being a materialization of administrative nature, thus being a „limited and subordinated" power (Gentot, 1994: 74, apud. Gîrleşteanu, 2011: 60). The legislator included in this category of authorities: the Competitiveness Council, that in its field has the ability to regulate the application, organization and execution of the law that is the subject of its area of activity, and the Supreme Council of National Defence.

The power of referring to the state powers - this power was given to the Competitiveness Council under Competitiveness Council Art. 8 paragraph (2) of the Competitiveness Law no. 21/1996, republished. Thus, when it is found that the central or local authorities or the central government institutions, or entity to whom they have delegated powers, do not comply within the time prescribed, the measures ordered by the Competitiveness Competition decision in order to restore competitive environment, may use contentious administrative proceedings to the Bucharest Court of Appeal, asking the court, where applicable, the cancellation, in whole or in part, of the document that led to the prevention, restriction or distortion of competition, compelling the authority or institution concerned to issue an administrative act or to perform some administrative operations (law no. 21/1996, Official Gazette no. 153 of 02/29/2016). The power to sanction refers to the ability of those established by the legislator to those autonomous authorities which may in sanction the slippages of the subjects of law from the legal norms established in the area where they carry out their activity. The best examples of authorities

that enjoy this power are the National Broadcasting Council and the National Council to Prevent Discrimination.

Given the range of powers granted to autonomous administrative authorities and particularly the power of sanctioning, we might fall into the trap of a rigid approach of these authorities and tend to minimalize the importance and value they hold in a democratic society. We must take into account and not forget that the power of sanctioning with which autonomous administrative authorities have been invested has the role of penalizing behaviours that compromise on legality but also to bring things into normality.

Leadership and powers of autonomous administrative authorities

Despite the fact that the autonomous administrative authorities are part of the authorities of the central state administration, unlike the latter, they have legal personality and their leaders are those who represent them in dealings with other authorities, public institutions, natural or legal persons, they represent their interests in court, with the main credit quality. Some autonomous authorities have their own leadership bodies established in the Constitutive Document, have their own organizational structure and special responsibilities that, as we have discussed before, makes them different from other specialized institutions of the central government. For another category of autonomous authorities, the Romanian Constitution provides for the appointment of governing bodies, such as the Romanian Intelligence Service where the appointment of directors is made by Parliament following a proposal from the President [art. 65 paragraph (2), letter h)]. The establishment or appointment of the leadership/management of autonomous authorities must actually be free of the political influence. The leadership of the autonomous administrative authorities may be collegial or single (Ombudsman). In the vast majority of cases these independent authorities appear as a Council (Competition Council, the Supreme Council of National Defence, the National Audiovisual Council), a Committee (Supervisory Commission of the Private Pension System), an Agency (the National Integrity Agency, National News Agency ROMPRES), of an Authority (the National Supervisory Authority for the Processing of Personal Data, the Permanent Electoral Authority) or a service (Romanian Intelligence Service), that form of collegial bodies (Gîrleşteanu, 2011: 41). The Leaders of autonomous authorities differ from typical ministries by various titles evidenced by names such as: Chairman, Director, Ombudsman. It should be noted that that no matter who makes the nomination of leadership for the autonomous authority (the President of Romania, the Standing Bureaus of the two Chambers of Parliament), it should be done respecting the principle of depoliticization, so that individuals proposed to fill leadership positions could not be members of political parties. In carrying out their duties, the autonomous authorities also carry out a series of tasks, some of which fall under the general functions carried out by the executive bodies of state, here bringing into question the specific executive activity that that involves - organizing the execution and enforcement of the law, but also ensuring the functionality of services and sometimes even the exercise of powers of a judicial nature (ANFP, n.d.). By jurisdictional competence we refer to the possibility of autonomous administrative authorities to determine behaviours and punish deviations from normality, and not to the power of jurisdiction in the true sense of the word, while others are strictly specific to autonomous administrative authorities, being described in detail in the laws/ordinances that regulate their activity and operation.

The fact that the activity and attributions of autonomous authorities are established by laws and ordinances that are issued by the Parliament or Government must not give us the false impression that they have a hierarchical patronage over them. But as any structure of the state, this category of administrative authorities must respect the law of the state, and any deviation from this principle shall be corrected. On the other hand, the organizatorical independence and functional authority that independent authorities have shall not determine us to disregard the will of the legislator and consider autonomous administrative authorities as being a self-standing power of the state. Both the organizatorical independence and the functional autonomy have appeared as a leverage granted to autonomous authorities by the legislator who wanted to ensure that this category of the strategic and sensitive sectors is protected against politics and also to grant them enough weapons to be able to stand the pressure from the external environment who could disrupt the activity of the domains above mentioned.

Conclusions

Autonomous administrative authorities represent one of the modern mechanisms for achieving the rule of law, being considered an innovation and a response given by the democratic state to the new social order. Their appearance is justified by the necessity of promoting a modern method of governing transparently, by consultation and negotiation. Their essential characteristic is hat they do not depend or are not subordinated to any of the three state powers: legislative, executive or of the court of law, which is a main condition for ensuring balance in the abilitated sectors. These autonomous authorities have a major role in the process of establishing rules and organizing the categories of sensitive sectors having a significant economic, political or social impact in which the Government does not wish to get directly involved, but where" neutralization" of politics is absolutely necessary, helping also to resist pressures of different economic and social interest groups. Thus, an autonomous authority may take binding decisions, which distinguishes them from courts whose decisions are enforceable under the law, affecting only with the parties and their successors and being opposable to third parties. In exercise of the powers they have been granted, the autonomous administrative authorities mediate between state powers, between the government and the opposition and last but not least, between the state and the civil society. This missing that was granted involves the possibility to monitor, organize, verify and control the method of action of the entities that develop their activity in the field in which these authorities were abilitated by the legislator and despite the guarantees of independence that they offer, they are a form of intervention of the state in society. This intervention is however justified by the necessity of ensuring and preserving social order and does not oppose the principles of the state of law. If any inadvertencies or deviations from normality are noticed, the autonomous authorities can apply corrections for any behaviours that deviate from legality and to reinstore order and conformity and equal and fair rules for all participating actors. This is one of the distinctive particularities of autonomous administrative authorities as compared to other administrative authorities as autonomous administrative authorities are called among others to ensure a climate of trust to the judges from their area of influence. Meeting all of these attributes is possible and guaranteed, given the fact that autonomy is effective and is acting without being subject to or controlled by any another authority, maintaining a collaboration relationship with the Romanian Government. In summary, we could say that autonomous administrative authorities are called upon to contribute in offering a guarantee to the public opinion with regards to the impartial and prompt

intervention of the state in the fields where they operate, while in correlation and in accordance with daily realities. Through the autonomy and specialization that they benefit from, autonomous administrative authorities have the capacity of contributing to an efficient administration in a dynamic society that needs to continuously adapt to the change.

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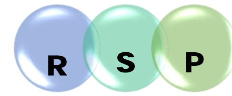

ORIGINAL PAPER

Democracy Assistance - Bulgaria and the Council of Europe (1989-2007)

Teodora Kaleynska*

Abstract

The process of democratization in Bulgaria, started November 10th 1989, ended with the Bulgaria accession at EU in 2007. The paper analyses the dynamics of the process of Europeanisation in the country and its influence of the main political actors (political parties, formation and development of the institutions and the civil society). The paper presents the international support for the process of democratization and democratic consolidation, mainly of the Council of Europe. The main questions seeking answers are: What are the characteristics and levels of development of the political system in its transition from authoritarianism to a stable democracy? To what extent is the process of democratization in Eastern Europe and especially Bulgaria influenced by international factors and international organizations? To what extent do international organizations hold roles as creators of stability in the region? The role of the Council of Europe in Bulgaria's road to democratization is summarized.

Keywords: *Council of Europe, Bulgaria, democracy assistance, institutions*

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Introduction

The process of democratization in Bulgaria, started November 10th 1989, ended with the Bulgaria accession at EU in 2007. The key questions that need to be addressed are to what extent the democratization in Bulgaria has been under the influence of international factors. It has been mainly noted how the Council of Europe as an active international organization and the Bulgarian application for membership played a crucial role in creating sustainable democratic institutions, promoted the development and strengthening of civil society and formed conditions for democratic development institutions, expanding their capacity conditions existence and stability. What effect does the Council of Europe have on Bulgarian fledgling democracies and developing democratic institutions, the introduction and promotion of democratic forms of decision-making and the functioning of a democratic political system? How is the civil society developing in Bulgaria, what stages is it at and how is a sustainable network of NGOs that protect, safeguard and develop democratic values created? Does civil society participate through its projects in the decision making process and what kind of a mechanism role for information and education in democratic values does it play?

Methodology

It is important and accurate before analyzing the Bulgarian case and the elements and techniques of democracy assistance of the Council of Europe, to define the actual approaches (academic and institutional) and explain the concepts on the assistance of the international organizations towards democracy. In academic debate the topic of the impact of international organizations on the democratization process is well defined. A number of authors such as Whitehead (1996), Levitsky (2005), Way (2005), examined the influence of international organizations on the democratization effect mechanisms between external and internal factors through various stages, the dynamics of democratization in the target countries and the change of international organizations' strategies. There have been numerous research studies conducted on the influence of the process of democratization by individual international organizations as the European Union (EU), United Nations (UN), the Organization for Security and Cooperation in Europe (OSCE), the US Agency for International Development (USAID), the European Bank for Reconstruction and development (EBRD), International Monetary Fund (IMF), North Atlantic Treaty Organisation (NATO), the World Bank (WB) – (Grabbe (1999), De Senarchens (2001), Woods and Narlikar (2001), Azpuru, Finkel, Linan, Selingson (2008).

Among the numerous studies on the assistance for new democracies offered by the EU, the UN, the international financial institutions and USAID, those dedicated to the Council of Europe, are relatively few. They primarily explore mechanisms of internal interaction of the Member States, the functioning of the institutions of control and balance of membership, the interaction of the Council with other international organizations. However, the impact of the Council on the process of democratization is not among the studied subjects (Konstantinov, 1997; Romer and Klebes, 2007). For example, Filipova and Gizinska (2007) propose to examine the impact of the Committee of Ministers on the Council of Europe. But this topic is focused on functional characteristics and the international support for democratization is paid little to no attention. The limited number of research studies defines the innovation of the selected topic here. The subject of this

paper is the impact of the Council of Europe to bring an institutional culture in democratising societies, including in the Bulgarian political and civil society; the impact of the Council of Europe to democratize the institutions and intermediary organizations in Bulgaria; its contribution in creating a legal framework of the Bulgarian transition based on basic democratic values and the consolidation of the party system and the nascent civil society.

Key questions that arise in the analysis of Bulgaria's membership in the Council of Europe are related to the extent to which: The Council of Europe has clear specificity of impact unlike other International organizations, which it administers through an innovative approach of influence in the country; The Council of Europe has a visible impact on the democratization processes in Bulgaria; The Council of Europe as a democratic assistance to Bulgaria, applies atypical mechanisms and creates new forms of influence; When supporting the Bulgarian nongovernmental sector, the Council of Europe recreates the key priorities and areas of its activity by stimulating the creation of new organizational units that are not typical for the NGO sector. At various times it creates an opportunity for them to act as an intermediary on the one hand between itself and the third sector and on the other – between itself and the citizens; The Council of Europe creates a unique feedback mechanism with the nongovernmental sector which allows it to analyze and evaluate the ways in which the policies of the Council of the Bulgarian government are carried out.

The impact of the Council of Europe has been accomplished in many ways. The organization itself, understanding the changing European realities especially since the enlargement of the European Union, analyzed the impact and influence on the member states and within the integrated project “Making democratic institutions work” (2002-2004) created the so-called “Green Paper” (Green Paper 2004: 3). Modern democracy must react, adapt and actively intervene in the development of the socio-political, cultural and economic existence and welfare of its citizens. Governments worked in an altered liberal environment in Europe. The organization conducted an important analysis of its influence in the period between 2002 and 2004 when it accepted the thesis that democracy had reached a significant and important point in the development of Europe. The outcomes of the analysis have been implemented and multiplied in the decade followed in the new member states. The concluded five main areas of influence of the Council of Europe on European democratization processes identified as its five “basic principles” are the foundation upon which the impact of CE on democratic process in Bulgaria has been analyzed. The first principle is related to the *existence and function of a parliamentary democracy*, the main topics considered are the existing formal structures of separation of powers and the various mechanisms through which the process of collecting civil opinion can be implemented. The second basic principle is *the principle of representation*, the implementation of which is an essential part of the policy of the international organization to its member states. To keep the elective procedure, elective bodies must actually represent the community they serve. For the principle of representation to be possible, a state of pluralism is assumed of effective political parties that act democratically, transparently and with clear standards to prevent corruption in their financing and defend the public interest before the private one in their operations, actions and activities. The defining of standards is pointed out as an element of the principle of proportionality, standards that concern the proportion of various ethnic minorities, the promotion of gender equality as an essential element of modern democracy.

The third basic principle concerning the assessment of the Council of Europe for its own international influence and support for democratization is its *transparency, accountability and trust of citizens and civil society to the institutions of democracy*. The main areas of manifestation and work presented to civil society are the need to establish ethical standards of civil servants that oblige them to act in the public interest; the need to develop a whole series of instruments to tackle and fight corruption at all levels, directly affecting the modern European citizen; the support of free and active media as guarantors for the preservation of freedom of expression and free civil opinion.

With the pan-European context of development of civil society is linked the *fourth key principle – the principle of subsidiarity* displayed as part of the impact of the Council of Europe. The principle of subsidiarity implies and imposes decisions be made at the level closest to citizens. The fifth basic principle that the researchers Pratchett and Lund (2005) conclude in support of the impact of the Council of Europe for the democratic development of its member countries, refers to *the participation of the citizens in the decision-making process and civil society.*

The Council of Europe' democracy assistance to Bulgaria – the study

In the context of the approved principles, the impact of the Council of Europe on the political processes in Bulgaria is very strong and important in the first phase – in the process of political liberalization and democratization, which is the time span before Bulgaria's accession to the Council and in the first years after its accession. During this period, the impact is carried out through the policy of conditionality as policy conditions and it's focused exclusively on Bulgaria's government and fell under the influence of nation-building (Schmitter, 1999: 44). Meanwhile, short-term and medium-term efforts to promote democracy are highly dependent on international impact, they are brightly highlighted and with a significant degree of efficiency – the changes and preparation of the new Constitution, the synchronization of the Bulgarian legal framework with the European one, especially in the field of human rights protection, the establishment of functioning institutions, the conduct of democratic elections were just pillars with a significant presence in the new Bulgarian history after 1989. It is important to note that the impact of the Council of Europe to promote and consolidate democracy in Bulgaria has been presented in multiple time periods. The author defines *three main periods of impact and democracy assistance to Bulgaria* (Kaleynska, 2011: 94).

The *first time period* covers the process of political liberalization and democratization in Bulgaria from November 10, 1989 to Bulgaria's accession to the Council of Europe on May 5th, 1992. This period is characterized by exceptional impact intensity on political processes. It is related to the mechanisms of preparation of the new Constitution, democratic elections as the system's functioning mechanism, laying the foundations of democratic institutions, support for the nascent civil society, support for the development and democratization of the political parties. The period is associated with laying down conditions when Bulgaria as a precondition for its membership, held the first democratic and free elections in the presence of broad political pluralism, prepared and adopted a new Constitution, reformed and introduced new institutions for its democratic development. During this period the Council of Europe played a crucial role in the implementation of existing international and European standards in legislation related to human rights, social and political rights and the rule of law. The impact of the Council of Europe was the most pronounced in the field of jurisprudence and the preparation of the new legal framework of the Bulgarian democracy.

A fundamental element of impact is the fact that any country wishing to join the Council of Europe must accept and ratify the European Convention on Human Rights (ECHR). In the main articles of the Convention on civil, political and social rights of modern Europeans are clearly laid out; its accompanying protocols define how they are used. In this way this legal document became a prerequisite for membership but also an obligatory legal text for forced synchronization of the internal legal heritage with current European standards and the implementation of EU standards in the field of human rights protection and fundamental freedoms and basic European values. Thus, the Council of Europe applied an original "legal intervention" in membership candidate countries and the observance for fundamental democratic European values. A classic example is the visit of Catherine Lalumiere, former Secretary General of the Council of Europe and her meeting with the then President of Bulgaria Zhelyu Zhelev on the occasion of the application of the decision of the European Court of Human Rights for allowing MRF (Movement for Rights and Freedoms) to the political scene of the country.

The *second period* includes the period of the accession of Bulgaria as a member state of the Council of Europe to the accession of Bulgaria as a member state of the European Union, namely from May 1992 until December 2006. On May 5th, 1992 Bulgaria became a full member of the Council of Europe. In accordance with the adoption of the Statute of the Council of Europe, Bulgaria's participation in the long-term various activities of the Council of Europe became a priority for the Bulgarian government and at the same time a long-term guarantee for extension, deepening and adding sustainability to the democratization process. The Council of Europe carried out a basic form of monitoring and control over the implementation of democratic values in order to strengthen democracy. The democratic institutions in Bulgaria strengthened their position during this period, a comprehensive mechanism to protect human rights was developed and applied, the democratic start was affirmed at national and local level, institutions began to work, a comprehensive police reform was carried out, civilian control was accomplished and the legal system was executed according to European standards and regulations. There is continued support for political parties and their full democratization. The Council of Europe had a significant impact on the institutions in the country that we could examine as long-term and short-term impact. In the long run, of special concern are the political parties and structures of the judiciary and law enforcement. The political parties are intermediaries between society and the authorities but their role in the democratization process is crucial, because in practice they determine the democratic order of the system and it directly affects all levels of functioning – elections, participation in the judiciary power or opposition activities, campaigns, legislation. With a view to creating a stable and consolidated democracy in member states and build democratic political elites in 1992, the Council of Europe created a network of political schools that are active in 16 countries of the 47 member states of the Council towards today. The Bulgarian School of Politics (www.schoolofpolitics.org) was founded in 2001 with the mission to develop a community of young political and civic leaders and modern political and civic culture in Bulgaria based on the values of pluralism, tolerance and open dialogue.

Since 2001 more than 300 Bulgarian and 100 foreign MPs, leaders of political parties, senior government officials and leaders of civil society organizations have participated in the two main training school Programs – the national and regional program. The national program is aimed at politicians from parliamentary parties in Bulgaria, civic leaders, mayors, municipal officials, local and regional administration

officials, journalists and through it the mutual assistance and political impact of the political society of the Council of Europe is direct. The regional program provides knowledge of young political and civic leaders from the Western Balkans by creating a regional network of a political democratic society. The politicians who've passed training courses are introduced in detail to issues such as development of political processes, implementation of policies at local and national level, European integration, political communication, institutional development and media relations. In addition to the regional network, the School of Politics maintains an active national network of alumni, thereby allowing a broad exchange of ideas and working partnerships.

The interaction of the Council of Europe through existing political school networks is significant and has a strong long-term effect in creating guarantees for a European policy based on democratic values and standards. The European Association of the Schools of Political Studies was established in Strasbourg in 2008. The new network brings together 14 schools of political studies from the new democracies. A long-term policy to promote dialogue between the present and future political leaders and civil society leaders in Europe is the functioning Summer University for Democracy that annually brings together the graduates of the national schools of political studies.

The Council of Europe pays particular attention to the implementation of the rule of law after the reforms in the judiciary and law enforcement in Bulgaria by enforcing a direct long-term interest and impact. The National Institute of Justice was established in 2004 where magistrates, judges and investigators are trained. Key themes and areas of training are learning the practice of the European Court of Human Rights in Strasbourg and the provisions of the European Convention for the Protection of Human Rights and fundamental freedoms such as freedom of thought, conscience and religion, freedom of speech, freedom of assembly and association or the prohibition of discrimination, practically the matter in criminal and civil processes, in contractual, labor and administrative law. The training program "Police 2000" and "Police 2000+" have included more than 1,200 Bulgarian police officers in various forms of training on human rights, prevention of torture, working with high risk groups and working with victims of trafficking and domestic violence. In the short term, the Council of Europe's impact on government and political institutions manifests in the inclusion of Bulgaria in the campaigns of the Council of Europe, directly related to hot issues at European level and suggesting government intervention and enforcement of adopted European standards. Bulgaria as a member state has been actively involved in a series of campaigns which caused it to introduce changes in its legislation. The impact of the international organization on the NGO sector in Bulgaria can be viewed as two main stages outlining involvement in the process of doing politics (input policy) and output policy.

In the period of political liberalization and democratization and in the period of protection and sustainability of democracy, the Council of Europe has affected the development of NGOs as intermediary organizations in forming a system for connecting directly to the individual citizen. In the period of political liberalization and democratization, NGOs played an exceptional role in the transition to a democratic social and political system based on individual freedom and a functioning market economy because they had to work with the individual citizen to form a new sense of attitude toward the system and also to create new forms of organization and work in society.

The Council of Europe and the entire international community turned their utmost support to the NGO sector, because the instability of the political system in the early years of transition, the lack of stable democratic traditions and institutions, the

difficulties with imposing political actors and their exceptional dynamism in the face of political parties, set significant problems in the emerging and outside stimulated civil society by tackling and coping with meaningful tasks for the entire Bulgarian society – tasks that were set in policy priorities, forms of execution for the active involvement of citizens in the process of policy development and to the overall formation of civic culture. The fact that NGO funding had been largely dependent on external financing during the analyzed period only reinforces the thesis based on the significant impact of the international community, including the Council of Europe, for the development of a democratic community in Bulgaria.

During this period, the shape and type of support towards civil society has been chiefly designed for creating functioning NGOs, funding and support for institutional development, training in organizational, financial and technical development, the development of experts and trainers working mainly in the field of human rights, civic education, and electoral behavior, decentralization, links between institutions at local, regional and national level; civilian control of the institutions. The main objective was to support the capacity building of NGOs in the form of organizational, technical, financial and expert support. By supporting organizations to organize civic activities and implement initiatives related to the development of communities, the Council of Europe on the one hand affected the process of building an active civil society and influenced the activist type of behavior on behalf of every individual citizen and on the other hand supported the process of channeling citizen participation.

The period between 1997 and 2006 until the accession of the country to the European Union allowed the Council of Europe to focus on its work in Bulgaria, reach levels of expertise, enhance capacity, network and expand the influence of Bulgarian organizations not only in the country but also through them, the "import of influence" in neighboring Balkan countries in transition. In this period to a certain degree have been established and profiled the organizations with which the Council of Europe works and supports in the country. The policy of the Council of Europe to support civil society in Bulgaria is not systematic and subjected to a clear strategy, but at the same time it is extremely flexible and dynamic to existing realities in the country and the civil sector. The Council of Europe adopted the agenda of the Bulgarian civil society with which it consulted the priority areas for project intervention and achieved efficiency through its implementation in the work of its organizational units – Information and Documentation Centres of the Council of Europe (IDC).

The *third period* of the impact and democracy assistance of the Council of Europe in Bulgaria identified in this paper is the period of the acceptance of the country to the European Union – January 2007. In this period, the Council of Europe carried out mainly monitoring activities, the implementation of European policies, compliance with human rights with an emphasis on minority groups, development of conservation activities of the cultural linguistic identity of minority groups. The Council of Europe directly influenced the lawmaking process in Bulgaria. With regard to the full application of the European standards in the field of legislation, Bulgaria is still under post-monitoring dialogue. There were a series of recommendations by the Parliamentary Assembly of the Council of Europe (PACE) chiefly related to judicial reforms, legal norms and practices to improve the situation of minorities, election legislature, anti-corruption practices and laws.

In the three identified stages of the impact of the Council of Europe is outlined the specificity of the help of the organization to the processes of democratization, in

comparison with other international organizations. The effect of the impact that each organization has achieved in the target country is different. The Council of Europe has had an undeniable role in the democratization process in Europe. However, the organization remains in the shadow of other international organizations, especially the EU. As much as its leaders point out that it is the flagship of human rights protection, it remains dependent on the will of the big member states and the desire for EU partnership.

Main findings

An analysis of the democratization and consolidation of democracy of Bulgaria is of major importance for the future of Bulgarian democracy. Clear answers are needed to address questions such as the following. What are the characteristics and levels of development of the political system in its transition from authoritarianism to a stable democracy? To what extent is the process of democratization in Eastern Europe and especially Bulgaria influenced by international factors and international organizations? To what extent do international organizations hold roles as creators of stability in the region? These answers will allow current and future generations of Bulgarians to create a future that includes a sustained democracy.

The role of the Council of Europe in Bulgaria's road to democratization and its democracy assistance can be summarized as follows: The Council of Europe hastened the transition from authoritarian rule to democracy by providing legal consultation and guidance in changing all existing legal documents and all active laws; The organization influenced the process of rebuild of the party system; by proposing education and training to leaders and helping them to analyze the attitudes of the people in order to better plan and develop their political programs; the Council of Europe introduced policies for creating proactive attitudes in young people toward elections and the decision making process on all levels; the Council of Europe contributed heavily to the building of the non-
profit sector in the country by implementing a different approach (IDC). The chosen methodology was based more on developing resources already in existence, rather than the forced introduction of new ones, and mainly on the creating of networks for the exchange of information rather than financing untested projects; the assistance of the Council of Europe in Bulgaria led to defining several successful practices that are helping to speed up the democratization process, and that could easily be adapted to different post authoritarian societies. The practices identified include: the reforms in education, including campaigns for the revision of textbooks at secondary schools, the adoption of strategies for teaching human rights at school and ministerial levels, and the introduction of constant monitors are steps made toward an improved respect for human rights in the country. The Bulgarian experiment was expanded to other member-states with huge minority groups (Macedonia, Albania, Georgia); the involvement of ethnic minority in the process of democratization by registration of a political party that represents and protects was identified later as a positive step for preventing ethnic conflict and as one of the possible measures that could have prevented the ethnic based violence on the Balkans in the late 90s; education and training of the political elite in a specially created School of Politics as a mechanism for introducing democratic values in decision-making. The policy was later introduced to all member-states from Southern Europe and the ex-Soviet world; creation of specialized non-profit bodies for the introduction of innovations and reforms in the local authorities in Bulgaria represented by the Foundation for Local Government Reform. The practice was later or in parallel adopted in Albania, Armenia,

Bosnia and Herzegovina, Serbia, Montenegro, Georgia, Kosovo and Rumania; use of formal organized networks to transmit information and pilot initiatives for both the local authorities and the non-profit sector. The practice was later expanded to Russia, Romania, Slovakia and Poland; visible impact on the democratization processes is observed in the civil society sector towards which the Council of Europe implements a different and innovative approach of influence, which differs significantly compared to others international organizations. The Council implements untypical techniques and mechanisms for influence on the non-governmental sector and creates a micro-model for implementing its policies to Bulgaria through the support of the NGOs (two, hosting the Information and Documentation Centres). The successful experiment in Bulgaria of opening and supporting regional centres and regional networks was multiplied to other member states as Russia, Romania. In its support towards the Bulgarian non-governmental sector, the Council of Europe re-creates its main priorities and policies, fields of activities through stimulating the creation of new organizational units, not typical for the non-governmental sector. At the same time, the Council of Europe had imputed on them, in different periods of their functioning, the role of mediators between the Council and the non-governmental sector as well between the Council and the political sector and the Council and the citizens.

Conclusions

International organizations, the Council of Europe in particular, have had a significant impact on the democratic processes in Bulgaria. The Council of Europe applies a different and innovative approach of influence in the country unlike other international organizations by carrying out a consistent policy of support that switched to development policy. The main specific of the organization's approach is the institutionalized support by creating organizational units that encourage and promote the democracy's consolidation. Through the years of its membership, Bulgaria has been influenced and assisted in all public spheres in order to strengthen and sustain its democratic development.

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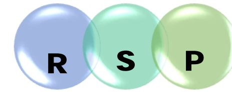

ORIGINAL PAPER

Constitutional Control of the Constitutional Court of the Republic of Kosovo

Besard Belegu*
Zemri Elezi**

Abstract
Constitutionality and legality are one of the essential elements of the rule of law, therefore the treatment of constitutional control in the scientific aspect is very important for the Republic of Kosovo, given that Kosovo is still being consolidated among its institutional and democratic elections after its Independency on 17 February 2008. This study aims to recognize the types of constitutional control, determining its positive and negative sides and finding appropriate proposals, adequate recommendations depending on practical problems. Methods of study in this research are descriptive method, normative method and the type of researching method that regards to the qualitative one. I hope this study to be a starting point for other potential researchers to explore further the rule of law, respectively the constitutionality and legality of the country, because it is not enough only the political debate on building and consolidating the rule of law but also the active participation of the main opponent of any power, so the opinion makers and academic critics and law experts as well, without never bypassing the raised awareness of the society..

Keywords: *Constitutionality, legality, constitutional control, the rule of law and society*

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Introduction

In the constitutional and political the expression "constitutionality" is used with different meanings. To distinguish constitutionality as a constitutional principle, whether by formal or political aspect, different theorists use the word "constitutionality" in its meaning as "constitutional" (constitutionality). As for the marking of the whole movement of the struggle for the adoption of the written constitution and limit the unlimited power of the rulers throughout history of human development, we use the word "constitutionality 'or its synonym phrase "constitutionalism". The difference is more doctrinal because the fight for constitutionalism did not aimed only issuing written acts (constitution), but also the institutionalization of society, in which the written constitution would appear as a tool for preventing arbitrariness of those in power and for setting behavior of everyone, including the "creator" of the constitution, under rules set by it. We will stick to the word (term) "constitutionality" in its wider meaning which means this constitutional principle as the formal aspect, as well as political; the existence of the written or not written constitution, as well as the institutionalization of the political overhaul of the society and respect for the legal rules and norms, as we have done so far. The word "constitutionalism" would only be used in this occasion in order to make a distinction between it and the word "constitutionality", mainly as a constitutional principle. Constitutionalism is presented as a political requirement of the liberal bourgeois for the institutionalization of the society with a written document. Therefore, from the beginning, especially from the half of XIX century, appeared entire political movement named based on this idea and word. Beside this, there were also presented different ideological currents, inspired and oriented for constitutionalism. This way, constitutionalism represents a doctrine against political absolutism and oppression of the rulers, for the institutionalization of the democratic order. Constitutionality is a formal – legal expression of this movement that means the principle of political overhaul of the society which guarantees the institutionalized power, and integrity, freedom and rights of individuals and groups. Therefore, at the beginning, at the presentation, Constitutionality did not mean just the idea of existence or issue of the written constitution, in its formal meaning, but also the implementation of the idea of popular sovereignty and limitation of absolutism and autocracy through the institutions which are represented by the people. Based on the above we can conclude that constitutionality is a target process, which appears in certain conditions of the history of mankind, by the end of the eighteenth century and during the nineteenth century, a period that coincides with that of the adoption of the prior first written constitutions.

As the struggle for written constitution, as well as the struggle for constitutionalism and its application as an integral part of the organization and functioning of political power is intensified or weakened depending on the objective circumstances in certain periods. It marked its worst crisis as on the eve of the First World War, as well as during the Second World War, as a result of the strengthening of autocratic, military tendencies etc. Between the two wars it has seen its crisis especially in fascist countries. Its crisis come under consideration after the Second World War as well, especially in countries where it is placed military dictatorship and the socialist countries, in which it is propagated and implemented the cult of the state and totalitarian state, as an ideology opposed to democracy and constitutionality . Sadly, this crisis as a result of the inertia of the past, as a result of the abandonment of one-party socialist flag of nationalism, is also present today in some post-socialist countries (transition),

especially in those with mixed national composition. In such countries, this crisis is felt in all segments, as in the political, economic, international ones, etc., but it is mostly felt in transnational terms, in disregard of the fundamental rights of national minorities and nations numerically small, and in disregard of the fundamnetal rights and freedoms of citizens in general. Besides the commitment of the international mechanisms for overcoming the constitutionality crisis in these countries it is necessary the internal struggle of democratic forces, as well as of the legal and political science and other social sciences for changing relations and institutions and overcoming the nationalist political, the centralized bureaucratic and monopolistic phenomena, that resul the unconstitutional situation and constitutionality crisis in these countries.

Systems of control and protection of constitutionality

Constitutionality in material terms is presented much earlier than constitutionality in the formal sense. Therefore, the struggle for the protection of constitutionality in the material sense is presented more time before submitting the Constitution of the United States, as a written, strong constitution, with which it is connected, in theoretical legal aspect, the principle of constitutionality and its control and defense. In this regard, it is reasonly claimed that the principle and protection organization of constitutionality is older than its judicial protection, implemented by the US Constitution. Already in old China, the Greek polis and, later, also in different countries of Europe and South America appear forms of protection of the existing rules of common life, in the form of political authority.

However, as the principle of constitutionality and legality (in the politico-legal sense), by reason are associated with the introduction of the written strong constitution, as well as their control and protection is linked with the presentation of the such constitution, because only this kind of constitution includes and implies the idea of constitutionality and legality. Only with the appearance of strong constitutions it is question the principle that any act of government must be legitimate and that any act contrary to the constitution is illegitimate, respectively unconstitutional. With such constitution are provided certain rules to be followed by the representative body in its legislative activity. Laws and other acts of it are the basis of the legal order, but the legal order is subjected to the highest order, the constitutional order.

Constitutionality, as in legal terms as well as political, it is the result of the proclamation and the legal guarantee of individual freedoms and rights of the human and citizens, and in the US, the federal state structure as well. To provide those rights to citizens, as well as the relationship between the federation and autonomous parts (federal units) are needed adequate mechanisms for the control and protection of the constitution, respectively of the "higher principles" and values guaranteed by its forms. Despite the disagreements in the order of the political and legal thinkers regarding to the "higher principles" containing the constitutions regarding the rights of man and citizen, in democratic constitutional theory and practice has dominated the opinion that these values must be protected and that through their realization it can be ensured democracy and democratic character of the state. However, there have remained disagreements on the type of guarantees and the authoritative body, who would be authorized to assess the compliance of the common laws with the constitution and decide on their removal from the legal order, in case that determines their incompatibility with the constitution. As a result of the different approaches regarding to the meaning of constitutionality, therefore regarding to its forms of control and protection, in the constitutional comparative theory

are presented three basic systems of control of constitutionality of laws and other legal acts: by legislative body, by the side of the special political and constitutional body or by the courts (regular or constitutional).

Control and protection of constitutionality by the Constitutional Courts

In order to control and protect the constitution, after the First World War, as a result of the awakening interest for constitutionalism and constitution, some countries with strong constitution apply the form of protection by the independent bodies of judicial power - constitutional courts. Constitutional Court as a "guardian of the Constitution" it is presented for the first time in Austria, with its Constitution of 1920, under the influence of Austrian federalism and theoretical legal opinion of the author of this Constitution, Hans Kelzenit. After World War II, along with the renewed interest for constitutionality, it is increased the interest for constitutional courts, as a way to protect her. The negative experiences before and during this war on respect and adherence to the constitutionality, especially the denial of fundamental rights and freedoms of the citizen, the denial of integrity and national sovereignty by fascism, have encouraged political forces to constitutionally implement mechanisms who would guarantee that the past would not be repeated. Therefore, the first countries to implement this form of control and defense of the constitutionality were precisely the former fascist totalitarian countries: Italy (1948) and Germany (1949). In Austria, too, in 1945 the Constitutional Court again applied the powers that had until 1934. In this period, this form of constitutional protection penetrates even outside Europe, in some countries that won independence and adopted strong constitution, as was the case of Sijami (in 1949), Syria (1950) and Cyprus (1960). In 1961 it was implemented in Turkey also, while in 1963 in SFR Yugoslavia and in 1968 in Czechoslovakia. In the last decade of the twentieth century, this form is presented to us in almost all transition countries. The carrier body of control and protection function of constitutionality is not called the same in all these countries. On the other hand, in some countries, the Constitutional Court is not the only organ of defense and guarantee of constitutionality, but this function is also given to other organs. In some federal contries are formed such courts at the level of federal units as well (in Germany, SFR Yugoslavia, etc.). Unlike countries where it is applied the protection of constitutionality by regular courts, where those courts protect the legality as well, in the majority of countries where there are implemented constitutional courts these bodies defend only the constitutionality, by exclusion, the legality (as was the case with the Kosovo's constitutional court and other independent countries in the case of dissolution of the SFRY). It is important to be noted that, in addition to protecting the freedoms and basic democratic rights of citizens in broad terms, and the protection of constitutionality and legality as a necessity of functioning and the existence of the rule of law, it is significantly expanding the powers of the constitutional courts in the area of electoral law and the election procedure, and in the area of responsibility of high state officials with before them.

Judicial control of constitutionality in Kosovo

The judicial control of constitutionality is an essential element of the rule of law and stems from the principle of the supremacy of the constitution in the legal order. It follows the right of courts to supervise the constitutionality of legal acts, primarily the acts of the legislature. The dominant attitude to constitutional justice looks at the narrow and wide meaning. In a narrow sense, by constitutional justice we understand the

constitutional control of laws, and in the wide sense we understand resolving constitutional issues through the courts, in order to protect, namely revive of the Constitution (Saliu, 2004: 163-164). Kosovo has a centralized system of control of constitutionality, because this responsibility is only focused on a specific constitutional body (the Constitutional Court of the Republic of Kosovo) where this authority was given by the Constitution of the Republic of Kosovo (See article 112 of the Constitution of Kosovo). The deciding forms during the constitutionality control of the law are indirect or direct deciding forms. The form of indirect estimation (accessory) of the constitutionality of the law, the question of constitutionality is not meritorious (MERITUM) of the legal proceedings, therefore the decision of the court regarding the constitutionality of the law in this form of deciding has effect only in the concrete case, where such decision on this case by the court has concrete effect (inter partes). In the US (United States), the highest authority for the defense of the constitutionality of the country (interpretation of the Constitution) is the Supreme Court, which is a regular court and decides accessory for the cases of assessment of constitutionality, not so explicit but being accepted as doctrine by declaring its famous question "Marbury against Madison" in 1803 (US Department of State's Bureau of International Information Programs, 2005: 85). The base of the federal judicial system in the US it is appointed in Article 3 of the US Constitution, which states, "the judicial power of the United States will be entrusted to a supreme court and other lower courts that the Congress will approve and establish from time to time (Maksuti, 2007: 35). Despite this form of deciding, the forms directly or abstract deciding about the constitutionality of the law, the compliance of the law with the Constitution is a matter of merits of the judicial procedure from the competent court. Since by this form of deciding we are dealing with constitutional dispute as a matter of merit, the court's decision in principle has effect on everyone (erga omnes) with consequences for the existence of the law itself. If the application is made by an ordinary court, because it doubts the constitutionality of contenders' norm to be applied, then it discontinues the judicial procedure until the Constitutional Court, with its decision, is declared related to its constitutionality, where the decision of the Constitutional Court shall also be applicable to all other cases (erga omnes) (Saliu, 2004: 187). Besides the problem of decision making way, constitutional theory has also treated the problem of time evaluation of constitutionality, namely the issue of preliminary (preventive) and subsequent (repressive) control of constitutionality. Preventive Control means any check that has to do with reconciliation, constitution, law or bylaw which have not yet entered into force (Saliu, 2004: 188),while the repressive control of constitutionality, despite the preventive one, starts from the fact that object of constitutional control may be only those acts (laws and bylaws) which have entered into force and have legal effect (Saliu, 2004: 190). The Constitutional Court of the Republic of Kosovo defines abstract form for the way of deciding for the constitutionality of the law and bylaws, which means that the constitutional issue presented to the Constitutional Court is a matter of merits of the Constitutional Court and such decision by the Constitutional Court has effect to everyone (erga omnes), or said more simply has the force of law (See article 116, paragraph 1 of the Constitution of Kosovo).

The Constitutional Court of the Republic of Kosovo, under the Constitution and the Law on the Constitutional Court, the terms of time of the constitutionality of laws and other state acts, contains elements of preventive and repressive deciding, and has accepted the incidental reference by ordinary courts to the Constitutional Court only in cases where it essentially suspects on the contender norm to be applied in the judicial procedure if it

is in accordance with the Constitution of the Republic of Kosovo (Constitution of the Republic of Kosovo, Article 113). The Constitutional Court of the Republic of Kosovo has also recognized the right of individual appeal which makes it a much more democratic and independent institution supporting and defending the fundamental human rights and freedoms.

Preventive control of the Constitutional Court of the Republic of Kosovo

Prevention (early) control of constitutionality by the Constitutional Court of the Republic of Kosovo is present on the Article 113, paragraph 5, of the Constitution of Kosovo, stating that 10 or more members of the Assembly, within a period of 8 days from the approval day, have the right to contest the constitutionality of any law or decision adopted by the Assembly, as regarding its substance or the procedure followed. In another case, preventive control is present in paragraph 9 of Article 113 of the Constitution of Kosovo, stating that the President of the Assembly of Kosovo has to refere the proposed Constitutional amendments before approval by the Assembly, in order to ascertain whether the proposed amendment decreases the rights and freedoms guaranteed by chapter II of the Constitution. A group of theoreticians of constitutional law considers that preliminary control is most likely to be misused, so we think that in no way should be the only option of constitutional control because it would create the inviolability of power because there could made nontransparent deals to adopt laws and other acts in the lawmaking body and those acts would no longer be subject to a lawsuit by the constitutional Court. Especially in countries with weak democracies should not be allowed this form of control as the only option. Kosovo fortunately provides also the subsequent constitutional control by the Court. Usually, the preventive control is exercised to very sensitive issues of state and public character, especially in the area of fundamental human rights and freedoms.

Repressive control of the Constitutional Court of the Republic of Kosovo

The Constitutional Court of the Republic of Kosovo in terms of time evaluation of constitutionality applies the form of repressive (subsequent) control of the constitutionality of laws with the Constitution after their entry into force, respectively, during the implementation of laws by administrative bodies and other relevant public institutions. However, this form of control is not expressively defined as in the case of preventive control, but implicitly. The Constitutional Court exercises repressive control in case of compliance of laws, decrees of the President or the prime minister and government regulations, with the Constitution, as well as municipal statute compliance with the constitution. The court realizes this only with the filing of the request of parties authorized to aforementioned issues where the parties authorized to raise such issues before the Court are: the Assembly, the President of the Republic of Kosovo, the Government and the Ombudsman. The municipality may contest the constitutionality of laws or acts of the Government which affect municipal responsibilities or reduce the revenues of the municipality, if the relevant municipality is affected by such law or act, this is another situation where it can be exercised repressive control of the constitutionality by the Constitutional Court. Other typical situation of repressive control of constitutionality is presented in the rights of citizens as individuals to refer violations by public authorities of their individual rights and freedoms guaranteed by the Constitution, but only after exhaustion of all legal remedies provided by law (Constitution of the Republic of Kosovo, Article 113, paragraph 2). Repressive control also means the

control over possible violations of the constitution by the president, where 30 or more members of the Assembly have the right to raise constitutional issues in the case that the president has committed a serious violation of the Constitution (Constitution of the Republic of Kosovo, Article 113, paragraph 6). To put it simply and logically, the Constitutional Court exercises repressive (subsequent) control every time, except the above mentioned cases when we have preventive control. The presence of repressive (subsequent) form of control is welcomed to the country's legislature, as always theory teaches us that the flaws and shortcomings of the laws are best observed when they are applied.

Constitutional control of international agreements

International agreements ratified by the Assembly of Kosovo have primacy over the laws of the Republic of Kosovo, this supremacy over laws, international agreements guaranteed by the Constitution of the Republic of Kosovo, which proves the privileged status of international law in the constitutional system of the Republic of Kosovo (See Article 19 of the Constitution). Therefore we rightly conclude that the overall hierarchy of general state legal acts of the Republic of Kosovo, should be: Constitution; Agreements and international instruments set out in the constitution, Laws, Bylaws. Another argument in favor of the advanced status of international law in Kosovo's constitutional system consists on the constitutionality of several international instruments in the field of human rights which are directly applicable in the legal system of Kosovo. In this respect Article 22 of the Constitution of Kosovo, defines clearly that which international agreements are directly applicable in Kosovo. This article provides that: "The human rights and freedoms guaranteed by international agreements and instruments in addition, guaranteed by the Constitution, are directly applicable in Kosovo and have priority in case of conflict, over the provisions and laws and acts of other public institutions: (1) Universal Declaration of Human Rights; (2) European Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols; (3) International Covenant on Civil and Political Rights and its Protocols; (4) Framework Convention of the Council of Europe for the Protection of National Minorities; (5) Convention on the Elimination of All Forms of Racial Discrimination; (6) Convention on the Elimination of All Forms of Discrimination against Women; (7) Convention on the Rights of the Child; (8) Convention against Torture and Other Cruel, Inhuman and Degrading. Furthermore, Article 53 of the Constitution makes clear constitutional obligation on the necessity of implementing the provisions of the European Convention on Human Rights and its jurisprudence (Bajrami, 2011: 342-343). Any law or decision adopted by the Assembly, any draft amendments, and any other legal act issued by public authorities must be in full compliance with international agreements and instruments which have been incorporated in the Constitution.

Incidental reference to the Constitutional Court of the Republic of Kosovo

Incidental reference known as a right in the theory of constitutional control, in the Constitutional Court is explained by the law of common courts, to be refered ex officio to the Constitutional Court issues pertaining to the constitutional compliance of a law, if the court during the judicial proceedings is faced with a situation to implement a provision claiming to decide by verdict, but that it is not certain that the implementation of that provision of the law is in accordance with the constitution, and that the court's decision on a particular case depends on the compatibility of the law in question, where the referral

of the matter to the Constitutional Court to review the constitutionality has suspensive effect to proceedings in the common court and the common court will decide only after the Constitutional Court announces the decision, and in accordance with the decision issued by the Constitutional Court (Constitution of the Republic of Kosovo). The incidental reference by ordinary courts in Kosovo is almost entirely silent in practice, and it lets the prejudice that it is not possible not encounter often in practice with conteder acts to be applied is unconstitutional, especially in the case of protection of freedoms and fundamental human rights provided by the Constitution of Kosovo.

Constitutional Control to the President of the Republic of Kosovo

Kosovo's constitution gives authority to the Constitutional Court in relation to the President of the Republic, for possible violations by his side. According to Article 113, paragraph 6 of the Constitution of the Republic of Kosovo, thirty or more members of the Assembly are authorized to refer the question of whether the President of the Republic of Kosovo has committed a serious violation of the Constitution. But how is it to be a serious violation to be considered a severe violation to the Constitution, the final decision and only merits for this has the Constitutional Court. A weird thing is present in the Constitution of the Republic of Kosovo and in the Law on the President of the Republic of Kosovo, Law Nr. 03 / L-094. At the dismissal of the President or the possibility of early termination of its mandate, is not projected to end the mandate of the President of Kosovo if it happens that the country's president, he or she dies. This is a serious omission that legally or formally, the Constitution of Kosovo means immortal president and will lead to confusion in the legal system of the country (The Law of the President of the Republic of Kosovo, article 10). In Kosovo constitutional violation by the presidents has had and the Constitutional Court has dealt them by deciding meritorious on those cases (Case Sejdiu and Pacolli case). The role of the President under the Constitution of Kosovo is very important where the President is considered the body or "guardian" who oversee the functioning of the constitutional order as a non-partisan man and unifier of the representative values for all the people and for the state and public institutions. The President of Kosovo from the formal side of competencies is "weak" against other powers because that is directly elected by parliament and that there are very few competing powers with the Prime Minister. More influential, the President of Kosovo would do his charisma if he has it, than his constitutional formal position.

The individual complaint to the Constitutional Court of the Republic of Kosovo

The Constitutional Court of the Republic of Kosovo under its jurisdiction also provides filing individual complaints by it. This shows the quite democratized institution and number one supporter of human rights and fundamental freedoms in the Republic of Kosovo. Although some more developed and democratized countries in Europe do not provide jurisdiction of national Constitutiona courts presentation and protection of individual complaints, Kosova in this direction has chosen to be in support of human rights by concretizing by the Constitutional Court through the recognized right of its citizens, individual complaint. The Constitutional Court decides on the admissibility of the application on the following grounds: (1) The Court may review referrals only if: a) They have exhausted all effective remedies prescribed by law against a decision or against the judgment to oppose; b) The request is filed within four months from the date of delivery of the last effective legal remedy to the Applicant, and c) The application is not

manifestly ill-founded. (2) The court shall reject an application as manifestly ill-founded, if it is satisfied that: a) The demand id not justified prima facie; b) The presented facts do not in any way justify the allegation of a violation of constitutional rights; c) The Court finds that the applicant is not subject to any violation of the rights guaranteed by the Constitution; or d) When the Applicant does not sufficiently substantiate his claim. (3) In addition, an application may be considered inadmissible in the following cases: the court has no jurisdiction in the matter; the request is anonymous; request submitted by an unauthorized party; the Court considers that the application is an abuse of the right to petition; the court has already issued a decision on the case and the request does not provide sufficient grounds for issuing a new decision; the requirement is not ratione materiae with the Constitution; the requirement is not ratione personae in accordance with the Constitution; or the request is not Ratione temporis in accordance with the Constitution. (4) If the request is incomplete or does not contain the information necessary for the conduct of the proceedings, the Court may require the applicant to make the necessary corrections within 30 days. (5) If the applicant, without any objective reason, fails to make the necessary corrections within the time limit referred to in paragraph 5 of this rule, then the request will be processed (Rules of Procedure of the Constitutional Court of the Republic of Kosovo, Rule 36).

According to the Constitution of the Republic of Kosovo, individuals are authorized to refer violations by public authorities of their rights and individual freedoms guaranteed by the Constitution, but only after exhaustion of all legal remedies provided by law (See Article 113, paragraph 7 of the Constitution of Kosovo). Kosovo's Constitutional Court has so far been a strong mechanism of treatment of individual complaints, where by the multiplicity of individual cases which addressed, it is likely had the role of the regular courts. However, it is desirable and in favor of strengthening the protection of human rights and fundamental freedoms in a democratic country,which it has always claimed to be, the newest country in the world, the Republic of Kosovo.

According to an interview conducted earlier with Mrs. Arta Rama, Chairperson of the Constitutional Court of the Republic of Kosovo, we found that 80% of the individual complaints before the Court are declared inadmissible due to some reasons of non-compliance with formal requirements for admissibility of complaints, driven mainly by the promoted parties of the lawyer’s services of irresponsible advocates. The Constitutional Court faces each year with a large number of individual filing complaints by natural and legal persons.

Recommendations

Upon completion of this scientific work with research character, of course we can offer some recommendations for positive change. Recommendations are commit at some point as follows: a) the Constitutional Court should reflect that the current President, the executive and legislative power to amend the Constitution in Article 91, paragraph 3 (discharge of the President) in order to provide the possibility of early termination of the mandate even in cases of death; b) the Constitutional Court with its independent budget, realize an awareness rising campaign for citizens on how to submit individual complaints especially for individuals, and when are fulfilled the conditions for the individual complaints to be acceptable to citizens; c) non-governmental organizations to be more active in criticizing the institutions that are approached to constitutional judgments for implementation, so that this would not only be done by the national media.

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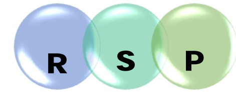

ORIGINAL PAPER

An Incursion into a Staged Past: Bucharest's Communist Heritage as a Tourism Product

Alina Brașoveanu *

Abstract
The present article explores the way in which in the present postcommunist period the recent communist past, local heritage, history and memory, are being presented to foreign visitors as tourism products. The core of the paper is the notion of communist heritage and the analysis of its various uses in the sphere of the Romanian incoming tourism industry. The article is based upon content research of the itineraries of Bucharest communist heritage tours, with a focus on Bucharest's immovable heritage from the communist period, as it is presented in online touristic materials by local travel agencies and tour guides targeting foreign tourists. Moreover, the study offers an overview of the way Communist heritage tourism in Bucharest may indicate, through its uses of the local immovable *communist heritage,* a new stage in dealing with a long unwanted past.

Keywords: *communism, postcommunism, heritage, tourism, Bucharest*

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Introduction

Postcommunist Romania's coming to terms with its socialist past is an ongoing process and represents a complex and rich material of research. The relationship between the two Romanias, the one hidden behind the Iron Curtain from 1948 until 1989 and the post-revolutionary one, their identities and national heritage can be studied from multiple points of view. The dimensions of the present study allow but sketching the edges of a very interesting process: the interpretation of heritage, communist heritage in this case, and the associated rewriting of history for touristic purposes – the active actors of this process are tour guides, travel agencies, tourism institutions, national and local authorities and tourists themselves. Focusing on the way communist heritage is portrayed as a tourism product, the article employs as main research method content analysis of online materials of travel agencies and tour guides presenting their offer of *communist heritage Bucharest tours.* The wide scope of heritage will be confined for the present study to the material, immovable aspects: monuments, buildings and groups of buildings, sites, all associated to various degrees with the Romanian communist period.

A framework for communist heritage tourism

In a globalized world, where mobility is omnipresent, social networks are transnational and frontiers lose their traditional sense (Giddens, 1991), tourism takes a variety of shapes, but can widely be defined as follows, according to the UNWTO: ''Tourism comprises the activities of persons traveling to and staying in places outside their usual environment for not more than one consecutive year for leisure, business, and other purposes.'' Out of the sea of tourism categories, the present article will focus on the inbound tourism in Romania and a specific niche, that of communist heritage tourism (Goeldner, Ritchie, 2012: 3). In order to define the concept of heritage and in particular the way communist heritage is understood in this article, a couple of references from the literature can be useful, starting with a highlighted UNESCO definition: „The cultural heritage may be defined as the entire corpus of material signs – either artistic or symbolic – handed on by the past to each culture and, therefore, to the whole humankind [...]" (Jokilehto, 2005: 4-5). Narrowing down the concept of cultural heritage to a series of categories described by Capot et al. (2012, apud Stănciugelu, Ţăranu and Rusu, 2013), the present article will concentrate only on the certain aspects of the communist heritage: immovable cultural heritage (historic monuments, buildings) and museums and public collections. For its uses in present article, the notion of communist heritage is, as seen by Stănciugelu et al. (2013), "a cultural legacy composed of tangible and intangible elements that have historical, cultural and social significance that became and functioned as forms and aspects of legitimacy of the communist political power". The authors add that this type of heritage is historically defined, ideologically infused, concentrated in urban areas and found many times in relationship with specific propaganda mechanisms. To begin with, the communist heritage has a high political charge in regards to tourism – both positive and negative portrayals can be politically instrumented, as Stănciugelu et al. (2013) note – and a controversial nature, due to the game between acceptance and rejection of communist heritage as part of the national heritage (Ivanov, 2009). Caraba (2011) underlines in the literature review in the „*Communist Heritage Tourism and Red Tourism: Concepts, Development and Problems*" article the two different types of tourism developed around the communist heritage used as a tourism resource. The first type is red

tourism, introduced in China in 2004 and based on visits to sites associated with communist leaders and heroes, comprising an important educational element, as well as nostalgia.

The second type is communist heritage tourism, present in the postcommunist countries of Central and Eastern Europe, and „using as resources heritage sites related to the communist/socialist past" (Caraba, 2011). While red tourism developed in China as a centralized and planed state initiative, the communist heritage tourism developed in the Central and Eastern European countries firsthand due to external demand triggered by the interest of western tourists. The educational goals of red tourism in China are not to be found as such in the European countries proposing communist heritage tourism, where a mainly negative view of the period is portrayed and authorities have a tendency to ignore this recent past (Caraba, 2011). This phenomenon present in European postcommunist countries can be viewed as a „dissonant heritage" (Caraba, 2011), where a game between privileged remembrance of certain aspects of the past is doubled by officially disregarded elements of national history (Adler, 2005: 1094 apud Baločkaitė). Red tourism and communist heritage tourism include a variety of activities, memorabilia, forms of exploiting the past: from reenacting China's Communist Revolution, to motivational slogans, red flags, sculptures of revolutionary figures and founding fathers, local retro venues incorporating furniture and decorations of those times, with patriotic songs as soundtracks.

It is also worth noting as well the debatable representativeness and adequateness of the use of the term "communist heritage tourism" when referring to the tourism use of local heritage associated to the European Communist past (Caraba, 2011). Increased accessibility (Caraba, 2011) added to the curiosity and cultural interest for the way of life behind the Iron Curtain has increased the number of tourists in the former communist countries, triggering a development of the way heritage tied to the communist past is inserted and portrayed in the tourism industry. To illustrate the diversity in which communist heritage is employed into the tourism industry, I shortly present below two examples present in the former communist countries, in addition to the communism-related museums present in the capitals of the Baltic States, in Budapest, Berlin, Prague. Conceived in the 1940s, Nowa Huta is socialist realist city planned around the steelworks close to Krakow, Poland. Knudsen (2010) studies how the communist heritage tourism developed by the *Crazy Guides Communism Tours,* transformed an undesirable heritage into a staged environment through tourism practices. Changes of political regime are usually associated with an immediate set of measure taken by the new regime to alter the public official discourse told through public spaces (e.g. by changing the names of squares and streets, replacing statues portraying political figures etc.). Memento Park in Budapest, Hungary, opened in 1993 as an open-air museum putting on display statues and symbols of the previous political regime. Its popularity, design and use of communist heritage has had Western commentators remark its similarity to a „theme park" (Knudsen, 2010).

Communist heritage tourism, being a particular niche within the cultural heritage tourism, has only relatively recently caught the eyes of researchers. Light (2000a, 2000b) and Young (2013) have developed several studies regarding the communist heritage, focusing many times on the postcommunist states' relationship with their past, in particular in the view of building new state identities. Contributions from the two authors will help clarify the analysis results in the second part of the article. Earlier research has found that local actors, such as city officials, architects, developers, as well as the majority

of the population seem to be rejecting communist heritage (Light, 2000b; Czepczynski, 2008). However, as we will see in the next section of the article that some of these previous findings might now be in the full process of becoming outdated, as new local projects involving communist heritage stem from the civil society and private sector, while authorities seem contaminated and have opened to the public the Primăverii Palace – the former residence of the Ceausescu family, which is now ran as a state museum. In absence of an official strategy in the Romanian tourism sector regarding communist heritage, the article observes the private initiatives capitalizing on Bucharest's communist heritage used as part of a tourism products during communist themed tours of Bucharest. Hence, this article aims to analyze a part of the way the Bucharest communist heritage is presented, in online sector by travel entrepreneurs (guides or travel agencies) for foreign tourists interested in a Communist Bucharest tour.

Research Methodology

Corroborating the present analysis with the results of other studies focused on the same theme, the article is based on content analysis as a main method of research. A definition of content analysis as proposed by P.J. Stone (1966 apud Chelcea, 2004: 263) underlines its validity as a technique of research which makes inferences by systematic and objective identification of certain characteristics of texts. Content analysis presents both a quantitative and a qualitative approach, the present study using as main approach the quantitative approach. Since the year 2010, when the article published by Caraba (2010) identified only one Communist themed tour of Bucharest, the tourism sector has vastly developed with dozens of touristic packages and guided tours being tailored on the basis of communist heritage: over 30 *communist Bucharest guided tours* identified in the online sector for this article. The vast majority of these initiatives is private and aimed at foreign visitors known as special interest tourists. These following 30 tours and their respective itineraries constitute the corpus of focus of the present research.

Table 1. Bucharest Communist Heritage Tours proposed by local actors

Nr.	Local actor name, website, tour name	Local actor description
1.	Tour of Communism https://tourofcommunism.com/about-the-communist-tour-of-bucharest • Communist Tour of Bucharest	Independent tour guide specialized in the Communist heritage tour of Bucharest
2.	Interesting Times Bureau http://interestingtimes.ro/communism-tour-2 • Communism Tour [of Bucharest]	Cultural NGO proposing various themed Bucharest tours, including a Communist Bucharest tour
3.	Unknown Bucharest http://unknownbucharest.com/bucharest-communist-tour • Bucharest Communist Tour	Independent tour guide specialized in private themed tours, including a Bucharest Communist Heritage tour
4.	Unzip Romania http://www.unzipromania.com/#!ceausescu/c1woe • Story of Romanian Communism	Travel agency offering a variety of tours across Romania, including a Bucharest Communist themed tour
5.	Rolandia http://www.rolandia.eu/offers/bucharest-tour-behind-wall • Bucharest Tour – Behind the Wall	Travel agency offering a variety of tours across Romania, including a Bucharest Communist themed tour

6.	Communism and the city http://communismandthecity.com • The Tour	A tourism project dedicated entirely to Bucharest's Communist Heritage
7.	Open Doors Travel http://opendoorstravel.com/wp/?page_id=45 • Communist Tour	Travel agency proposing various themed tours of Bucharest, including a Communist Bucharest tour
8.	Romanian Tour Store http://www.romaniatourstore.com/bucharest-tours/communist-bucharest-tour.html • Communist Tour of Bucharest	Travel agency proposing various themed tours of Bucharest, including a Communist Bucharest tour
9.	Uncover Romania https://www.uncover-romania-tours.com/history-tours/communism-bucharest • Communist Bucharest Tour	Travel agency offering a variety of tours across Romania and in Bucharest, including a Communist themed tour
10.	Bucharest step by step http://www.buchareststepbystep.com/communist-bucharest-tour • Communist Bucharest Tour	Independent tour guide specialized in private themed tours, including a Bucharest Communist Heritage tour
11.	Unveil Romania http://unveilromania.com/romania-tours/bucharest-tours-communism • The Ashes of Communism	Travel agency offering a variety of tours across Romania and in Bucharest, including a themed Communist heritage tour
12.	Slow Tours http://romania.slow-tours.com/product/communist-tour-2/ • Communism Tour	Travel agency offering a variety of tours across Romania and in Bucharest, including a themed Communist heritage tour
13.	Walkabout Free Tour http://bucharest.walkaboutfreetours.com • Communism Tour (performed by Slow Tours)	Cultural NGO proposing various themed Bucharest tours, including a Communist Bucharest tour
14.	Bucharest Guided Tours http://www.bucharestguidedtours.com/bucharestcommunisttour.html • Days of Communism	Independent tour guide specialized in private themed tours, including a Bucharest Communist Heritage tour
15.	Romania to go http://romania-to-go.com/bucharest-tours/bucharest-communist-heritage/ Bucharest Communist Heritage	Travel agency offering a variety of tours across Romania and in Bucharest, including a themed Communist heritage tour
16.	City Compass www.citycompass.ro/en/tours/tours-bucharest-romania/bus_communism_democracy_bucharest • Bucharest Tour – From communism to democracy	Travel agency offering a variety of tours across Romania and in Bucharest, including a themed Communist heritage tour
17.	ABC Travel Romania http://abctravelromania.com/package/bucharest-communism-tour/ • Bucharest – Communism Tour	Travel agency offering a variety of tours across Romania and in Bucharest, including a themed Communist heritage tour
18.	Bucharest Walks http://bucharestwalks.com • Tour of Communism • The Dictator's Dream	Travel agency offering a variety of tours in Bucharest, including two themed Communist heritage tour, one walking, the other by car
19.	Mr. Tripp http://mrtripp.tours/the-rise-and-fall-of-communism Rise and fall of Communism	Travel agency offering a variety of tours across Romania and in

		Bucharest, including a themed Communist heritage tour
20.	Tours of Bucharest/Carpatia Tours http://www.toursofbucharest.ro/The-Communist-Romania • The Communist Romania	Travel agency offering a variety of tours across Romania and in Bucharest, including a themed Communist heritage tour
21.	Travel Maker http://www.bucharestcitytour.com/The_Last_Days_of_Communism_Tour • The Last Days of Communism Tour	Travel agency offering a variety of tours across Romania and in Bucharest, including a themed Communist heritage tour
22.	Touring Romania http://www.touringromania.com/tours/one-day-tours/communism-bucharest-tour.html • Communism Bucharest Tour	Travel agency offering a variety of tours across Romania and in Bucharest, including a themed Communist heritage tour
23.	CT Tours http://www.cttours.ro/bucharest_tours.htm • Bucharest And The Communist Times: Relics of a By-gone Era	Travel agency offering a variety of tours across Romania and in Bucharest, including a themed Communist heritage tour
24.	Travel to Romania http://travel-to-romania.eu • Bucharest Communist City Tour • Communist city tour of Bucharest	Travel agency offering a variety of tours across Romania and in Bucharest, including a themed Communist heritage tour
25.	Carpatia Tour http://carpatiatour.co.uk/package/communist-dictator-tour • Communist dictator tour	Travel agency offering a variety of tours across Romania and in Bucharest, including a themed Communist heritage tour
26.	RetroTravel http://www.retrotravel.ro/ceausescu.php • A journey into the Romanian Communist dictatorship and Ceausescu's trial and execution	Multi-day tour in Bucharest and other communist-related destinations
27.	Communist Road http://www.communistroad.ro/en/tururi/Communist-Group-Tour.html • Dacia Luxury Tour • Communist Group Tour • Communist Welcome • Communist Night Aut • Ceausescu Megalomania Tour	Travel agency specialized on communist-themed tours, offering a 5 different communist-themed tours of Bucharest
28.	Passion for Bucharest http://passionforbucharest.com/custom-tours/the-communist-past-unfolded-the-scars-beneath-the-iron-curtain • The communist past unfolded • Communism and Religion	Independent tour guide specialized in private themed tours, including a Bucharest Communist Heritage tour
29.	Occasions Tour http://www.occasiontours.com/communist-tour-of-bucharest/ • Communist Tour of Bucharest	Travel agency offering a variety of tours across Romania and in Bucharest, including a themed Communist heritage tour
30.	Excellence Travel http://oneexcellencetravel.com/tours_post/communist-tour-of-bucharest/#ad-image-0 • Communist Bucharest Tour	Travel agency offering a variety of tours across Romania and in Bucharest, including a themed Communist heritage tour

Source: Author's own compilation

The question that guided the research and the analysis of the itineraries proposed online by travel agencies and independent tour guides on the communism themes is: What are the elements of immovable communist heritage visited in communist-themed guided tours of Bucharest? Below are a series of connected secondary questions, to be developed in a further study: What are the main events that are portrayed in relation to them? How are they portrayed? Who/what is presented as a „trademark" of Romanian Communism? Where does „daily life in the communist rule" come into play? The result of a quantitative content analysis of the itineraries proposed by the tours reveals first of all the frequency with which the objectives are presented as communist heritage. From this first identification of the frequencies of inclusion in the tours' itineraries, several categories of themes linked to the interpretation of communist heritage can be underlined. The first step was identifying the main attractions and placing them into areas of interest, while the second of a more qualitative nature was to group the attractions/touristic objectives into several discourse categories presenting the communist past. The limits of the research are obvious from the beginning: it focuses only on online materials – although this is the sector where communist heritage tours are predominant, as printed materials present in local tourist-interest venues (hotels, touristic information points etc.) are scarce in comparison with the online options; all online materials analyzed are in English, aimed at special interest foreign tourists; all the tours analyzed here are proposed by local travel agencies/guides, which covers most of the local offer, leaving beside the way Bucharest communist heritage is marketed by foreign actors in the worldwide tourism industry (international travel agencies etc.) and the way the communist heritage is portrayed for the local population.

Analysis results: Communist Bucharest as a touristic product

As Caraba (2010) pointed in the analysis of 39 tours' itineraries in 2010, most of the general Bucharest tours included the following communist heritage main attractions: the Palace of the Parliament present in the vast majority of the tours, the House of the Free Press, Unirii Square and Boulevard (Former Victory of Socialism Boulevard), Revolution and University Squares. On the only communist heritage tour of Bucharest identified by Caraba in 2010 included the following communist heritage sites as well: Ceaușescu's tomb in Ghencea Cemetery, Ceaușescu's residence in Primăverii Neighborhood and the Radio House. As the results of the quantitative content analysis of the Bucharest communist heritage tours indicate, much has changed in only the space of a few years. To begin with, the number of local private initiatives proposing this type of tour themed on communist heritage has exploded and the diversity of the topics and heritage sites, buildings and monuments has increased overwhelmingly.

Table 2 – Analysis results. Frequencies of appearance in tours' itineraries of elements of communist heritage as touristic attractions

Nr.	Main attractions	Nr. of inclusions in itinerary
1.	Palace of the Parliament / House of the People	30
2.	Revolution Square	24

	(including several attractions: former Central Committee of the Communist Party, Rebirth Memorial, 5th Division of Security, Communist Congress Hall – Palace Hall, Former Royal Palace, Iuliu Maniu and Corneliu Coposu statues)	
3.	Civic Center (with Constitution Square and Socialist Victory Boulevard)	16
4.	University Square / 21st December 1989 Square	11
5.	"Communist neighborhoods" built in communist period	10
6.	House of the Free Press / Scânteia House	8

Nr.	Museums	Nr. of inclusions in itinerary
1.	Primăverii Palace – former residence of the Ceaușescu family	6
2.	„Memory as a form of justice" – Permanent exhibition in Bucharest of the Sighet Memorial of the Victims of Communism and Resistance	4
3.	Military Museum – exhibition on the Romanian Revolution	4

Nr.	Religious heritage	Nr. of inclusions in itinerary
1.	Displaced churches during the systematization works on the Civic Center (in particular Mihai Vodă Church)	7
2.	Romanian Orthodox Patriarchy	1

Nr.	Cemeteries and Mausoleums	Nr. of inclusions in itinerary
1.	The Heroes' Mausoleum in Carol Park	3
2.	Heroes of the Revolution Cemetery	2
3.	Ghencea Cemetery – Nicolae Ceaușescu's tomb	2

Nr.	Other attractions across Bucharest	Nr. of inclusions in itinerary
1.	Radio House	4
2.	„Carol I" Defense University and socialist statues	3
3.	Circuses of Hunger	2

Nr.	Day trip to Târgoviște	Nr. of inclusions in itinerary

1.	„Metamofozele unui loc al trecutului" exhibition in the former Military Unit 01417 – trial and execution place of the Ceaușescu couple	3

Source: Author's own compilation

Caraba's (2010) proposed categories to better understand the way a tourism discourse can be developed around communist heritage are still partially applicable. The main attractions can be divided in the following categories: 1) Attractions related to the Communist regime: Palace of the Parliament, Revolution Square (former CCPC headquarters), Civic Center, House of the Free Press, Radio House, Congress Hall – Palace Hall; 2) Attractions associated with the 1989 Revolution: Revolution and University Squares; 3) Attractions underling the relationship between communism and religion: all the monuments present above in the religious heritage section. However, the current analysis finds that most of the previously neglected areas and sites were integrated in more detailed and longer guided tours studied here. Heritage buildings or sites with significance for the communist period, previously absent or little put on display (Caraba, 2010), are now part of the various itineraries (e.g.: the State's Archives still showing bullet signs from the Revolution, the Heroes Mausoleum in Carol Park, the churches affected by the demolitions and systematizations of the 1980s and the residence of the Ceausescu's, as well as their tombs in Ghencea Cemetery). Moreover, entire new categories appear which develop new themes and provide various interpretations of the communist heritage:

- An "off the beaten track" itinerary, portraying daily life in the communist regime: this category includes visits to the "regular communist" Bucharest neighborhoods built in the communist period (in particular the '70s and '80s), as well the Hunger Circuses (large venues projected to become markets and canteens). These types of itineraries are usually coupled with the displaced churches hidden in the area of the Civic Center behind tall Socialist buildings (Mihai Vodă Church in particular).
- Remembrance themed sites are also relabeled as touristic attractions - The Heroes' Mausoleum in Carol Park, Heroes of the Revolution Cemetery, Ghencea Cemetery. In the same category can be placed the interior visit of the „Memory as a form of justice" – Permanent exhibition in Bucharest of the Sighet Memorial of the Victims of Communism and Resistance.
- A category by itself is the Primăverii Palace, the former residence of the Ceausescu couple, which was recently opened for the public visits (March 2016). The opening was a success with the local public, while at the same time the popularity of this touristic objective is growing with the foreign tourists.
- In connection to the Bucharest communist heritage comes also the short trip to Târgoviște, at the former Military Unit 01417 – trial and execution place of the Ceaușescu couple. The visit of the museum can be either integrated in Bucharest communist tours or presented as an independent day tour. This heritage site rememorizes the final chapter of the Romanian communist period, with the dramatic events of the Romanian Revolution.

Another aspect worth mentioning is the development of several walking tours themed around the communist heritage. Although most of these tours center around the Palace of the Parliament and the Civic Center area, they also include the University Square/Revolution Square. This design of the itinerary implies for the easy-paced walking tour the inclusion of an alternation of the communist heritage landscape with urban heritage from other periods (e.g. in architectural heritage Art Deco, Neoromanian and

French eclectic are worth mentioning as a contrast to the Socialist architecture). Walking tours themed on communist heritage are available also private tours form. All in all, Bucharest's communist heritage tours gravitate around two main elements. The first one is the Civic Center, with its highlight the Palace of the Parliament being included in all the communist heritage tours studies. The Palace of the Parliament holds a special place in the discussion of communist heritage due to its direct association with the Ceausescu totalitarian regime. In addition to the massive interest shown by foreign tourists and the its promotion by local private initiatives as the highlight of the local communist heritage, as well as a local landmark in general tours, the Palace of the Parliament, still stirs debates among locals. It was considered by locals both the most beautiful (35,6 %) and the ugliest building (10,56%) in the city, which sustains the high degree of sensitivity and polarization around the subject of local communist heritage (NSPAS, 2010).

The second theme is the Romanian Revolution, illustrated by the massive presence in the tours' itineraries of the two main squares associated with the 1989 Romanian Revolution: Revolution Square, itself including various statues, monuments, buildings and sites related to the communist regime, and University Square – one of the essential symbolic spaces of the Romanian Revolution. Bucharest has the largest immovable communist heritage in the country, having undergone major urban changes and a general re-landscaping of the city in the communist period. The systematization plans following the devastating 1977 earthquake have leveled down an area 4.5 km in length and 2 km in width, roughly equivalent of the total surface of Venice (BICC: 2016) of the historical center. Almost 40.000 inhabitants of the area were evicted, historical heritage churches, synagogues and buildings being bulldozed in order to put into place the plans of the Civic Center (Light, Craig: 2013). Hence in Bucharest, the communist heritage – and in particular the built one – can mainly be associated with the second half of the communist period and with Ceausescu's dictatorship and major urban projects. In the light of this particularity of the local communist heritage, part of the tours analyzed here can be seen as focused around Ceausescu related heritage, in other words we are witnessing the *Ceaușization* of communist heritage tours of Bucharest (in Romanian *"ceaușizarea tururilor de patrimoniu comunist"*).

Conclusions

Heritage interpretation is an essential issue related to the practice of tourism in general, nonetheless it stands out for its paramount importance in the case of communist heritage and its uses in the tourism sector. This is due to its sensitive relationship with the new states that arose from the former communist countries (Light, 2000a, 2000b). Administrative actors have yet to formulate an official pose regarding its communist heritage and its use in the tourism industry, meanwhile interpretations of heritage are provided by other actors. The scene is taken by private actors capitalizing on the cultural interest of foreign tourists, while at the same time civil society projects militate for the remembrance of that past (the best example being the exhibition opened in Bucharest by the NGO Fundația Academia Civică, as a small part of the „Memory as a form of justice" Sighet Memorial). Moreover, this seems to be an underling trend, as civil society initiatives, NGOs and community projects have started proposing guided tours or other activities centered around communist heritage in Bucharest, targeting the local population

and Romanian visitors (e.g.: guided tours provided by Calea Victoriei Foundation[1], photography and blogging projects[2], projections and events themed around the communist heritage or period).

Another interesting theme is the use of nostalgia and retro symbolism in the design of local venues (Social 1 restaurant) or in advertising and rebranding of former communist brands (the Pegas bikes and their shop in central Bucharest are a success, just as other rebranded products, such as the as Eugenia biscuits and Rom chocolate bar have caught the eye of new generations). Duncan Light's (2000b) observation about Romania's communist heritage tourism being created from the exterior, due to the interest of special interest foreign tourists is, as proven from the current research, being countered in recent very years by local private initiatives – in particular local travel agencies and private guides. The desire of authorities to erase the communist past (Light, 2000b) might also be put into question, although the public sector does not engage in Bucharest's case in overt promotion of the communist heritage as such. A note must be taken, however, of the major shift of attitude of administrative actors in relationship with the immovable communist heritage, as shows the case of the successful opening of the Primăverii Palace as a public museum. Another interesting example of an institutional project aiming to bring communist heritage into the public eye and popularize this thematic among the young generation is the Communism in Romania (in orig. *Comunismul in România*) project developed by the National History Museum of Romania. [3] This project highlights the Romanian communist past by means of immaterial heritage. The *Comunismul in Romania* project is online-based and presents, besides the vast photographs collection portraying major events as well as daily life from the communist period, a series of articles related to various aspects of the communist past. Along with the new wave of interpretation of communist heritage as part of national history and culture via tourism practices, we might just be witnessing a very interesting process of re-integration of communist heritage into the national identity and history discourse.In the end, a question is raised and will be undoubtedly followed in the next years: as Bucharest's communist heritage is inextricably linked to the Ceausescu regime, will the representations of Bucharest's communist past be associated mainly with the figure of Ceausescu by interpreting in this direction the local communist heritage?

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[1] Calea Victoriei Foundation (2009, 2013) proposes a series of lectures themed on local history, architecture and culture including such events related to the communist heritage (e.g. Prof. Ph.D. Vintilă Mihăilescu's lecture on *Balconiada or about daily life in communism* and Mirel Banica's lecture on *The red sun – about memory and nostalgia of communism in Romania.*

[2] Two extremely relevant examples of photography-based projects with a major online following are „New and old Bucharest" (in orig. *Bucureștii vechi și noi*), http://www.bucurestiivechisinoi.ro, and „The Photography Museum" (in orig. *Muzeul de Fotografie*), http://www.muzeuldefotografie.ro. Another blogging project themed on the urban heritage and landscape is „Urban ideas" (in orig. *Idei urbane*), deconstructing the evolution of the city, including its communist heritage layer (Idei urbane, 2015).

[3] A notable initiative of the project is the fact that the collection of pictures depicting the reality of communist Romania is available for download and private or public use online and in social media, as long as the copyright of the National History Museum of Romania is acknowledged.

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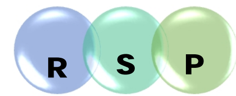

ORIGINAL PAPER

Policy Making and Secularism in Macedonia

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Abstract
In places where social multiethnicity and multiculturalism is detected, the interethnic and interreligious dialogue is considered to be the imperative of time which should be initiated by the government itself. But in recent years, the Republic of Macedonia as a multiethnic and multireligious state goes in the direction of ruin the interethnic and interreligious harmony, thereby destroying the basic rules of the secular state. The purpose of this scientific study is to make a specialized overview regarding the recent function of secularism in the Republic of Macedonia. The main hypothesis of this study is theconfirmation that in the Republic of Macedonia there is an attempt to ruin secularism by the actual government. This will be proven by mentioning several cases and challenges that occurred in our country lately as well as we will recommend way of overcoming the same. Different methods were used in this study, starting with the descriptive method by consultingrelevant bibliography and analyzing relevant reports from the country and the international factor, the causal method, the content analysis, whereas a questionnaire was used as a technique which was filled by people living in the main cities of the Republic of Macedonia between January and March 2015, and an interview was held as well. The results of this study prove that in recent years the borders of secularism were infringed and that the political parties through the impact of government indirectly helped one particular religious community, so that there is ethnical and religious conflict and discrimination which has had a great impact not only on the country but this is reflected in the region as well, in the development of reports with the neighboring countries of the Republic of Macedonia.

Keywords: *Macedonia, religion, challenges, relations, conflict*

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Policy making and secularism in Macedonia

The return of religion has become a crucial phenomenon in many societies, as well as a global orientation that gains more strength with the development process of globalism. In this process of religious returning in half instances, time after time it is pretended to exist in Macedonia as well. Peter L. Berger, one of the foremost advocates of secularization during the 1960s, said that "a whole body of literature by historians and social scientists loosely labeled 'secularization theory' is essentially mistaken." According to Norris and Inglehart "there is no question that the traditional secularization thesis needs updating. It is obvious that religion has not disappeared from the world, nor does it seemlikely to do so. Despite trends in secularization occurring in rich nations, this does not mean that the world as a whole has become less religious" (Norris, Inglehart, 2004: 4-5). During the last decade, however, this thesis of the slow and steady death of religion has come under growing criticism; indeed, "secularization theory is currently experiencing the most sustained challenge in its long history"(Berger, 1999: 2). On the other side, we have authors who show their concerns for the secularism of Europe as a whole, for example: "religious leaders, journalists, sociologists, politicians and most people with a passing interest in its religious and cultural identity, both within and beyond its boundaries, assume the West is secular (Smith, 2008: 3).

The term secular derives from the Latin *saeculum* and means a dualistic symbolism for time and space: In this case, time refers to "the present" or "today", whereas space refers to "the world" or "earth". As it can be seen, *seaculum* means "this time" or "the present time," i.e., it has to do with this world events or "contemporary events". Thus, the concept secular refers to the conditions of this world at this time or at this certain period of time. According to the author Harvey Cox, there are differences between the two terms "secularization" and "secularism". According to him, "secularization implicates a continuous and infinite process, in which values and viewpoints continuously are corrected in accordance with evolving changes in history, whereas secularism, the same as religion, projects a closed viewpoint and an absolute fixation of values towards a final historical goal and a final message to men" (El-Attas, 2006).

Secularism does not mean the exclusion of religion from the public life of a society. It is ofcourse possible to define secularism as a totally hypothetical notion of strict and systematic separation in all aspects of the relationship between religion and the state, and then to assert this narrow and unrealistic definition in rejecting any form of regulation of that relationship (An-Na'im, 2008: 36). For The event flow of secularism we must rely to the opinion of the author Hurd, he said that: "the social construction of secularism has taken two distinct paths in international relations: a laicist trajectory, in which religion is seen as an adversary and an impediment to modern politics, and a Judeo-Christian secularist trajectory, in which religion is seen as a source of unity and identity that generates conflict in modern international politics. Each of these traditions of secularism is associated with particular sets of practices". He ultimately thinks that "laicism, which comes out of the Enlightenment critique of religion, is associated with attempts to force religion out of politics" (Hurd, 2008: 23). So, as noted a trajectory of the word secular is alsoLaicite - the French version of secularism, which insists on the strict separation of church and state or, more generally, of politics and religion— has become well known internationally in the context of the March 2004 law prohibiting pupils at public schools from wearing ''signes religieux ostensibles [conspicuous religious signs]."During the struggle between les deux France, Republicans needed to

develop an ideology that could replace Catholic morality and that would spread the ideal of secular citizenship across the country" (Jansen, 2006: 477). The eventual objective of secularization is to deny God and to completely eliminate religion or to limit it in the private sphere only while recognizing the existence of a "God" that is not responsible for issues on Earth or secular issues affecting people. The concept cannot be set out of the context of Europe evolution and the church reformation movements. In order for Christianity to survive in the first centuries of its existence, it would set the division of faith and city, a division that was set in parallel with the differences between the world and the body. The first Christ's order "to Caesar" - which became immensely important in the Saint Paul's writing - added a political dimension to Christianity and to the already Christ's dual nature (Temimi, Esposito, 2010: 37). Jose Casanova suggests that secularization should be thought of as a three-fold phenomenon: the decline of religion, the differentiation of the secular spheres, and the privatization of religion. (Casanova, 2006) According to Holyoake "secularism remained secure, so long as the consensus that religion belongs within the private sphere remained in place" (Cady, Hurd, 2010: 4-5). This means that religion should not interfere in the internal affairs of state, as the state should not interfere in the internal affairs of religion, but this does not mean that religion should stay indifferent to the actions of the state and the state to stand indifirent to works of religion. Help each other but not to interfere in the affairs of another. Thus, the term secular can be defined as one of the most important organizational principles of modern politics. Mark Chames I claims that secularization should not be defined as "retreat of religion, but as a weakened sphere of religious authority" (McGuire, 2007, p: 68), whereas according to Uatt "the secularization process is necessarily universal, unstoppable and irreversible, even though he does not agree that in the end of this secularization process the religion will be destroyed or lost. He tries to see religion in a modern and laic society" (Pajaziti, 2012: 223). The relationship between religion and secularism can also be viewed as mutually sustaining. "Secularism needs religion to provide a widely accepted source of moral guidance for the political community, as well as to help satisfy and discipline the nonpolitical needs of believers within that community. In turn, religion needs secularism to mediate relations between different communities (whether religious, antireligious, or nonreligious) that share the same political space or space of civic reason" (An-Na'im, 2008: 41). To be clear on the point, "secularism cannot replace religion for believers, nor provide cross-cultural foundations for universal norms of human rights" (An-Na'im, 2008: 42).

Based on the abovementioned definitions, a personal and comprehensive definition can be given, so that we can say that secular is "that state where there is not accepted any official religion and at the same time it is not considered to be anti-religious, meaning that there are moral norms that originate from religious, but regarding its citizens, it does not impose religion nor forbid it". In most of the cases, the religion is considered to be a personal issue, and collective issue in cases when citizens or religionists of a particular religion get organized with religious communities or associations not being financed by the state as long as they do not spread hatred and religious discrimination.

Secularism in Macedonia - After the introduction of the term secularism, through this scientific research I intend to make a more specialized view about the functioning of secularism in Macedonia in the recent years. The main hypothesis of the study is to prove the idea that in Macedonia there is a tendency of dissolving secularism by the actual government. This is going to be illustrated with the following case studies:

the carnival in the Vevcan village near Struga, the building of the church in the Skopje Forteress, the building of giant crosses in visible places for members of all religious communities as well as the murders that happened in Smijlkovci village near Skopje. The conduction of a survey for the wide population was the technique that was used in the territory of Macedonia in the period between Januay – March 2015 both through emails and directly. The survey questions were sent through emails to 250 people, and directly to 150 other people. The reasons for the electronic survey are objective and subjective, i.e., it is an easier form of delivering and filling it, but having in mind that the Internet is used more by younger generations and less by older generation, the traditional form of the surveye was also used, through direct contact. The survey had a total of ten questions with some subquestions, and the answers were based on the Likert survey, that included five answers: I definitely agree, I agree, I do not know, I do not agree, and I definitelly disagee. In the survey, there were included people of all ages, i.e., from 15 to 21 years old 14%, from 22 to 34 years old 39%, from 35 to 44 years old 27%, from 55 to 64 years old 13% and older than 65 years old there were only 7%. Both genders, males and females, were included equally 50% - 50%. The percentage of their education is as follows: 24% with primary school, 45% with secondary school, and 31% with university diploma. Regarding their ethnicity and religion, I have tried to pay more attention to these two points, because they are related to the interethnic and interreligious dialogue, thus, regarding this issue, their percentage is as follows: 55% of surveyed people are Macedonians, 30% Albanians, 4% Muslim Macedonians, 4% Turkish, 4% Roma and 3% Bosnians, whereas regarding their religion, the percentage is as follows: 53% Orthodoxes, 43% Muslims, 3% Catholics, and 1% Atheists.

The Republic of Macedonia by constitution is a multi-ethnic and multi-religious state, where the largest ethnicities are Macedonians and Albanians. As Pari said "people of both religions have coexisted with centuries, and the religion was a sign of their culture so far, until the appearance of nationalism in the region and of the ethnic difference" (Peri, 2003, p: 405). To understand the reality of Macedonia we must return to its past, and this was very well defined by author Pajaziti, he said that "Macedonia, as a part of former Yugoslav Federation, is mainly led by the principles of Marxist atheism, communistic ideology, respectively. It has tried to reduce and confine the religion as a consciousness issue, a phenomenon with which the religionist lives in his/her inner world, without being visible to authorities and the state. By considering that the religion can hardly be eliminated from peoples' hearts this state had chosen the gradual approach" (Pajaziti A., 2003: 41-42). After being separated from Yugoslavia in 1991, in Macedonia there was a secular spirit which was mixed with a dose of tendency towards the orthodox direction, by giving it a priority based on the higher percentage of orthodoxes that are mostly Macedonian (65%), thus, having asymmetric and unequal attitude towards the Muslim population who based on the overall number of population have the second place (33%) (U.S. Department of State Reports, 2014). According to the author Spasenovski (2015: 9), "Macedonia has a combined model of secularism which holds the following three elements: the first one, European national standards; the second one, traditions of the majority of population of the orthodox version of Christianity, and the third one, the realities of the actual religious landscape". According to him, "the challenge of the Macedonian model of secularism, as the reality will demonstrate, consists in the ability to ensure balance between the three mentioned factors, and this duty is assigned to institutions which are led by political parties".

At the first glance, it seems that these three points are valid and in harmony with each other, but in reality it is not like that. The points that Macedonia have in common with all the Western countries with which it aims to integrate, are the first point, namely, “All the democratic states in the world have the human rights as a base of religious freedom” which is concluded with the Universal Declaration of Human Rights of UN and with the international rules of NATO and EU, agreements that are signed by Macedonia, as well as the third point that states that “all the heterogenic states that consist of multi-ethnical population and many religions ensure guaranty for all the communities”, which has also happened in Macedonia, but the point that differentiates this state from the others is the second one, namely, “the tradition of the majority of population of orthodox version of Christianity,” pretending this way that if the church is not connected to the state, this state is not completely functional. This point has changed continuously for years, where the article 19 of the Constitution in 1991, favors the Macedonian Orthodox Church among the other religious organizations, with the following formulation: “the Macedonian Orthodox Church and the other religious groups”, but with the changes that happened in 2001 as a result of the OhridFramework Agreement, this formulation with the amendment VII underwent changes, and it states: “the Macedonian Orthodox Church as well as the Islamic Religious Community, the Catholic Church, the Evangelical Methodist Church, the Hebrew Community, and other religious groups and communities”. Now, with the last changes that happened, the religious confessions are divided in three groups. The Macedonian Orthodox Church is in first group, the Islamic Religious Community, the Catholic Church, the Evangelical Methodist Church and the Hebrew Community are in the second group, whereas in the third group, actually, in the category of “other religious groups and communities” there are included all the other smaller confessions. Even though these new changes which are related to constitutional changes for the status of the main religions in Macedonia made a progress in the issue of equality among religious communities, again this did not make all these communities equal, and again the Macedonian Orthodox Church has a priority over other communities because by adding the conjunction “as well as” in the amendment VII the basic criteria of secularism is ruined, the criteria that states that all the religious communities are equal by the constitution.

This point contradicts the two other points, because by giving priority to one religion or ethnic community it loses the equilibration and its heterogenic concept. The functionality of a secular state does not mean that it should not be connected to one community or religious object. By distinguishing a particular religious community it seems as if one community is more constituent than the others, as if it has more obligations, liabilities and responsibilities than the others, and as a result it has more priority in the management and leadership than all the other communities. Again, this thing contradicts the most crucial rights of the democracy.

With this we are witnessed so far is in line with what the author Maleska says “theoretically, in a state where different ethnical groups live, the nationalism of one of them triggers or strengthens the nationalism of the others” (Maleska, 1991: 93). In Macedonia there is a correlation between ethnicity and religious affiliation; the majority of Orthodox Christians are ethnic Macedonian and mostMuslims are ethnic Albanian (U.S. Department of State Reports, 2014). According to Atanasov “nationalism in Europe is not dead. Europe is a nation-state business. The Balkans too. Macedonia is one of the rare interesting examples from a multicultural point of view as a practice, theory too. The Macedonian state is driven between the nationalism(s) and multiculturalism, and there

are no easy solutions" (Atanasov, 2003: 314). He also said that "macedonians still perceive Macedonia as their 'natural' state, and involuntarily make more 'space(s)' for the Albanians" (Atanasov, 2003: 304). These two ethnicities have a huge difference regarding the religion and nationality concept. Generally, regarding the Orthodoxes, in all Balkans, if we rely on the opinion of Denford "the building of autocephalous churches was considered to be necessary step in the process of the creation of nations-states. The autocephalous orthodox church represented a continuation of the state … religious saying about the nation" (Denfort, 2003: 41). In the same line is Ortakovski too, he said that "the orthodox Church and its supporters mythologize its historical function today, and consider it to be essential for the existence of the nation. Ethnic Macedonian nationalism has been traditionally tending to connect with the Church, as in all the cases of the Orthodox Commonwealth, that's way Macedonian Orthodox Church acts not only as a religious, but also as an ethnic organization" (Ortakovski, 1998: 412).

Albanians, on the other side, according to Peri, regardless of their religion as they are divided in Muslims, Catholics and Orthodoxes, "they did not develop feelings of nationalism until the twentieth century" (Peri, 2003: 367). Albanians as a nation belong to three religions: Muslims, Christians and Orthodoxes, and the shifting or conversion of a person from on to another religion does not impinge his/her nationality as well as does not affect his/her value and dignity, because as it was mentioned above there is not a strong tie between the nationality and religion, whereas regarding the Macedonians, their shifting or conversion to another religion apart of Orthodox impinges their nationality because in their faith the religion is closely connected to the nation and citizenship, and in the cases of conversion then there are real chances that the person loses lots of respect and his/her dignity is impinged by the surrounding society.

This conclusion is also based on our survey, and based on the raised issues there are two more: On the Macedonian side, religion is considered to be essential for the existence of the nation and the answers of the surveyed people are as follow: I definitely agree 39%, I agree 28%, I do not know 10%, I do not agree 13%, and I definitely disagree 10%; and on the Albanian side, religion is considered to be essential for the existence of the nation and the answers are as follow: I definitely agree 5%, I agree 8%, I do not know 25%, I do not agree 35%, and I definitely disagree 27%.

The events that are case studies in this research and that have happened in the recent years are related to the conflict between the two biggest ethnicities. The issue of interethnic conflicts is very delicate but in Macedonia they have had more echoes because of the aforementioned analysis, i.e., the issue of inseparability between the nation and religion. By deriving that for the Macedonian community the citizenship is an element of religious principles, then they consider themselves as dignified owners of their state, which was proved with the Constitution of the year 1991 in relation to the nation and religious communities, whereas the other communities were considered as second hand citizens.

One of the reasons of a polarization between Albanians and Macedonians in Macedonia is also the fact that the Macedonian political parties deploy the Orthodox religion in their political doctrines by stating that the spiritual, the religion and the faith is eternal food of Macedonian identity, whereas they consider the Macedonian Orthodox Church as essential for the existence of nationalism to the extent that the Macedonian Orthodox Church did not function only as a religious organization but also as an ethnical organization. The doctrine of VMRO-DPMNE of the year 2009 ranks the religion as one of the eight main columns and it says: "The spirituality, the religion and the faith are

eternal food of Macedonian identity…" but with time, VMRO as a political party of the center right advocates for less expressed division of the state with the religious communities, so that with this defined reality it persists the role of MOC-AO to be emphasized without damaging the other remaining religious organizations. Herewith, starting from 2001, this political party started in the same way to address the citizens of the other Christian denominations (Catholics and Protestants), as well as Muslims, especially at the time when many members of the Macedonian Muslim community became members and voted this political party. SDUM (SDSM), as a political party of the center left, considers the church as a historical factor in the development and fortification of Macedonian national identity (Party Programme of the SDSM, 2014, p: 125). The former president Branko Crvenkovski, an ex leader of the opposition SDAM, when in power in 2007 has awarded the MOC with highest honors for special achievements and contribution to the benefit of the state. (The journal of turkish weekly, 2007) According to the opinion of Macedonian author Spasevski, "in principle, this political party advocates for stronger expressed division of the state from the religion without favoring any of the religious communities. In the true sense of the word, this means not to interfere in religious institutions, but at the same time disabling religious communities to interfere in the work of institutions" (Spasevski, 2015: 17). Regarding Albanians, their case is slightly different because even though the religion among them is an important aspect of their identity, considering the fact that historically the Albanians have had three religions, and that the Muslim, Catholic and Orthodox religion, this was not necessarily connected to their ethnic identity, whereas The Islamic Religious Community in Macedonia despite of having a protective politics for the Albanian Muslims in particular, it also protected the rights of every Muslim believer in Macedonia, regardless of their ethnicity. Regarding the political parties and politicians, in a local plan some Albanian political representatives have kept connections with the Islam believers in Macedonia (QMBN, 2009, p: 35-36), but at the Albanian political parties at the period between the years 1991-2001 there is not a religious content in the programs of the Albanian political parties (QMBN, 2009, p: 35), and this result continues to this day with all Albanian parties.

When we defined the secular, we said that the state must not favor one religious community, and must not have a government project for building a religious object or for financing and sponsoring something similar. But, in the recent years we have witnessed things that go on the opposite direction, as is the case of the building of the church Constantine and Elena in the center of Skopje.Immediately after the 2006 parliamentary elections, the government decided to finance the construction of the church of Sts Constantine and Elena in Skopje's central Macedonia Square, appointing the Ministry of Culture as the project leader (Pisarev, 2014). Although it remain an speculations that we can not prove definitively because for all these hipothesis there are not any declaration by the government representatives, government spokesmen or even published official declaration by governmental web sites. According to the video clip that visualizes the New Skopje which additionally is added in YouTube (Proekt "Skopje 2014", 2010), it proves that the church "St. Constantine and Elena" was part of the government project "Skopje 2014" even though in the construction place there is a signboard where there is written that the investor of the church is the foundation "St. Car Konstantin". According to the portal post of Apostlov, "at the beginning, the Ministry of Culture was engaged in the building of the object and in 2009 it opened a tender that failed because "Granit" – Skopje offered, according to the government, very high price for building it. The thing

that is known to the public is that until now for the building of the church two donor conferences were held, and the second known thing is that besides of the businessmen, there was also present the Prime Minister Nikola Gruevski" (Apostolov, 2014). The only official source, is the following information given by of the Republic of Macedonia in 2013 that says "the Prime Minister Nikola Gruevski, who was present at the donor conference, said that he was pleased that once again they gathered to support the initiative and to give support for building of the new church "Saint Constantine and Elena" – he said. He invited the attending ministers, deputies, directors, representatives of the economic chambers and businessmen to help in the continuation of, as he said, the building of a beautiful tradition in Macedonia and together to build the church "Saint Constantine and Elena"' (The government of the Republic of Macedonia, 2013). According to a interview with Kosta Stanoevski made by Jordanovska, "a secretary general of Skopje Eparchy, the state has given the land of the center "Macedonia" as a gift where the church should be built" (Jordanovska, 2009). Afrim Tahiri, ex general secretary of the Islamic Religious Community, complains that the Orthodox Church enjoys an exclusive position in society, and acts in alliance with government institutions, reflected in their routine presence and participation at events where no religious community has a place. He said that the secular constitution of the state was being directly undermined also by the government's decision to build churches within the "Skopje 2014" project, which is intended to beautify the capital. "These trends are followed by local governments and government ministers," Tahiri maintained. According to him, despite of the promises given for years, very little or nothing was done for the elimination of the problem, a problem that affects negatively in the interreligious and interethnic harmony. As the sponsoring of religious objects by the state is a very delicate issue, through the survey we were also interested for the citizens' opinions. The discussed hypothesis was: "The government in Macedonia has financed and continues financing the building of churches," where 24% of surveyed people definitely agreed with this declaration, 29% only agreed, 12% gave no answer, 20% did not agree, and15% definitely disagreed.

An issue that again interferes with secularism is the religious holidays. According to Spasenovski "this was achieved with the changes of the law about holidays in 2007, which was approved at the time when the governing political party was VMRO-DPMNE. With the changes of the Law about holidays from 2007, unlike before, the state presented 27 holidays of which 15 are of religious nature, where the biggest part is about the citizens of Orthodox confession, and then, depending on the size, actually citizens of every religious community mentioned in the Constitution" (Spasenovski, 2015).

Case studies: 1

Protests at Skopje Fortress "Kale"

The first case study, chronologically chosen, is about excavations at the Skopje Fortress. On 13 February 2011, at least 100 ethnic Macedonians and ethnic Albanians clashed at the medieval Skopje fortress (Kale), over the building of a museumchurch meant to host historical artefacts from the archaeological excavation (Europe, 2011, p: 14) which resulted that there had been evidence of an antique Macedonian church. This provoked a protest against the building of the church inside the Skopje Fortress as well as a counter-protest by the Macedonian Orthodoxes that looked like a street battle, where not only the police was involved, but also the senior leaders of the political party DUI. This event prompted a strong political reaction that shook the government coalition and

caused inter-ethnic crisis among the supporters of the church and its opponents. According to information given by Davitkovska “the clash started when the Head of the Bureau of Cultural Heritage denied giving an explanation on what was built inside the Kale Fortress” (Davitkovska, Stefanovski, 2015: 10).

Regarding the tensions in the Skopje Fortress, our survey included several questions on this issue. One of the submitted discussions was the following: “The excavations at the Skopje Fortress and the building of the Macedonian Orthodox Church (2011) were provocation for interethnic and interreligious tensions in Macedonia,” where 34% of surveyed people definitely agreed with this declaration, 31% only agreed, 15% had no answer, 12% did not agree, and 8% definitely disagreed. The second question was: “The building of the church at the Skopje Fortress was prevented because nobody took the responsibility for its building.” The second issue regarding this problem is the following: “The building of the Orthodox Church at the Skopje Fortress during the late hours of the night was considered suspicious for the citizens,” where 31% of the surveyed people definitely agreed with this declaration, 31% only agreed, 11% had no answer, 15% did not agree, and 18% definitely disagreed. The next discussion that had to do with this issue was: “The building of the church at the Skopje Fortress was prevented because nobody took the responsibility for its building,” where 27% of the surveyed people definitely agreed with this declaration, 36% only agreed, 9% had no answer, 20% did not agree, and 8% definitely disagreed. The following issue was reviewed in the next discussion: “The senior leaders of DUI should not have involved themselves physically to prevent the building of the church at the Fortress, because their involvement provoked more Albanians and Macedonian citizens to get revolted and clash with each other, where 20% of the surveyed people definitely agreed with this declaration, 25% only agreed, 8% had no answer, 25% did not agree, and 22% definitely disagreed.

Case studies: 2

Controversial carnival of Vevcani near Struga

2. In Macedonia there are cases of abuse and discrimination on religious bases as is the case with the carnival of Vevcani near Struga, where low-browed people by using masks on behalf of culture, attacked Islamic values, as well as, the principles and the main Islamic practices were mocked, a situation that aroused dissatisfaction in the country and caused interethnic and interreligious hatred as well as a conflict. Author Pajaziti, years ago, had similar analysis for Carnival in Vevcani, he said that “this carnival had its internal and external consequences. Externally was caused a diplomatic scandal with Greece (due to the symbolic burial of the Greek corpse), so Greece sent to Macedonia a protest note, internally was generated a turbulence with religious nuances, were upset religious feelings of almost half of the population of RM” (Pajaziti, 2013: 9). In front of the Municipality of Struga, demonstrations were organized in Struga on January 27th, where the Head Mufti of the Struga muftiate Ferat Polisi and the Mayor of the Municipality Ramiz Merko addressed the group of Struga citizens. They announced that the demonstration is organized because of the “offenses against the Muslims in Macedonia with the carnival masks in Vevcani”. If we look at the bottom post “after this event, offensive graffiti was written on several churches and mosques in the region during the next week, and there were tries to set the religious buildings on fire” (Micevski, Popovikj, 2013: 91). Until now, it is still unclear who was the organizer and sponsor of this manifestation. The carnival is supported by the Ministry of Culture and is sponsored by the Macedonian Telecom (macedoniaonline, 2012), whereas aspokewoman from

FYROM's Ministry of Culture "the main organizer of the carnival is the Municipality of Vevcani" , despite the fact that the Carnival is funded by the Ministry of Culture (history-of-macedonia, 2012). The Carnival of Vevcani was also included in the survey regarding these discussions, hence: "In the carnival of 2012 in Vevcani, where the Islamic values were attacked by using masks, and the Muslims were mocked, it was only a demonstration of the freedom of acting and had no political background," where 12% of the surveyed people definitely agreed with this declaration, 14% only agreed, 8% had no answer, 34% did not agree, and 32% definitely disagreed. The second one was the following: "Because of the carnival, the protests in Struga and the burning of the two Orthodox churches (in Struga and Tetovo) introduced a rational response to maintain the ethnic balance," where 16% of the surveyed people definitely agreed with this declaration, 20% only agreed, 4% had no answer, 39% did not agree, and 21% definitely disagreed.

Case studies: 3

Milenium Cross in capital Skopje

3. The third case study is related to the Milenium Cross in the most visible places of Skopje, namely in the montain Vodno. Today, religious objects can be seen almost in the most unusual parts of the country, often built for political or strategical tendencies, such as the building of the crosses in many places inhabited by mixed religions or doubled (paired) minarets, that can be considered a novelty in our territories. This race reached its culmitation with the building of giant crosses on certain highlands that can be seen even from larger distances. Until recently, the building of crosses as well as autonomous symbols without the presence of the basic cult had not been a tradition of Christians. The first case is the building of the Milenium Cross, 66 meter high which was built at the summit of montain Vodno in the city of Skopje, built with the intention to compete the building of the two high minarets in the entrance of Skopje, i.e., in Saraj and at the same time to identify the capital city and Macedonia with it, as a biblical country. According to the author Vangeli (2010: 91): "the construction of the Millennium Cross was one of the most visible actions of desecularization, as the government not only put itself into a position of promoter of religion, but it also marked a highly visible public space with a religious symbol". Also, the construction of the second giant cross is almost at the end. It is 56 meters tall, and is located in Aerodrom in Skopje, that can be seen in all the territory of Skopje (Çupi, 2014) that followed the building of 100 floor residence Sky City, part of the Turkish company Cevahir Holding. According to the general secretary of the Islamic Religious Community of Macedonia Afrim Tahiri: "by participating in such events and by placing religious symbols in public places and public buildings, they acknowledge that they are dominant and that they are enclosing their own space". As a conclusion, we can say that any religious symbol that is visible for all the citizens without the presence of basic cults, requires the religious identity of the citizens that do not have that symbol as their own, that is why if the setting of crosses without the presence of basic cults in cities and mountains threatens the distinctive identity and guarantee of Muslims that live there, then those crosses should be removed.

Case studies: 4

Murders in Smilkovci village

4. The most flagrant case that prompted religious hatred and mass protests in the capital of the country is the murder of five Macedonian Orthodox in Smilkovci village. After this tragedy hundreds of angry young Slav-Macedonians staged a huge

demonstration in Skopje to protest the Smiljkovci killings. The protesters chanted nationalist slogans that blamed ethnic Albanians for the killings. The rally spiraled into violence when young Slav-Macedonians tried to enter Albanian districts, but the police managed to cordon them off. As two author tell us, "on May 20, suspects were arrested during a massive police operation in Skopje and surrounding Albanian villages" (Armakolas, Feta, 2012: 1-2). The Ministry of Internal Affairs without having concrete evidence yet, linked this case with terrorism on behalf of religion by arresting as suspicious many Albanians and Muslims, and by accusing them for radical Islamic terrorism. Pendarovski, expert on security issues, regarding this event said: "To say that the murderers did this act based on jihad is a hard thing to believe. The charge also mentions structured groups and organization as well, and not individuals. Let's take some examples: In Norway, Brejvik is a Christian fundamentalist but he is by himself; recently, in France, it came out that the person who killed in front of Jewish schools acted alone; here in Macedonia, it is said that there is an organization. Until now, I have not seen or consulted someone from abroad, particularly from western secret services that claim that in Macedonia there is organized jihad. In principle, jihad has got sporadic purpose to trigger threat, as with every terroristic attack, its primary purpose is to make society to comply with sharia rules, and this element is missing in the case "Monstrum (Monster)" (Pendarovski, 2012).

The survey was also focused on the case "Monstrum." The following was discussed: "The murder of five persons in Smilkovci village near Skopje should not be linked with Islamic terrorism or radical Islam, as the Minister of Internal Affairs GordanaJankullovska stated," in which case 38% of the surveyed people definitely agreed with this declaration, 41% only agreed, 1% had no answer, 13% did not agree, and 7 definitely disagreed.

Government relations with religious communities - The reports of the actual government with the two major religious communities were part of our survey as well. They were included in two questions. The first one was: "The government of Macedonia gives priority to the Macedonian Orthodox Church compared to other religious communities," in which case 31% of the surveyed people definitely agreed with this declaration, 24% only agreed, 2% had no answer, 23% did not agree, and 20 definitely disagreed; and the second one was: "The Islamic Religious Community, unlike the Macedonian Orthodox Church, is avoided by the actual Government because of the failure to return the temple properties, for example: the case of the Burmali Mosque in the center of Skopje, in Bitola, etc.," in which case 19% of the surveyed people definitely agreed with this declaration, 27% only agreed, 9% had no answer, 31% did not agree, and 14 definitely disagreed.

As a conclusion, after discussing all the intended issues that we thought are related with the initial definition of secularism, in our survey the basic issue of the research was put forward regarding the functioning of secularism, namely: "The actual government of Macedonia goes on the opposite direction of secularism, meaning it tries to desecularize the state," in which case 26% of the surveyed people definitely agreed with this declaration, 29% only agreed, 9% had no answer, 25% did not agree, and 11 definitely disagreed.

Apart of this, we communicated with Sasho Ordanoski through the email, a journalist and political analyst, and we asked him about his declaration given in the portal Balkaninsight, where he said: "Macedonia now belongs to a category of "semi-secular"

states, which are neither one thing nor the other. Macedonia is not completely secular like France, for example, neither it is fully non-secular, like some eastern theocracy. It operates rather on the German model, where church and state are separated but where the state supports the church indirectly and 'invisibly'. When nationalists are in power, like VMRO for example, then that support is visible, direct and demonstrative," and he replied that he still stand to this statement.

Religious expert Ramadan Ramadani says that "the state backs the Macedonian Orthodox Church openly, in part to compensate for the Church's weak position internationally, in the Orthodox world. Because of non-recognition of the Macedonian Church by its sister churches and its exclusion from the Orthodox communion, it enjoys a unique position. There is a strange symbiosis between the state and the Church hierarchy in which they help each other to achieve their own interests. On the other hand, such a relationship between the Church and the state leads to an asymmetric form of secularity. What is not considered secular when it comes to the Church is always applied as secularity when it comes to the Islamic religious community", Ramadani said. An interview was also held with BobanMitevski, Chief of cabinet of the Head of the Macedonian Orthodox Church – Ohrid Archbishopric, and he was asked about the hypothesis that there is a tendency for desecularisation by the government side, but he said: "I think that an idea or initiative for desecularisation of the system does not exist. My personal opinion is that in Macedonia exists an attempt to present secularism as atheism, and for those structures it is convenient to redirect the thesis that we deal with desecularisation. Secularization is seen only in the fact that the Church should not interfere in the state issues, or the opposite. It has never happened the Church to say for which should be voted, and vice versa in the frames of church elections. Surely, there are issues where the Church, actually, religious communities and the state are in the same frequency, actually an accordance appears for the things of general context on which both sides are personally concerned".

Conclusions

All these case studies presented in this paper, as well as the citizens opinion through the conducted survey, go on the opposite direction regarding the definition of secularism, therefore, even though Macedonia by Constitution is defined as a secular state, in practice, its society is being affected by the unfair asymmetric politics, and in many cases goes on the opposite direction of secularism. But, even though its counter secularism (desecularism) cannot be proven expressly, as we would otherwise pretend that it has turned into a religious state, that is not true, and in the end we can conclude that Macedonia has a special status, because by infringing the secular rules from time to time, it turns into a semi-secular state, with a tendency of the Macedonian political parties to turn it into a religious state tomorrow that would represent only one religious community at the expense of the others.

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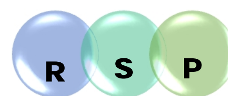

ORIGINAL PAPER

The Right to Education of Persons with Disabilities - A utopia of Romanian Education System

Adelina Mihai*

Abstract
Taking into consideration its applicability along time, we can claim that the right to education was the subject of many controversies, thing which it is not justified if we take into account the legal nature of the concept, that of a fundamental right. From the perspective of disabled persons, the right to education has a complex and relatively complete legal settlement, but regarding its applicability on the national level, there are required certain clarifications which will definitely lead to the improvement of some aspects at the institutional level. To express it more clearly, we consider that these problems of applicability arise due to some economic, psycho-social and educational-institutional difficulties. Although the European regulates this fundamental right, yet it places the matter of the right to education of persons with disabilities in the responsibility of national public authorities, granting them the freedom of action and also to manage such delicate situations. Regarding Romania, this freedom of action involves limited material resources, thing which determines the restriction of the right to education for persons with disabilities in the matter of the applicability of the legal provisions on education nationwide. The aim of this article is to elaborate a complex analysis on the right to education of disabled persons on the current Romanian educational system, as well as the way public authorities implement national education law regulation.

Key words: *right to education, persons with disabilities, Romanian educational system, national education law, implementation*

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Introduction

Romanian State is confronting different problems in the field of education, yet before the 1990's, and its attempt to eliminate the disruptive elements which are making harder this system is questionable. Often, the disabled persons are considered to be one of the most disadvantaged groups by the government, still representing a minority part of it. It is possible that this aspect may raise a problem at the society capacity level to integrate these persons with disabilities, thus creating barriers of different natures: legal, cultural, economic etc., between what is normal and what it is considered to be "abnormality". One of the most important aspects that should be highlighted in this situation is the reason why the right to education of the persons with disabilities is partially violated, and even more than that, in a discreet manner.

We consider that the problem that occurs regarding the lack of respect on the right to education of the persons with disabilities has its cause in more areas, but the legislation in the domain of education raises a number of problems both at interpretation level but also regarding its applicability. If we make reference to the applicability of the legal framework, the problem prioritizes on the level of educational institutions which respect the law, but to the extent to which the state offers them the resources they need.

Although we speak about the same right for all the persons to education, including for the persons with disabilities, with no form of discrimination, we consider that there still exists a difference at the level of respecting this right, as compared to the individuals with deficiencies and the others, and this difference is in how much the state is willing to provide resources for these persons depending on their level of disability, so that they can counterbalance the lacks that the persons with disabilities have. The moment when the persons with disabilities will have their needs satisfied regarding human, material and architectural resources and there will be established an equality ratio between this disadvantaged group and the majority, we can speak about the right to education, with no form of discrimination.

In relation to the interpretative level, we consider that another aspect on which we have to take in account in respecting the rights of persons with disabilities in education, it takes of the understanding of the significance of certain concepts used in the legal sources, like "handicap", "disability", "education", "learning". To make specific examples on what it refers when is discussed the partial lack of respect of the right to education of the persons with disabilities, in a discreet manner, it is necessary the understanding of the concepts listed before. We agree that "the right to learn" from National Education Law and Romanian Constitution has different connotations as compared to "the right to education", the last being less emphasized in the Romanian legal sources. The concept of education is not clearly defined in any Romanian legal sources, but not in the international sources either, except only one and that is The World Declaration on Education for All adopted in Jomtien, Thailand (1990), declaration that Romania approved, and from this definition comes the fact that the right to education includes the right to learn. Regarding the differences on conceptual level between the terms "handicap" and "disability" there are little Romanian legal resources which take into account the fact that using the term "handicap" has discriminatory connotations for the persons in this situation.

Analyzing the concepts of "education" and "learning"

Over time, Member States of European Union have not elaborated a specific definition of the concept of education because of the wide understanding of the term, and

that is why they focused more on the role of education and on the objectives that the right to education should accomplish. Cultural, religious, political differences and different social circumstances represent the main factors in the acceptance of a universal definition of education, as the term does not have the same meaning for all cultures. Education is considered to be a fundamental right of human and The International Declaration on Education for All, adopted in Jomtien, Thailand (1990), sustains closely this global vision (Centrul Educația 2000+, 2009), more than this, it proposes the access to education of all children, youngsters and adults at international level, with no discrimination. This declaration is also the only legal source which gives a clear definition of education, exemplified by the stipulations of article 1. In the presented regulatory act, the concept of "education" is brought like a learning procedure by which there are obtained certain abilities of learning necessary for personal development.

The other legal sources, for example the International Covenant on Economic, Social and Cultural Rights, do not give the definition of education, but they focus more on the results produced by education, on a summary of ideals resulted by ensuring the right to education of all persons (Spring, 2000). Like the other international agreements, the stipulations of art. 2, (3) of the National Education Law of Romania is concentrated on the final product of education, namely on the personality development, on creating a system of values, active participation in society and hiring on the labor market. The Convention on Human Rights, The Convention on the Rights of Persons with Disabilities, International Covenant on Economic, Social and Cultural Rights, Universal Declaration of Human Rights, expend the horizons of education, by the fact that it does not give a clear definition precisely for the results of educational process to be more expanded. The stipulations of the Universal Declaration on Human Rights does not place emphasis only on education as a fundamental right, but also on the fact that education must be a growth factor regarding the fundamental rights and freedoms; moreover, this idea is consolidated also by the Convention on the Rights of the Child. The difference that occurs between the Declaration on Human Rights and other conventions is in the fact that the Declaration places emphasis on moral values, while the conventions are the result of the legal commitment of the States which are parts that ratify these moral values (Audrey, 2012: 3).

These moral aspects are results of education and they consist in teaching the people to live in harmony together in different social contexts, thus developing this solidarity between human differences, with the purpose to value dignity, justice and equality of chances for all (Audrey, 2012: 1). Moreover, the stipulations of article 13 of the International Covenant on Economic, Social and Cultural Rights support the above mentioned ideas. Interpreting the stipulations of article 26 of the Universal Declaration of Human Rights and the stipulations of article 13 International Covenant on Economic, Social and Cultural Rights, education does not tend to an act of learning, as we frequently understand by using the term in relation to the teaching system, but more to shape a personality by implementing some basic moral values of the society. Regarding the right to education of persons with disabilities, the Convention elaborated for these persons to fully benefit from their rights, it reclaims more elaborately the concept of education, taking in to account that the beneficiaries of this convention are persons that come from a disadvantaged group. The difference is made by the reference to the "inclusive education system", but also the reference to a "continuing education" taking into account the fact that the person with disability needs education during the entire life. In the Convention on the Rights of Persons with Disabilities there is a very important given

aspect and this is the fact that we insist on the idea that all the people have the obligation to respect “human diversity” specifically we are speaking about mutual respect both for the persons with disabilities but also for de persons considered to be minorities or disadvantaged groups. Training the tolerance and friendship is not only for the “normal” persons, but for everybody, the persons with disabilities not being advantaged by physical or psychic problems that they “carry”, they have to actively participate in the evolution of the society, because these persons take benefits too on this right equally with the others (Audrey, 2012: 4).

An aspect that needs to be pointed is the fact that the term “education” does not have the same significance as the concept of “learning”. Romanian Constitution speaks about the right to learn not to education, this might represent one of the problems related to the applicability of the right to education in our country. The right to education, as we exemplified above, promotes moral values and the concept of “learning” refers to the process of accumulating intellectual knowledge. Renucci (2009) emphasized in The European Law and Human Rights Agreement the idea that “education has to be understood as the sum of all procedures through which we try to inspire to the youngest values, and learning and instructions especially refer to the transmission of knowledge and intellectual training”. It is to prefer to make a specific delimitation between the two terms because the applicability of the National Education Law from Romania to be more precise. Thus, in article 1 of the National Education Law it is spoken about “the right to learn”. At the same time, the National Education Law is promoting the same educational ideals reminded in the Convention on the Rights of Persons with Disabilities, The Convention on the Rights of the Child, the International Covenant, etc. by the stipulations of article 2, (3). While the concept “education” refers to the accumulation of values for personality development and active participation in society, the meaning of the concept has stronger values when it comes in the statement “the right to education”. The statement “the right to education” is defined by the stipulations of the article 1 of Universal Declaration on Human Rights (1948).

In elaborating par.1 of this article, the Members of the Committee tried to avoid certain aspects such as the part in which the persons who are leading us can stop the parents in choosing the education for their children. Another problem term was the concept “mandatory” in the assertion: ”elementary education has to be mandatory”. A possible interpretation of the term “mandatory” refers to the fact that nobody, not even the State or the family, cannot prevent the child from benefiting from the elementary education. The argument to maintain the word “mandatory” was the fact that “free and mandatory education” became a traditional model in all the countries, so that the omission of this term will be just a step back. The idea of using the term “mandatory” was not referring to the fact that the State can use all the monopoly on the education of the child and neither to the fact that the parents will not have the possibility to choose the school that they desire for their children to go (Tooley, 2004: 1).

If we try an ample definition of the right to education based on the stipulations in the articles of the Convention on Human Rights, International Covenant, Universal Declaration of Human Rights and the International Declaration on Education it follows that actually anyone can benefit from free education in elementary school, and by education we understand both the appropriation of some support instruments for learning and the development of some abilities of learning that underlie lifelong personal evolution. Moreover, education has to build persons who have a certain set of moral values, so that they can contribute to the progress of the society and maintaining the peace.

It can be noticed that the term of “learning” is included in the concept of “education”, therefore the right to learn as it is mentioned in Romanian Constitution is part of the right to education. The stipulations of article 1 of the National Education Law, strengthens the idea that in Romania it is placed emphasis more on the right to learn, because it refers to the fact that the State “ensures the fundamental right to lifelong learning”. The stipulations of articles 2 and 3 of the same law are similar with the stipulations of the articles of international legislative sources regarding the right to education, but none of the Romanian legal articles refers specifically to this.

The differentiation between “handicap” and “disability” on jural fond

The existence in the law both of term of disability and handicap can produce wrong interpretations of the laws, if we take in account the different significances of the two concepts as compared to the perceptions of the society. Agreeing within the abolishment of the term handicap, UNO proposes the substitution of this term with that of disability, counting on the positive connotation of the second term. The designation of the Convention elaborated by UNO is using the term of disability, thus avoiding like this the term of handicap, used both in Romanian Constitution and in other law sources in our country. In the report elaborated by the Romanian Institute for Human Rights there are examples regarding the differences between the two concepts, “handicap” and “disability”. Thus, UNO Convention shows that the persons with disabilities “include those persons who have long term physical, mental, intellectual or sensory deficiencies, deficiencies that, in interaction with different barriers, can limit the full and effective participation of the persons in society in equality conditions with the others. According to a given definition in the UNO system, the handicap is influenced by the relation between the deficient person and his/her environment. Handicap occurs in the situation in which these persons are meeting cultural, physical or social impediments that are preventing the access to different social systems that are made available to other citizens (RIHR, 2013: 7).

As its results from the two definitions given above, the term of “disability” removes the personal lacks, trying to give a “normality” to the person considered to have deficiencies, assigning the problems of his/her incapacity to access to a normal life to the State, the State being the one that has to eliminate the barriers which stand between the persons with disabilities and social integration. More specifically, it is necessary to change the environment and cultural, physical or social resources have to match with the needs of persons with disabilities, removing like this the barriers with the consequence of ensuring the fundamental rights of these persons. Further, “at the moment we speak, there are frequently debates in the world referring to the environment and attitude factors and their role specifically to show the fact that the disability is not an attribute of the person but of the relationship between the person who suffers from a certain deficiency and the environment. The unadapted environment is the one that “disable the person, because of the architectural obstacles, but not only, and in this relationship, taking the responsibility becomes mandatory for each of us” (UNICEF, 2013: 8).

The definition of handicap is discriminatory for these persons with deficiencies, because it focuses the problems on the lacks that these persons have in relation to the environment. In fact, persons themselves, with deficiencies, are guilty for their incapacity to access environment, as long as the rest of the population has the possibility to integrate in the same environment. We agree that replacing the term of “handicap” with the one of “disability” from Romanian Constitution, in article 50, the interpretation of the respective

article would be a different one: "Persons with handicap enjoy special protection. The State ensures the achievement of a national policy of chance equality, to prevent and to treat the handicap for the effective participation of the persons with handicap in the life of the community, respecting the rights and duties of the parents and the trustees". As compared to the stipulations of article 50 of the Constitution on the concept of "handicap" it can be noticed the fact that the State is taking prevention and treatment measures for handicap, not for removing the environmental barriers, as it should happen if in the Constitution it would be used the term "disability".

The problem of the applicability of the law in the special education system

Nowadays, the educational system has different roles depending on different situational contexts: the transmission of knowledge from one generation to another, the acquisition of different learning abilities, the adhesion to a model of "good citizen" to occupy a positive status in society, and, last but not least, building and developing a future society (Stavenhange, 2015:1). Education has to be of the highest possible quality to help every child reach his or her potential, and to achieve effective transitions both from pre-primary to primary and from primary to secondary school. Governments must ensure that children with disabilities in all schools, are able to receive the same quality of education as all other children (UNICEF, 2012: 70).

Within the special education system from Romania, we consider that there are some problems, both at legal and institutional level, leading to a restriction of the right to learn, implicitly of the right to education. There is a discrepancy between the law and its applicability within the institutional framework. The Romanian law mentions the fact that the persons with disabilities should have access to education by specific various forms depending of the level of disability, and the educational system has to provide them access to education. What we want to emphasize is the fact that, although in the law it is mentioned the fact that "The State guarantees the right to education", this right is respected according to the possibilities of each teaching institution.

The same thing is argued in terms of "The right to instruction" in the Convention on Human Rights, but the problem occurs when it comes about the way to respect this right, about the imposed conditions, as Article 2 of protocol no. 1 guarantees the access to the school institutions existing at a moment in a contracting State to whom the Convention recognize the right to regulate the appropriate learning system according to the resources that it has and the social needs (Bârsan, 2005).

The right to a quality education in elementary school and kindergarten has as its purpose developing of certain types of abilities for the persons with disabilities, especially to those that affect the learning process, social cohesion and productivity for the best interest of the society. Educational system plays an important role at institutional level. An important problem that the State and the law have to solve through the educational institutions is finding a way to develop the abilities of persons with disabilities so that it can relate to each degree of deficiency specifically, without any form of discrimination. There are schools that are not adapted in accordance with the type and degree of the disability, even though National Education Law guarantees the access to education for all, with no form of discrimination (EFA, 2004). Although the National Education Law speaks about developing some values, the accomplishment of the objectives of education regarding the persons with disabilities comes up against different problems, because the teaching system passed and it is still passing through a negative period caused by demographic, social factors (the high risk of poverty and social exclusion speaking about

some disadvantaged categories of population) and, last but not least, economical factors. Against the background of the negative impact caused by international economic crisis, most of the governmental interventions recorded a decrease of the financing level, regarding the Romanian education system (NEM, 2012: 4).

Because the National Education Law is the general legal framework for the education of persons with disabilities, we consider that it is necessary to make a parallel between certain articles of the law and the way of their applicability by the special institutional education systems. For example, we illustrate the stipulations of article 53 of the Romanian National Law which raise a problematic situation. This article refers to the existence of school text books in special schools, but it does not make specific reference to a special text book, therefore, therefore we consider that it is necessary that the law should be extremely clear and precise in this matter. Thus, the law has to mention the existence of special text books in special education institutions.

At the same time, we consider that it has to be a law which stipulates on purpose the obligation of the existence of some special text books for the children with disabilities for their integration in the Romanian education system. The problem of the lack of special text books occurs also because of the fact that article 53 establishes a condition of their appearance by the fact that they have to be approved first by the Ministry. This approval represents a procedure that delays the process of elaboration of special text books and their introduction in schools with a direct consequence on violating the right to education of persons with disabilities. So, even though there are organizations, foundations for persons with disabilities protection that write and edit this kind of text books, the text books will be examined by some State institutions, which is supposed to be a waste of time and materials, inevitably leading to a postponement of the process of inclusive education both in regular schools and in the special ones.

Inevitably, we can speak about a form of discrimination relating to the persons with disabilities, and this becomes more emphatic comparing to normal children, because, as article 69 of the same law for a quality learning system, normal children benefit both from text books, auxiliary materials, etc. from the State and collections and working cards from different publishing houses. Against to these arguments it has been formed another opinion that sustains the fact that National Education Law is sufficient and that it is the duty of the teachers to sustain the teaching process without the support of text books. If we refer to the stipulations of article 46 (2), as compared to article 53 of National Education Law, it occurs again a form of discrimination, because this law considers that it is necessary to exist special text books for national minorities “especially elaborated”, article 46 (2), in order to ensure the access to education. From this point of view it is an obvious violation of the principle of chances equality referred to in article 28 of The Convention on the Rights of the Child.

This article do not distinguish normal children from children with disabilities and, according to the adage “ubi lex non distinguit, nec nos distinguere debemus”, neither we cannot do this, and this is why we consider that these stipulations become incident both in case of normal children and children with disabilities. On these grounds, we consider that in Romanian education system it is mandatory the existence of some norms regarding the access to education of children with disabilities. Of course, there is the probability that these measures can be taken without the law of special text books being applied, if the state would have enough founds for the teaching system, but it seems that “the main challenge for the education system and the professional training from the perspective of the financing in the horizon of 2020 is represented by the insufficient

allotment of resources and the difficulties of the State to respect the actual legal provisions regarding the level of expenses. This state of affairs equals to an education addiction to other finance sources that can continue both the current programs and the initiation of some new policies for student vulnerable groups" (NEM, 2012: 8).

Anti-discrimination legislation that introduces a prohibition on policies, practices and actions that directly or indirectly discriminate, will not be sufficient to end all forms of exclusions and segregation. For example, separate schooling systems for children with disabilities are often sustained without braking non-discrimination laws. It is, therefore, possible to go further and introduce a positive obligation to promote inclusive educational environments. Legislation can establish a commitment to inclusion, introduce requirements on education authorities to take all necessary measures to ensure that no groups of children are excluded and that the barriers that may impede their access are removed, create incentives to promote socially inclusive school environments, and design and implement affirmative action ir positive discrimination programs (UNICEF, 2007: 54).

Implementing the right to education demands an effective education system able to create educational environments sufficiently flexible to adapt to the diversity of educational needs. This requires a legal framework committing schools to be receptive to diversity and to consider each student's need and outcomes, regardless of his or her circumstances, social origin or ethnic group. It demands the human, financial and technical resources to support students in meeting academic, social and professional requirements and empowering educational institutions to became pedagogically accessible to the diversity of needs (Ebersold *et* al., 2011: 20).

In conclusion, it has to be mentioned the fact that although in the Romanian Constitution the right to learn has priority and as we related before, the concept of "learning" refers also to the process of acquisition of knowledge, National Education Law does not sustain enough this process, because it does not offer material resources, and by material resources it refers to the special text books, for facilitating and supporting the access to education of persons with disabilities. The restriction of the right to education of persons with disabilities is a problem that relates both to the way of applying the education law at national level, to the interpretation of the law at conceptual level, and to the economic situation of the country in relation to the institutional level. At the same time, this right is discouraged by social preconceptions, which are against one of the essential ideas promoted even by the "concept of education" and that is the companionship between citizens and developing a set of moral values, thus creating a progressive society and this is caused by the misunderstanding of the difference between the two concepts "disability" and "handicap".

The right to education is not specifically mentioned from the point of view of the law in the legislative sources of our country, because the Romanian law regarding the right to education is based on the right to learn, thus partially excluding certain purposes that have to be carried out at educational level. As we have shown before, the persons with disabilities do not benefit from all necessary resources so that they can have access to a quality teaching system, even if the law partially sustains their needs, but its applicability depends mostly on the economical help granted by the State. We consider that solving this problem comes to the implication of the State so that all the juridical, financial, institutional barriers that stand in the way of exercising the right to education of persons with disabilities be overcome. Education can promote (although does not guarantee) understanding, tolerance, respect and friendship among nations, ethnic or

religious groups and can help create a universal culture of human rights. The Latin origin of the word itself is "to lead somebody out". A person's right to education incorporates educational opportunities, e.g. access to primary, secondary, and tertiary education. While acknowledging a broader conception of the right to education, this module focuses on primary and basic education, as vast numbers of people are denied even the foundations of a lifelong learning journey" (Benedek, 2012: 253).

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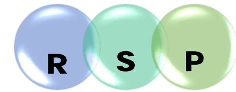

ORIGINAL PAPER

The Romanian Presidents' Speech about Education

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Abstract:
For a quarter of a century "education" has become national "problem". For over twenty years education is also normative a national priority. "Problem" is, because all the facts, acts, words, needs are "problems" in colloquially language. "National priority" never was and we think that will not soon become. In reality, very few understand the term and fewer have explained the term. But when education is on everyone's lips, we intend to look how was approached and how is approached the issue of education in Romanian presidents' speech. For this we will analyze the speeches of presidents Ion Iliescu, Emil Constantinescu Traian Băsescu, Klaus Johannis, during 1992-2016. We propose that after brief analysis and interpretation of political text to account all phrases, all structures that have defined education and all ideas about and for education. Thus we find redundancies, utopias and raves. Finally, we establish also the status of ideas (concretized, non concretized) and we formulate conclusions based on the information from two synthesizer tables and from more Venn diagrams. We observe the differences and similarities of speeches about education of the four presidents of Romania, of their programs, of their projects and of their reforms. We will be amazed by the similarities and the redundancies discovered.

Keywords: *education, presidents' speech, redundancies, utopias, raves*

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On Monday, 15th of February 2016 it was launched, the National debate concerning Education and scientifically Research from Romania during 2016-2017. The statement of Mr. President Klaus Iohannis concerning the project *educated Romania* had four pages. In those four pages we can find twenty- five derivatives of the verb „to educate" and articulated forms of the resulted nouns. The repeating of words such as *education*, *educated*, of education, *educational* (system). The repetition consists of repeating certain sounds, lexemes or constructions with expressive purposes. Thus, this repetition should confer expressivity to the text. But the statement is a political one, and its text has a non literary feature. So, it has none of the four conditions of literacy (mimicry, fiction, expressivity, useless) and we cannot find any expressivity in repeating the terms (on its radical). As a brief conclusion we can notice that, unfortunately, reiteration of words is neither repetition nor a way of putting emphasis upon an idea. The texts lead in this way to a lexical redundancy. Having as a starting point this statement, we reach the following probability- in all speeches of the Romanian presidents between 1992-2016 can be found those kind of redundancies; Moreover, these cannot only be observed on a lexical level but are also extended to an ideational one.

Thus, in this paper, we are going to analyze those speeches and we are going to observe how the concept of education was vehiculated in the speeches of presidents: Ion Iliescu, Emil Constantinescu, Traian Băsescu, Klaus Iohannis and what ideas concerning education and/or educating had each of those presidents. We are going to make a text analyzes in those cases where the way of exposing the idea or even the idea itself will impose, and eventually we will analyze the ideas and discover the redundancies; Ideas of recurrence or ideas of non recurrence (according to the dichotomy of metaphor in the concept of Max Blach and Peter Newmark), clichés or new things. Moreover, we are going to establish the status of idea as concerning its concretization - idea not materialized (for different reasons) and materialized idea.

Diachronically and chronologically we put under analysis all the existing documents that concerns the theme „Culture, school system, health system" of the search button from the Romanian President site, between 1992-2016 (as concerning the years\period 1990-1992 there are no documents), and we begin with messages, statements, speeches and press conferences of Mr. Ion Iliescu, during 1992-1996. In „the message of the Romanian President, Mr. Ion Iliescu, with the occasion of opening the universitary school year- 3rd of October, 1994" Ion Iliescu thinks that the Romanian school system is in „a turning point" (Iliescu, 1994: 1) and, in the same time, this „represents the main instrument of spiritual reconstruction" (Iliescu, 1994a: 1). So far, we meet two clichés- syntagmas, imponderable as meaning, because they are semantically empty, impossible as form, because, at most, they can represent the subjective description of an abstraction. In the same message we are told that „It is compulsory that the Romanian school system to enjoy the importance of a national priority, of a veritable strategic operation.

With the scientifically research the school system represents an important part in the social change and in the integration of Romania in the system of ideas and values of contemporary world (Iliescu, 1994b: 1). From this, we understand what the Romanian school system should be and what it represents (obviously in the concept of Ion Iliescu). Again, we are reading an entire descriptive passage for just one idea, school system- national priority. Next, Ion Iliescu gives shape to a static picture with the theme *School system today:* „today we are facing a forceful competition between societies for a better place under the light of the Sun. in this race, the greatest positions will be win by those

societies which invest in the spiritual education of people, in the process of instruction and education, a field which becomes a priority in the context of global policies. I do understand the multiple difficulties that the school system has, not only from a material point of view, but also from the matter concerning salaries of teachers (…)" (Iliescu, 1994c: 1). Which are the proposals? Which are the solutions? Which is the concrete route from idea to fact? Questions for which answers cannot be found in this *Message*… But maybe we will find out in the next speeches.

In other ten pages of Mr. Ion Iliescu, which composed, The statement of Mr. Ion Iliescu, the Romanian President at the symposium <<the Romanian society-present and perspective>>-Bucharest, 20th of October 1995- (transcription from the magnetic tape) "we are tasting with compulsoriness loquaciousness, in an euphemistic way, of the politician Ion Iliescu and we are trying to get away of the bitter taste of clichés, keeping in mind an action. An action addressed to the young pupils, taking into consideration at least four dimensions of education, four languages which are to be assimilated by all young people (…)" (Iliescu, 1995: 4). The first moment in the *deployment of the action* can be noticed in the following text: „Meeting with specialists from the school system, Culture, Computer Science and Economics with the purpose of preparing the launching of the National program concerning the education of the young generation according to the requests of the informational society". The text is a written proof of the existence of a National program concerning the education (education or educating?!...) the young generation according to the informational society requests, a part of the National Strategy concerning the economic and social development and the integration of Romania in the European Union. A national program generically called the *multy language Project.* In a large meaning, the previous text and moment represented the *exposition* for this *story*, for this program. The *deployment of this action* begins with the launching of the program. The only difference is that the *climax* brought by the closure of the governance of the President Ion Iliescu ends, in a way or another, the program, *the action* and the *upshot* appears as an open ending…All those that will follow, will change the *story* (of the Romanian school system)…Because,, the capacity of intellectual creation represents the essential condition of contemporary progress" (Iliescu, 1995: 6).

And the *narrative thread* (the *story* is an action developed upon six narrative threads) between 1996-2000, is modified by Emil Constantinescu, the President of Romania from that period. Short exposures, lapidary stile, dull narration, truths in clichés, utopias, inappropriate associations of words. The statement of the President of Romania, Emil Constantinescu, with the occasion of launching the program *Educational Romania* (Bucharest, the Palace of Children, 19th of May, 1999) begins like this: „(…) It is a moment- I would dare to say- almost historical, of assuming the responsibility by all those who form this so important segment of the Romanian society. (…)" (Constantinescu, 1999: 1). Thus, the event is historical, crucial and education is the epicenter of every evolution. Moreover, everything is based upon values (without even naming a value) and upon solidarity. By invoking the poetic permit, there is nothing with more clichés and more utopias. And „education is and has to remain a national priority" (Constantinescu,1999a: 2) and…a leitmotif in the political speeches. Before going on with the next text (text < lat. *textus* - fabric/netting; in this case a netting of words in which even the scarce ideas, as a paradox, are becoming clichés), we must read carefully the title/ the name of the national program- *Educational Romania*. What does really mean this association of words? Is it a concept? Is it a collocation? Is it a linguistic trace? The concept, the collocation and linguistic traces, they all have meaning. Instead, this

association- Educational Romania- has no meaning. In literature, the title can be defined as a paratextual element with the purpose of anticipating the subject of the opera or with the purpose of summarizing the message of the text. Here, this „title" only resume the ignorance and does not anticipate non materialization.

From the „Speech of the President of Romania, Emil Constantinescu, at << the Fair- the Educational Offer>> (Bucharest, the Palace of Children, 9th of June 1990, transcription from the magnetic tape)" we are keeping in mind that the project the *Fair- the Educational Offer* is part of the program *Educational Romania*, that „ Romania has a budget which dissatisfies not only the teachers, students, parents, but also the representatives of Ministry" (Constantinescu, 1999: 1), and that it must be a solidarity between teachers, and that those teachers are full of qualities and that „if we will not realize such a competitive system and especially one of self-regulation, we will succeed that instead of young people highly educated we will provide to society o highly educated bureaucracy." (Constantinescu, 1999a: 1). In the end of the speech we find out the purpose of this project, this program: „the education of the individual, of personality, of the young person who will have to live and work in the next century and millennium." (Constantinescu, 1999b: 1).

Chronologically, the following is the speech of the Romanian president Emil Constantinescu, at the opening of the academic year 1999-200 (Craiova, 1st of October 1999). Five pages of speech, in which the error is higher to cliché; Two are the ideas that are drawing attention in pages three and five. Those ideas can be found in the fragments: „ It is also appropriate to renounce to the idea according to which the state is the only responsible for the smooth operation of education" (Constantinescu, 1999:3) and, (…) we have shown to the president of the World Bank, Mr. Wolfenson, a project that aims to help to identify the Romanian elites from the United States of America and Canada and to support their return to our country in order to participate to the Romania's modernization." (Constantinescu, 1999a: 3). We are saluting the second idea and we disapprove the main idea. If the state is not the responsible one for the smooth operation of education, then who is it? Each part of the system, each individual? The Aristotelian thesis education has to be an object of public surveillance, not private shows clearly the responsible. Without any other theses and antitheses. Other texts concerning education from Mr. Emil Constantinescu's presidential term cannot be found on the President of Romania's site. But, for the next period, 2000-2004, there are at least ten texts in which, Mr. Ion Iliescu speaks about the problem of education| of school system in Romania.

We are giving up to the separate analysis of each text and we are extracting from this research corpus only „the new ideas", meaning those that aren't appearing between 1992-1996. „ New things" in tens, hundreds of pages are the following: „the vertically of the professional specialization is supported upon the horizontal of the general knowledge" (Consultative meeting upon urgencies of national culture, 2002: 1); „(…) to activate an active mechanism of sponsorship and of patronage" (Consultative meeting upon urgencies of national culture, 2002a: 4); „ to bring into the national circuit works of art of some of them (of Romanians across the borders- n.n.)" (Consultative meeting upon urgencies of national culture, 2002b: 4); the moral duty of offering (the young ones) here, at home, the reason, motivation for a return" (Consultative meeting upon urgencies of national culture, 2002c: 4); to be more involved in the European cultural movement, to involve ourselves in elaborating works of synthesis, dictionaries, encyclopedias of large circulation" (Consultative meeting upon urgencies of national culture, 2002d: 4); „making a public organism able to coordinate on a national level some cultural programs

(…). Possibly- Romanian (Cultural) Institute'' (Consultative meeting upon urgencies of national culture, 2002c: 5); The National Alliance for a Sustainable Development'' (Iliescu, 2003:1); it is a crisis concerning the need of a common set of values" (Iliescu, 2004:2); we also need a serious examination of those who are working in the school system and the research field " (Ion Iliescu, 2004:3); Romania is facing a desperate need of a new generation of citizens highly educated and trained, honorable and sincere employees who want to live better by making things better" (Iliescu, 2004: 3); three values of the national education: founding and keeping the national unity of Romanians no matter their religion and social status; promoting the national interests; promoting the love for the country; founding some Excellency centers.

The one that adopts the principle aurea mediocritas is Traian Băsescu. Texts between the yeas 2004-2014 are neither long, nor shorter, neither many nor less, neither dangerously sincere nor dangerously false. Those are the result of an attitude of a president which is responsible and aware of the perenniality of his words. The motions of the president Traian Băsescu, for the school system in Romania and the opinions about this system, as they appear in the analyzed texts are: promoting the written book -paper version (president Traian Băsescu enjoys a book fair- Bookfest); „neglecting the education for sixteen years, explains why Romania is so far away of situating itself between the first 500 universities of the world" (Traian Băsescu, 2006: 1); a too late organizing on the three cycles (according to Bologna system) of the academic system from Romania. In the same time, in his speeches about education: he presents the three main conditions which our country must fulfil to have an advanced educational system (from his perspective): quality, competitively, equal opportunities; he considers that „a deficiency of quality of the Romanian academic system is the liberty of a limited choice of students as concerning the optional courses" (Băsescu, 2006a: 2), but also a lower level concerning the exigency of the teachers; he underlines „the necessity of state contribute in providing the quality in education (…)'' (Băsescu, 2006b: 2); he believes that the resources distribution must be made upon the criterion of performance for each university; he says that „research, innovation are fundamental elements upon which the academic system from Romania must be based" (Băsescu, 2006c: 2); he notice the necessity of increasing the number of students without facing a drastically decrease in quality of the educational system and graduates; he draws attention upon the role of exigency („an increase of exigency gives the opportunity to each graduate to be employed" (Băsescu, 2006d: 4); he ascertains that educational performances were deprecated in the last years and that Romania is facing an explosion of teachers; he considers that „we are having the obligation to put the student in the centre of the academic system and the teacher, with decency, elegance and nobles specific to teachers, to understand that he is a person in the service of student" (Băsescu, 2006e: 4); he says that students must have a certain level of competences at the end of each cycle of study, that it has to exist a statute in which the rights of the education beneficiary to be regulated; he enumerates the lacks of the school system: departments occupied by substitute teachers, violence in school, school dropout; he is surprised by the fact that the money for schools repairs are not spend. As in a novel with a circular structure, we are coming back to the text considered as a starting point. The last one, chronologically speaking, the speech of the president of Romania, Mr. Klaus Iohannis, with the occasion of launching the National Debate concerning Education and Scientific Research from Romania for 2016-2017.

Mr. president Klaus Iohannis suggests „an ambitious project" generically called *Educated Romania*, and as a first stage of this project, a National Debate concerning Education and Scientific Research, meaning that „the year 2016 to be entirely dedicated to an extensive consultation on national and regional level, concerning the strategic options of Romania regarding education and scientific research" (Iohannis, 2017: 1). A few features of text and subtext: education is seen as a national priority; Romania has a huge potential; the future of Romania is strongly bounded to education; a need of authentic debate („You have in mine an employed partner, but you all have the hardest mission- to debate, to harmonize, to decide and to apply" (Iohannis, 2017a: 2); the theme of education is crucial; in the year 2016 we can put for real education and scientific research on the public agenda" (Iohannis, 2017b: 2); in order to have a durable reform we need time but also: solidarity, the establish of some principle objectives, clear and based upon values („We will have to think, to reconfirm or to redefine the values upon which our school system is based but also the values with which we want our children to finish school after each learning cycle" (Iohannis, 2017c: 2); from those words we are understanding the huge confusion between *value*s and *competences;* an education correlated with the work field (but definitely the president Klaus Iohannis refers to an intellectual category, a specialization, correlated with the work field…). As we have said at the beginning of this paper, after these brief analyses and interpretations of political text, we are now making a summarize of ideas and we discover the redundancies but we are also establishing „the statute'' of idea from the materialization view point.

Table 1. Ideas, concepts about education vehiculated in the speeches of all those presidents

Ideas, concepts about education- Ion Iliescu	Ideas, concepts about education – Emil Constantinescu	Ideas, concepts about education - Traian Băsescu	Ideas, concepts about education – Klaus Iohannis	Ideas, concepts about education vehiculated in the speeches of all those presidents
education- in a crucial moment; school system- national priority; education-ele- ment of change; education-the key for tomorrow's development; difficulties concerning finances; competition is won by the society which invests in the school system; the promoting of values; forming honest persona- lities, creatively harmonious;	education- in a historical moment; launching the program, a crucial event; education- national priority; education-the centre of evolution; the existence of a budget that displeases; competitiveness in society; promoting values; the individual's education;	(education means) compe- titiveness; scientific re- search, innovation- fundamental elements; a syn- chronization with the international school system; increasing exigencies in the school system; equal chances for everybody; increasing	the theme of education is crucial; edu- cation- national priority; education- Romania's future; substantiating upon values; ways of encouraging smart children; bringing into the national circuit the works of some known artists; Romania has a huge	education- in a crucial moment; school system- national priority; education- element of change; education- the key for tomorrow's development; difficulties concerning finances; competition is won by the society which invests in the school system; promoting values; forming honest personalities, creatively harmonious; ways of encouraging smart children; founding Excellency centers; bringing into the national circuit the works of some artists; program for the returning of the young ones; conceiving some scientific papers in order to have a certain visibility in the international cultural field;

ways of encouraging smart children; founding Excellency centers; bringing into the national circuit the works of some artists; program for the returning of the young ones; conceiving some scientific papers in order to have a certain visibility in the international cultural field; founding the Romanian Cul-tural Institute; an examination of those who are working in the school system and the research field; an active mechanism of sponsorship and patronage; the amplification of the extraordinary capital that Romania has; a call for solidarity; national project for education (the multi-language Project)	highly educated young people; founding some Excellency centers; a program for the returning of Romanians elites; the existence of a special intellectual capital; a call for solidarity; removing the hard competition to the entrance examination of faculty; -the state is not the only responsible for the smooth operation of education; national program for education-*educational Romania*	the quality of education; promoting the written book (paper version); the students must have a certain standard of competence s; the necessity of state's contribution to the insurance of quality in education; the decrease of violence in schools; the decrease of school dropout; the need of a status to regulate the rights of the education's beneficiary	potential; a call for solidarity; a need for an authentic debate (national); education and scientific re-search on public agenda; sustainable reform; -clear objectives; equality of chances for all students; values, with the meaning of competences-n.n, that students must have; an education actually an intellectual preparation-n.n.) correlated with the work field; national project for education-*Educated Romania*	founding the Romanian Cultural Institute; an examination of those who are working in the school system and the research field; an active mechanism of sponsorship and patronage; the amplification of the extraordinary capital that Romania has; a call for solidarity; national project for education; competitive in society; the individual's education; removing the hard competition to the entrance examination of faculty; the state is not the only responsible for the smooth operation of education; scientific research, innovation- fundamental elements; a synchronization with the international school system; equality of chances for all students; promoting the written book (paper version); the students must have a certain standard of competences; the necessity of state's contribution to the insurance of quality in education; the decrease of violence in schools; the decrease of school dropout; a need for an authentic debate (national); education and scientific research on public agenda; sustainable reform; clear objectives; an education (actually an intellectual preparation-n.n.) correlated with the work field

Table 2. Ideas of recurrence\clichés\stereotypes\impossible of being concretized and weighted and ideas of non-recurrence (materialized but also not materialized); idea and the person who initiated it

Ideas of recurrence\clichés\stereotypes\impossible of being concretized and weighted	Ideas of non-recurrence (materialized but also not materialized); idea and the person who initiated it
education- in a crucial moment; school system- national priority; education-element of change; education-the key for tomorrow's development; difficulties concerning finances; competition is won by the society which invests in the school system; promoting values; forming honest personalities, creatively harmonious; ways of encouraging smart children; founding Excellency centers; bringing into the national circuit the works of some artists; the amplification of the extraordinary capital that Romania has; a call for solidarity; national project for education; the competitiveness in society; the individual's education; the state is not the only responsible for the smooth operation of education; scientific research, innovation- fundamental elements; a synchronization with the international school system; equality of chances for all students; promoting the written book (paper version); the students must have a certain standard of competences; the necessity of state's contribution to the insurance of quality in education; the decrease of school dropout; a need for an authentic debate (national); education and scientific research on public agenda; sustainable reform; clear objectives; an education (actually an intellectual preparation-n.n.) correlated with the work field;	program for the returning of the young ones tinerilor (Ion Iliescu, Emil Constantinescu); conceiving some scientific papers in order to have a certain visibility in the international cultural field (Ion Iliescu); founding the Romanian Cultural Institute (Ion Iliescu); an examination of those who are working in the school system and the research field (Ion Iliescu); an active mechanism of sponsorship and patronage (Ion Iliescu); -removing the hard competition to the entrance examination of faculty (Emil Constantinescu); promoting the written book (paper version) Traian Băsescu); the decrease of violence in schools (Traian Băsescu); the need of a status to regulate the rights of the education's beneficiary (Traian Băsescu);

These two tables are the mirror of the following realities: all Romanian presidents have spoken very much about education/school system (most of them Ion Iliescu) and all of them made little things. Their speeches show, almost every time, the lack of content, of fond. Most of the times, the speeches represents pages drained by real and valid ideas, but full of endless associations of words, collocations which contains the verb to educate or derivates of it (the proof is the last column of the table).

Moreover, with the help of this two tables, we can see a repetition of ideas\conceptions/words associations from a term to another, from a president to another, with one exception. According to the first table, Ion Iliescu propose and says the most ideas (grosso modo). Naturally, taking into consideration the long period in which he was president. Emil Constantinescu repeats, most of ideas of Mr. Ion Iliescu, Traian Băsescu is the only one who come up with new ideas and the one who concertize those ideas, and Klaus Iohannis, according to the two tables, reiterates ideas shown before (at least until now, but its term is at the beginning…). If we would make some Venn diagrams, the situation will be the following. In the first diagram the circle containing the ideas of Mr. Ion Iliescu would intersect with the circle containing the ideas of Emil Constantinescu. Ideas that were enunciated only by Ion Iliescu are: conceiving some scientific papers in order to have a certain visibility in the international cultural field; founding the Romanian Cultural Institute; an examination of those who are working in the school system and the research field; an active mechanism of sponsorship and patronage.

Ideas that were enunciated only by Emil Constantinescu are: removing the hard competition to the entrance examination of faculty; the state is not the only responsible for the smooth operation of education. Common ideas\concepts\ proposals\ thoughts about education are: education- in a crucial moment; school system- national priority; education- element of change; education-the key for tomorrow's development; difficulties concerning finances; competition is won by the society which invests in the school system; competitive in society; promoting values; forming honest personalities, creatively harmonious; ways of encouraging smart children; founding Excellency centers; bringing into the national circuit the works of some artists; program for the returning of the young ones; the amplification of the extraordinary capital that Romania has; a call for solidarity; national project for education *(Multi-language Project and Educational Romania*).

Into the second diagram the circle with Ion Iliescu's ideas is intersecting with the circle of ideas proposed by Traian Băsescu. Thus, Ion Iliescu proposes everything we said before and Traian Băsescu wants: competitiveness; scientific research; innovation; a synchronization with the international school system; exigency in the school system; equal chances for everybody; quality of education; promoting the written book (paper version); a standard of competences; state's contribution to the insurance of quality in education; the decrease of violence in schools; a status to regulate the rights of the education's beneficiary; the decrease of school dropout. They both have just a common idea: education means competitiveness. Into the third diagram, the middle between the circle with Ion Iliescu's ideas and that with Klaus Iohannis's ideas is ample and includes the following: the theme of education is crucial; education is a national priority; education is Romania's future; promoting values; ways of encouraging smart children; founding Excellency centers; bringing into the national circuit the works of some known artists; Romania has a huge (intellectual) potential; a call for solidarity; a need for an authentic debate (national); education and scientific research on public agenda; sustainable reform; national project for education.

From the last diagram which we would like o imagine, that between the circle with all the proposals of presidents Ion Iliescu, Emil Constantinescu, Traian Băsescu and the circle with the ideas of president Klaus Iohannis, we discover that, unfortunately, all the ideas of Mr. president Klaus Iohannis were already mentioned by the previous presidents, and his proposals do not bring anything new, which wasn't said before. Thus, the conclusions can be inferred by each of us, and the last enounced, is, maybe, the most serious.

As concerning the second table, we are counting twenty-eight (and the treating is not an exhaustive one!) of ideas\concepts\associations of words\collocations concepts about education of new recurrence and nine ideas\concepts\associations of words\collocations concepts of lack of recurrence which, in part, were materialized (founding the Romanian Cultural Institute,

removing the hard competition to the entrance examination of faculty- unfortunately, promoting the written book (paper version)-through Book fest and not only, the decrease of violence in schools, the need of a status to regulate the rights of the education's beneficiary- through nomenclature of violence acts from the *Regulation of organization and operation of school education units.* All speeches about education (direct or indirect about education| school system) forms together a vicious circle of ideas, because almost everything remains on an ideative level; almost everything is resumed on an on, in a huge clock-wise direction which measures an irreversible national time. And it is already late….But not too late!

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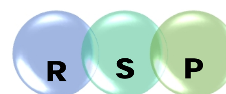

ORIGINAL PAPER

Immediate and Long Term Effects of Public Information. The National Health Card in Romania

Gabriela Rusu-Păsărin*

Abstract
The information about the health of the population, about social measures taken towards health protection and safety are some major issues in the public space. The information projected into the public space bear the prints of the political discourse, because in Romania the government was politically invested when our analysis was conducted, that is between January and November 2015. Any public information generated by a ministry became a governmental print, and as a result - political discourse. Along with the sociopolitical contextualization, the political - religion relations would have in this case an unexpected impact and reaction within a segment of the population as a consequence of construing the religious significance of the insignia on health cards. The principle of cooperation and conversational engagement would constitute the framework for analyzing the conversational maxims, through examples regarding the form and effect of the information on health cards in the public space. In the case of issuing the cards, a religious communication barrier was also raised. The word card was subject to misinterpretation (backwards it spells *drac*, which is the Romanian term for *devil*) as well as the contents of the card chip (it includes the number 666, the number of evil). The Romanian Patriarchate asked the Ministry of Health to clarify the health card's general advantages for patients and healthcare providers. The actors of open communication are, in this case, people over 18, national health card beneficiaries, the Ministry of Health representatives, the National Health Insurance representatives, family physicians and pharmacists. Open communication is interconnected to corporate, public and political communication, social communication and commercial communication.

Keywords: *health card, open communication actors, social impact, media effects*

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The dissemination of information in the public space is the emitter's responsibility connected to the public position he or she holds, as well as the responsibility generated by the ethical behavior the information propagator, as a person. The meaning of the public space concept converges on two poles – the social one and the political one – and it represents: "a medium of simple mutual consideration"(Quéré, 1992, no. 18); a place of social cooperation, socialization; the ensemble of more or less institutionalized scenes, where a series of organized actions are exposed, justified and decided on. The information about the health of the population, about social measures taken towards health protection and safety are some major issues in the public space. The information projected into the public space bear the prints of the political discourse, because in Romania the government was politically invested when our analysis was conducted, that is between January and November 2015. Any public information generated by a ministry became a governmental print, and as a result - political discourse. Communication barriers are usually linguistic, cultural and behavioral. Along with sociopolitical contextualization, the political - religion relations would have in this case an unexpected impact and reaction within a segment of the population as a consequence of construing the religious significance of the insignia on health cards. "Religion and politics derive their best ideological effects from the inherent polysemy of the legitimate language's social ubiquity. In a differentiated society, the words we name *common* (...) actually embrace different meanings, which can sometimes be antagonistic (...)" (Bourdieu, 1991: 63). It is the case of information reception regarding health cards in Romania. The causes are diverse, and the effects can be felt immediately and over time.

The public presence involves a public behavior and speech which conveys a succinct, logical message, an empathic attitude to produce a convincing effect, effective persuasion. The doctor-patient, pharmacist-patient, medical institution – press relationships are information sources, but also generate relational tensions that alter the nature of the interpersonal, intragroup and intergroup messages. In all three relationships, direct address is essential. Educated speech, supported by a personal style, is guaranteed to capture public attention and I also an argument for continuing the act of participation (even passively) in verbal communication. It is the "print" of the speech which determines audience ratings, reorganizing the structure of receptor groups by qualifications, those who share sympathy for the colloquial style or emotional communication, on the one hand, and the ones that prefer simplicity, vulgarity (elegantly phrased - nonconformists). The overall and specific qualities of the language style constitute the "coat" of verbal expression and the message is received and subject comprehension, becoming saleable, depending on the quality of the "cover".

The National Health Card and Conversational Maxims

Taking possession of a national health card became a popular subject in the public space and in the media for two important reasons: the Health Ministry in Romania provided confusing information to the public throughout the project's implementation at national level; furthermore, there were beneficiaries of public information who feared invasion of privacy by outsourcing personal information. It is necessary to run through a short exposition of the population's and public institutions' reactions to the impact of the information in the media.

The health card is a project of national interest that focuses on the transparency and efficient use of funds in the health insurance system (National Health Insurance House, 2015). The national institution website states that by implementing this system, money in the health insurance system will be spent more effectively and transparently. For a proper understanding of the use and especially the need to implement this project, a public debate on the subject was launched in January 2014. On September 19th 2014, the distribution of national health card

debuted. By 1st September 2015, 14 million people had taken possession of the document. During this period, there was information in the public space and the media that led to the misunderstanding of this document's significance and to reactions of rejection. A reaction was posted under the persuasive title "Romanians, return the health cards!" a VIDEO showing the CNAS - Ministry of Health - civil society debate (Express, 2015). Asociația pentru Libertatea Românilor (The Association for Romanians' Freedom) commented on the debate held by the National Health Insurance and the Ministry of Health together with the representatives of civil society on 16th January 2014 on the above mentioned site and instructed the population to return the health cards. On January 21st 2015, a newspaper reminded its readers that the date when national health card would become mandatory was February 1st. Just days before that date, the media brought into question the population's fears concerning the confidentiality of personal information (Ivan, 2015). Other dates were named as due dates of the document's coming into effect: May 1st, August 1st, September 1st, November 15th 2015. "Starting September 1st 2015 the national health card becomes the only tool for discounting medical services in the public health system in Romania, available to policyholders aged 18 and over" CNAS confirmed on its website (National Health Insurance House, 2015).

This path of the discussions in the public space was the analysis background of our study on communication barriers in the public space. Paul Grice is one who introduced the concept of *conversational implicature* (pragmatic inferences based solely on general rules of rationality) and determined a condition for dialogue, which he called the *cooperation principle*. According to Grice, for the principle to be met satisfactorily four conversational maxims need to be complied with (Dinu, 2008: 265-269). They are to be analyzed from the point of view of the information on national health cards placed in the public space.

The Maxim of Quantity. It refers to the amount of information that each participant brings to the interaction and which should be no more no less than necessary.

The Ministry of Health and the Casa Națională de Asigurări de sănătate (the National Health Insurance House – CNAS) did not specify whether this document can be used only in Romania or it can also be used abroad. As it is a health card, a unique official document whose use is compulsory in order to get healthcare expenses discounted, confusion arose to whether it could be used abroad as medical insurance or as a bank card.

Example 1: There is confusion regarding the health card. Many of those standing in line to pick up the document believe that it can be used for holidays abroad as medical insurance(Pro TV, 2015).

Example 2: Health Card credit card is not a *bank card*: To create dissension within the system and confuse people, a piece of information appeared online during that period: "On each health card there is a sum of 3,000 lei. This represents a subsidy from the European Union. All you have to do is insert the health card in any ATM machine before being activated" (Pavel, 2015). The effect was blocking the document in the ATM. The officials' reactions were quick to come: "We state again that this document cannot be used in the banking system and does not contain money for the insured party, as communications on various social networks erroneously claim. The national health card received by the insured party only contains the identification data of the insurant" stated the Ministry of Health in a press release (Pro TV, 2015); "The national health card does not contain money". What the Ministry of Health has to say about the chaos in recent days (Pro TV, 2015); On the third day of using the national health cards, Romanian Minister of Health cautioned that it should not be used at ATMs, but the system is functional. (Pro TV, 2015); Meanwhile, the daily newspaper Evenimentul Zilei posted a clip in which they showed how they tested the possibility of introducing such a card in the ATM, their conclusion being that it was not possible (Bot, 2015b); *A true urban legend, initiated by several news items reported a situation which was immediately perceived as credible and quickly spread on social*

networks and even televisions. The primary sources of the rumour seemed to be Antena3 and Ziuanews. These editors have published articles which read that "tens of Romanian tried to withdraw money, but failed, so they were left without a card. On Tuesday, Antena 3 news even published a TV news item that claimed the same thing (Bot, 2015a); The effect of this information that confused people in connection to the validation of the national health cards was that the representatives of Fundația pentru Apărarea Cetățenilor Împotriva Abuzurilor Statului - FACIAS (the Foundation for Citizen Defense against State Abuse,) demanded a six month postponement of the due date from which on it was compulsory to present the health cards when requiring health services. "Even if health services are insured for 3 months based on the employee certificate, the release thereof by the health Insurance House is proceeding slowly and does not solve the situation of insured parties waiting to receive the health card ", said the representatives of FACIAS (Pavel, 2015).

The Maxim of Quality (also named the veracity or sincerity maxim). According to this maxim, the dialogue participants must only say what they consider to be true and not to make statements for which they have no evidence (information from three sources is a condition for quality journalism). Public information with reference to a person‘s security and to money are the most accessed by the public, as they even cross-reference the media news items. The circulation of a new due date concerning the same field, applied in another space than the one known to be using the new term "national health card" has led to further confusion. Consequently, some receptors were convinced that the card in question was *the European health card*.

E.g.: Cristina Călinoiu, CNAS: "I repeat: the European card is the one you use for emergencies abroad and the national card is valid ONLY in Romania." (Pro TV, 2015). A separate chapter of the veracity and sincerity maxim might be our personal experience, as a programme compere for Radio România Oltenia Craiova. When participating in a debate on national health cards organized in Râmnicu-Vâlcea by a private hospital, I interviewed two state representatives responsible for the proper functioning and efficient dispensing of this document to the population. I broadcast the records on-air and posted them on the website of the radio:

a) With the health card "at the hotel or at the hospital"? The national health card should be a step in the optimization of healthcare service provision. In private hospitals, the use of the national health card is compulsory. The difference lies in the quality of hospital services and medical staff behavior. "The patients' level of satisfaction (in the public medical environment) is 60-65%". The causes?

Details in this exclusive interview for Radio România Oltenia Craiova with Vasile Cepoi, the President of Comisia Națională de Acreditare a Spitalelor (the National Commission of Hospital Accreditation) and State Secretary in the Ministry of Health. An interview by Gabriela Rusu-Păsărin (Rusu-Păsărin, 2015b). "The private / public distinction is often defined based on two criteria, the material and the institutional, which partially overlap. In a material sense, the very nature of the activities (personal satisfaction / political participation) is highlighted as the opposition between privacy and political problems" (Chambat, 2002: 70). The definition of the two spaces is illustrated by Pierre Chambat and it can also be applied to the reception of information about the health card.

b) The Health Card: May 1st, August 1st or November 15th?

According to the press release issued by Casa Națională de asigurări de sănătate (the National Health Insurance House) "starting 1st May, the health card has become the only instrument for validating and discounting medical services in the social health insurance system, for policyholders who came into its possession (...). We estimated this period to end on or around 1st August (National Health Insurance House, 2015). There

are only 10 days left and there are still many difficulties in activating the card. "August 1st is an unrealistic deadline," said Vasile Barbu, the president of *Asociația pentru Protecția Pacienților* (the Association for Patient Protection) in exclusively for Radio România Oltenia Craiova. An interview conducted by Gabriela Rusu-Păsărin. (Rusu-Păsărin, 2015a).

The Maxim of Relation (also called the maxim of relevance). The lines of the verbal exchange should be in correlation, should relate to each other.E.g.: Despite all the problems, the Minister of Health said the system was functional. Nicolae Bănicioiu, the Minister of Health stated: "Most of the suppliers and doctors did their job. There were isolated cases. First of all, there is no block! No, there is no block!". But the president was of a different opinion: Klaus Iohannis, the President of Romania: "The government prepared the implementation of the health card poorly. I saw thousands of people who cannot benefit from the health services to which they are entitled to sitting in queues. It is a public scandal." (Pro TV, 2015).

The Maxim of Manner (or modality). According to this, interventions in a verbal interaction must be clear, logically sequenced, unambiguous. An example bordering the comic: "Mr. Whoever died and got sick". E.g. The pharmacist-patient relationship. A study by "Exact Research and Consulting" in July 2015, posted by the Agerpres news agency on July 16th 2015 shows the relationship between the pharmacists' behavior, low prices and proximity as criteria in choosing a pharmacy. Two types of methods were used: the focus group (four mini-groups aged between 20 and 35) and the in-depth interview (10 interviews with pharmacists working in pharmaceutical chains). The actions of sociological investigation were carried out in Bucharest, the focus groups between 6th-7th July, the interviews 1st – 5th July (Ghiță, 2015).

The patients requested information from the most common sources or those that have credibility. The pharmacists have a direct more intense relation with patients than family physicians. Going to the pharmacist as a transmitter of public information is a landmark in the patient's mental map.

"In most cases, preferences for certain pharmacies are generated by how they manage to meet the clients' needs. On the one hand, we can talk about emotional factors (the behavior of the pharmacists and the attention they pay to the customer's needs), and on the other hand, the rational factors (low prices, supply, proximity etc.)"said Irina Rainer, Qualitative Research Manager for Exact Research and Consultancy (Ghiță, 2015).

The more the public gets informed, the more the doctor-pharmacist-patient triad will function as a credible and necessary information field, more of an impact will the confidence in the system and personal security have on the quality of life. In the same context as the importance of generating trust and credibility in the system, one must take into account the two principles of the conversational relationship: the cooperative principle and the politeness principle. Brown and Levinson (1987) studied politeness strategies and defined two categories of politeness: positive politeness (based on sympathy, approval, jokes to lighten the atmosphere); negative politeness (characterized by discretion, modesty - diminishing one's own value and exaggerating the importance of the others). These politeness strategies are important in the development of institutional protocol, in negotiations when managing an incident or conflict situations. Within the implementation project of the national health card in the public space, the institutional dialogue would have required a debate over more than a few weeks to ensure the correct reception of the message and to provide public institutions the possibility to explain the need for the personal use of this document. Hence systematically drawing attention to the subject.

The Imperative of Arresting Attention

The verbal communication process will show increased efficiency if the listener has a responsive behavior, as it is known that a message is memorized at a rate of 50-70% when

listened to, 25-30% of the original volume remaining 48 hours later. Listening is a tactical component of communication and has levels of interactivity. One can distinguish between: *active listening* – an action based on attitudes and techniques meant for a correct reception of the message and keeping it in mind for as long as possible (*zero interactivity*) (e.g. a dialogue with an introverted patient or one who is reluctant to the issue of health cards); *interactive listening* – the action of directly interacting with the speaker, asking questions and asking for confirmation (e.g. participation in debates on the theme of national health cards in the presence of specialists from the Ministry of Health and the National Health Insurance House); *interactive listening* through open or closed *questions* in order to obtain a detailed and proper comprehension of the message.

At all the levels of interactivity there was the necessity of institutional communication, which should be open communication. The latter aims to determine the convergence of the public institution's interests and the community's aspirations. The communication flow is adjusted between various internal and external partners. Open communication has a unifying role, bringing together the different actors in the market, the customers, the citizens, the organizers. Open communication favors the relationship between the institutional sphere, the private sphere and the public sphere (Haineș, 2008: 54). Open communication and communication barriers - Example: On the first day the health cards were activated in the offices of family physicians a system block occurred. Explanation: The company that had won the card contract had been insolvent since 10th December 2014: troubleshooting and maintenance would be provided by few employees. According to the CNAS president, Vasile Ciurchea, 50% of family physicians use the free software provided by the institution, the rest bought the software in the market. Therefore, the causes were of a technical nature, but also of communication. The communication block was doubled by an ethnic block (Bratu, 2015)

The open communication of the presidential institution in the public space bears forth a trenchant motivation: "The conclusion is that the implementation of the card was ill-prepared", said Klaus Iohannis, when asked about his conclusions after discussions with the Minister of Health, Nicolae Bănicioiu. He believed that the population had not been sufficiently informed about the implementation of the health card. "There would have been need of a comprehensive national information campaign and thus a good part of the syncope that occurred could have been avoided relatively easily", the head of state said at the Cotroceni Palace (Stan, 2015). An outline of the relations established between the different spheres and different publics highlights the key (central) position of the open communication necessary for the communication flow. The actors of the open communication are, in this case, people over 18, national health card beneficiaries, the Ministry of Health, the National Health Insurance House, family physicians, pharmacists. Open communication is interconnected to public, political and corporate communication, social communication, commercial communication (Cormerais, Milon, 1994: 68).

Open communication confirms the socio-cultural dimension of the organization. Thus it contributes to its social development and ensures the coherence of its actions. The visibility of the organization and its positioning up against the competition are achieved. The communication in institutions will lead to consensus and open communication, which will in turn confirm the size of the sociocultural organization, if it is carried out by a collective actor. It is a necessary effort in defining the identity of the institution in the public space, which is a place of idea confrontation and competition. CSAS and the Ministry of Health need open communication to establish a relationship of trust with the population and to generate government stability.

The Effects of Media in Harnessing Information about the National Health Card

The medical information, the information from the medical environment and information about diseases and ill people are three streams which do not always converge. The social networks often produce confusion, distort information, provide miraculous recipes, promise healing miracles. The persuasive force of the examples presented in an emotional manner is stronger than the advice of doctors or pharmacists. One must not only work hard to disseminate information from the medical area, but also fight to dismantle these myths. Of all media, television has the greatest impact on the current public opinion, because it has created a new public space, specific to the "media society" characterized by interactivity. Media studies focused on the diachronic trends, on the one hand, and on their effects on the receptors, on the other hand. Depending on the receptor's image - from a passive recipient, subject to a direct influence to an active and selective user of the media and the content (according to J. Klapper, Levy and Windahl) one could assess the direct, short term time effects, and the diffuse, indirect, long-term effects.

Together with the silence spiral and the addiction theory, the agenda setting theory comes under the social media macro-effects theories. The theory is based on the idea that journalists, who until the 60s had (were considered to have) to direct opinions and behaviors, now should mainly aim to inform, to transmit the information after sorting it. Journalists are those who mentally organize the world for the audience, they are the ones who designate the priority in topics for discussion, they put the "agenda" together. It is a representation of a "fabricated" world, where the importance of the events or characters is assigned by the journalists. Therefore, the public attention is either directed to real issues or deflected away from topics that can influence the future, by being offered other "fulminating" subjects.

One thus obtains visibility for certain themes or characters, while "eclipsing" the others. It is essentially a process of selecting, prioritizing and focusing the dissemination of information. The research on the effects of the media will be redirected accordingly, from measuring the *direct effects* ("what" and "how" to think) to the *indirect* ones (what is "important" to think about). The agenda setting model includes three types of agenda: 1. the media agenda; 2. the public agenda; 3. the political agenda, as well as the interactions between them. The agenda setting model gives the media its function of hierarchy, of selecting and ordering information, building the image of the contemporaneousness, which thus becomes a media product. The statement made by Bernard Cohen in 1963 on the power of the press is still valid: "Perhaps the press is not successful most of the time in telling people what to think, but it has great success in telling its readers what to think about".

Applying these synthetic theoretical considerations themes to our analysis of the implementation project of the national health card distribution, one can notice that the media have played an important role in shaping the image of this official document's importance, both at a personal level and especially on how to use it. The topic became front page and prime-time news, while press releases of the public institutions were posted to fix the faulty reception of messages, not focusing on informing the public. It was a difficult process and as a result the population experienced the "fight" between the government (the system) and the sensational prone media. The topic became a press topic. The media agenda was a on top in public preferences, the political agenda was associated with the media agenda on this topic.

The barriers of communication and the principle of relevance

Communication barriers are linguistic, cultural and behavioral. The interlocutors' cultural competence and communicative competence encourage / discourage the transmission of messages. In the present case, the issue of the health card, a religious communication barrier was

set. The word *card* was subject to misinterpretation (backwards it spells *drac*, which is the Romanian term for *devil*) as well as the contents of the card chip (it includes the number 666, the number of evil). The Romanian Patriarchate asked the Ministry of Health to clarify the health card's general advantages for patients and healthcare providers. The answer given by the Ministry was a diplomatic one: from an ethical standpoint, there is no reason to reject the health card. The only problem to be solved is to develop an alternative solution for those patients who for reasons of conscience and religion refuse the card and the National Health Insurance House promised to seek and suggest an alternative for such persons.

During their last meeting in December 2014, the Holy Synod resolved to formulate a point of view on behalf of the Romanian Orthodox Church (BOR) regarding the national health card. The Press Office of the Romanian Patriarchate has published Decision no. 13 621 of the Holy Synod, 16th – 17th December 2014, on formulating the standpoint of the Romanian Orthodox Church on the issue of the national health card which states that: *It authorizes the Romanian Orthodox Church to support the efforts of the Romanian College of Physicians towards the authorities empowered to identify an alternative method in reply to the requests of those patients who for reasons of conscience or religion refuse the national health card* (Cuvântul ortodox, 2015). The decision refers to Romania's media climate that fueled the confusion in the reception and understanding of the public information about the national health card: *It is approved that the hierarchs urge the clergy, monks and believers that, in the context of the disorder caused by the confusing and contradictory opinions in the media regarding the national health card, they should remain steadfast in their faith in Jesus Christ, nurse their spiritual health through prayer and good deeds first, and then decide rationally, not emotionally, always calmly and wisely* (Gheorghiță, 2015). It is not known how many of the 8,000 Romanian who, according to the Romanian Post Office, refused to receive the national health card, were religiously motivated. In cyberspace and in the press releases, there are however doubts cast on how the personal data gathered through the electronic health file might be used (Kartman, 2015). Among the **c**ontroversial ideas we can state: marketing private data (transforming personal data into commodity), privacy, data protection, discrimination, consent (Cuvântul ortodox, 2015). The law of relevance requires that a statement should provide the maximum relevant information. The statement is relevant if it generates consequences (Kerbrat-Orecchioni, 1998: 199-201). In our case, the argumentative relevance is absolutely necessary in understanding the context and effects of the action, the correct use of the national health card, as a personal document. These communication barriers remind as of a well-known phrase: integration and subjective plausibility. In their volume *Construirea socială a realității* (The Social Construction of Reality), Peter L. Berger and Thomas Luckmann (2008) explained this phrase, stressing the two levels on which integration and subjective plausibility are configured. The "horizontal" level implies institutional order, which must be understood "simultaneously by all participants in various institutional processes. In this case, the problem of plausibility relates to the subjective recognition of a global sense "behind" the prevailing situational reasons, but only partially institutionalized". The horizontal level connects the total institutional order to the numerous individuals who participate in it playing different roles one at a time. In the case of our analysis, the doctor (as a profession), the pharmacist, the Ministry of Health, the Social Insurance House, the church, the family physician are all roles to which the public discourse relates. The vertical level refers to the individual biography, the link of each individual to the institutional order in various stages of his or her life. It is the connection between the cultural competence and the communicative competence of each individual consequent on his or her personal experience throughout life. Legitimation is required to build a field of persuasive meanings, whereas the actors playing the above mentioned roles enhance the subjective attitudes and behaviors of those who are affected by the information that has become institutional (the mandatory use of the

health card for reimbursement of health care services expenses starting on a specific date). This generates the cognitive validity of the institutional order objective meanings and the legitimacy which "explains" the institutional order.

Instead of conclusion: “The code of effective communication”

The research of communication processes have finally approached the effectiveness of communication, which is more or less a stated goal, but essential in persuading public opinion nevertheless. In his article „How Communication Works”, Wilbur Schramm defined the four conditions for successful communication, which acknowledge the imperative "Know your audience!": 1. *The message is to be created and transmitted so as to gain the attention of the recipient one has in mind.* 2. *The message is to use signs referring to the common experience of the source and the recipient.* 3. *The message is to boost the recipient's personality needs and suggest ways to meet them.* 4. *The message is to suggest a way of satisfying those needs that is appropriate for the group situation in which the recipient is when he decides to send the feedback the communicator wants* (Schramm, 1971).

The National Health Insurance House passed through a difficult communication path, failing to produce argumentative, persuasive and timely messages to the public. The novelty of the format, adding actions to activate and use the card, the semantics similarity of the new term with another, also recent in the public space (health insurance, credit card, European health insurance card), have contributed to the confusion and the difficulty in understanding the concept in context and the object itself. It was an example of deficient institutional communication, with delayed reactions to the population’s reluctance in using the health cards. Several causes have jointly delayed the application of the information system. A year after the beginning of the communication process in the public space, the national health card is no longer a controversial issue in Romania. W. Schramm uses the phrase "the stalagmite metaphor" to define the persuasive effectiveness of communication: as a stalagmite forms of the limestone deposited by water dripping from stalactites, in a continuous process, so does communication become efficient. In the end, the communication on this theme in the public space was successful. And the mentality and behavior of public information and media consumers has changed. It has been a complex process, whose effects are still being felt, especially in the category of people over age 70 and in rural areas.

Persuasive communication and creating a climate of trust are two of the many components of effective communication in the public space. The attitude of comprehension is essential, it is the foundation of persuasion. It is equally necessary in the persuasion and mobilization dialogue (Mucchielli, 2005: 229). The health card has become a controversial instrument in the public space, through debates, through the information issued by various institutions and credible spokespersons. From the need to come into possession of the health card to qualify for the expense reimbursement for health services to the religious connotations of the marks on the health card, the spectrum of information on this issue has created certain expectations underlying insecurity. The explanation can be found in the statements of F. Varela (1990): *The act of communication does not translate into a transfer of information from sender to recipient, but rather through the mutual shaping of a common world by means of joint action: it is our social achievement, through the act of language, that which gives life to our world. There are linguistic actions we constantly perform: statements, promises, requests and claims. In fact, such a continuous network of conventional gestures, detaining its condition to satisfy, is not only a communication tool, but also a veritable thread on which our identity develops*. The issue defined by the interventions on the theme of the health card in the public space now falls within the area of understanding the influence mechanisms generated by situational contexts in which the actors are communicating. It is essentially the circular causality of the complexity

paradigm that we succinctly exemplified in the present paper that has held the attention of public opinion in Romania during 2015.

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ORIGINAL PAPER

Automated and Robotic Construction – a Solution for the Social Challenges of the Construction Sector

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Abstract
The main objective of this article is to show that there is an urgent need for automation and robotization in the construction sector, one of the strategic sectors of the economy. To achieve this objective, it has been conceived a review of the economic and political context related to the construction sector. In the world, there is a great demand for investment in construction in order to support economic growth and social transformations with new homes, offices, factories, school, hospitals and infrastructure. This demand will definitely increase due to the urbanization tendency. By 2050, cities will absorb most of the demographic growth of the world. They are also responsible for 2/3 of all greenhouse gas emissions. There are also many challenges regarding human capital such as high unemployment, labour mismatches, and increasing numbers of young people without education, employment and training. Considering the latest changes in the demand and its structure, we believe that the construction industry should quickly evolve in order ensure as result sustainable buildings. This evolution refers to the whole supply chain from design, materials to urban development. In this context, automated and robotic construction is, in our opinion, an exceptional solution to build faster and more efficient.

Keywords: *robotics, building automation, sustainable building, innovative building, building on demand, innovative building*

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Economic and political context of the construction sector. Construction- a strategic sector of the economy

Global Construction Perspectives and Oxford Economics in 2013 predicts an increase of the global construction market by $6.3 trillion or over 70% to $15 trillion by 2025 compared to $8.7 trillion in 2012. The emerging markets will cover 60% of the global construction activity by 2025 (compared to only 35% in 2005) as there is a great demand for investment in construction in order to support economic growth and social transformations with new homes, offices, factories, school, hospitals and infrastructure. From EU Perspective, the construction sector has a major importance as it represents over % of its GDP and more than % of fixed capital formation. It is the backbone of EU economy and society. This sector, if compared to a company, it would be the biggest industrial employer in Europe and would have the largest economic activity, gathering 20 million people. Furthermore, it is an essential actor in the implementation of the Single Market and other EU policies such as Environment and Energy (Bisch *et. al*, 2011).

Urbanization tendency

The EU28 faces a great tendency of urbanisation as we could see from Table 1 bellow. Cities above 50 000 are defined as clusters of grid cells of at least 1500 inhabitants per square km. Areas outside urban agglomerations are defined as suburbs and towns if they are located in urban clusters of cells with density above 300 inhabitants per square km and a total cluster population of at least 5000.

Table 1: EU28 cities defined according to their density of population

Population class 000s	Category	No. of cities	Population in size class (million)	% of total population
>1 million	Large	23	59.2m	12.2
500-1000	Large	37	27.83m	5.7
250-500	large	62	21.21m	4.4
100-250	Medium	227	36.13m	7.4
50-100	Medium	392	27m	5.6
Towns and suburbs	Small and suburban	-	157.91m	32.6
Rural population	Rural (including very small towns)	-	155.42m	32.1
Total		-	484m	100%

Source: European Union Regional Policy 2011 “Cities of Tomorrow: challenges, visions, ways forward”: 3

The report calls *The Impact of European Demographic Trends on Regional and Urban Development, Synthesis Report*, issued in 2011, states that the European cities

develop through the intense migration from rural and it faces new challenges : lack of employment, integration issues, but, as well, there is not adapted infrastructure and there are not enough homes to host the coming people. The question is how will the city dwellers face this new tendency? For the construction field, the answer can come from innovation in the field of performance. Another answer to the urbanisation issue would be the flexibility of urban infrastructures, seen as the capacity of urban infrastructure to serve different purposes (for example new houses for youth as well as for the elderly having an affordable price). The automated and robotic construction methods respond to this demand by developing a mobile factory that can be reutilised up to 300 times, thus offering the possibility of rapidly building new houses. The last above mentioned report also identifies the need to provide "a secure and safe urban environment in order to lower spatial segregation and increase the quality of life of all generations" (p. 15). The automated and robotic construction methods will also address this policy element as the space of the city can be better used by building high sustainable buildings with lower emissions and optimal use of resources.

Sustainable buildings

According to the Communication from the Commission on resource efficiency opportunities in the building sector (Brussels, 1.7.2014, COM(2014) 445 final) Consumption of resources and related environmental impacts throughout a building's lifecycle can be reduced by: improved design and functionality; optimal resource planning and energy efficient products; reducing waste in the construction and renovation processes. When we talk about sustainable buildings, there is a large palette of things that must be considered such as: social, cultural, environmental and financial aspects. More precisely there should standards referring to design, materials, energy, resources and waste (United Nations Environment Programme, 2014). According to a Report issued by US Department of Energy (2008) high performance and sustainable building should: establish goals on sitting, energy, water, materials and indoor environmental quality. It will also take into considerations the entire life cycle of the buildings; optimize energy performance. The total energy consumes for onsite and offsite processes will be measured and verified and new benchmarks will be established; protect and conserve water. The process will employ design and construction strategies that will reduce indoor water, outdoor water and process water consumes; enhance indoor environmental quality by: ensuring ventilation and thermal comfort, moisture control, day lighting, low-emitting materials, protect indoor air quality; reduce environmental impact. The following aspects will be taken into consideration: recycled content, bio based content, using environmental friendly products, waste and material management, ozone depleting compounds. As they aim, as a final result, to build high performance and sustainable buildings, the automated and robotic construction methods represent, in our opinion, the best solution to answer these challenges.

Human capital and construction in Europe

Nowadays EU in confronted to a great number of challenges such as: unemployment, labour mismatches, and increasing numbers of young people leaving education, employment and training. Migration, poverty, social exclusion, increased social costs are more and more realities and household incomes go down (Fotakis, Peschner, 2015). The EU market faces several changes such as: divergences between countries, reduced demand, erosion of human capital and competitiveness, undermined

confidence. EU as a whole has been questioned from the perspective of economic fundamentals and overall objectives. Human capital is one of the basic factors of economic growth in the information, knowledge-based economy of the EU as its level of usage determines the innovation component. The economy of post-industrial society is based on using intellectual resources so that organizations become more and more innovative. Innovation area does not include only new products and technologies but also new methods and methodologies of organizing processes (Belyakova, Rogova, 2013: 8-9).

In this context, the nowadays management of companies will shift from material and cash flows to intangible ones based on intellectual values. Information and electronic information technologies have become key resources, thus the number of those employed in intellectual work will increase and the number of those engages in the extracting and processing productions will decrease. Innovation includes, from the perspective of the human capital involved, the following aspects (Mayo, 2007: 189-190): innovative diversified methods for construction organization and management processes; new methods of performance evaluation; establishing new connections between actors from construction of buildings; experimentation of innovative technologies and learning from others; development of new vision of each person involved in the construction process including preparation for the change and dedication; development of new strategies for occupying the market by attracting new customers and creating new markets. Automation and robotization in construction will set new benchmarks for creating international, multidisciplinary teams able to work efficiently. The teams will be made of international standard specialists with already proven results. They will work together in order to offer a new solutions to the development of tomorrow's cities. New jobs and new occupational standards will appear in a high demand industry (the building industry).

Future opportunities in the construction market

The construction sector is of strategic importance to the EU (Bisch et al., 2011) as it delivers the buildings and infrastructure needed by the rest of the economy and society. As one of the strategies in EU programs for 2020 is an increase in sustainable and intelligent way the number of the workplaces, it includes the construction sector as a basic element. It is known that this sector provides about 9% of GDP and over 18 million jobs in the entire EU. Moreover, this sector uses 800 billion of components produced by other industrial sectors and this is leading to increase to 50% the percentage of gross capital just for the sector.

Thus, many of the European Societal challenges are addressed by implementing construction robots technology as it implies: a new operational and organizational structure; a higher productivity – as related to tasks and machines; a higher efficiency – from both construction products and processes; a new approach to health and safety – as it reduces the number of accidents and injuries, and also allows the reintegration of construction workers which have discontinued their work due to working incidents. The financial challenge, obtaining funds for R&D and innovation in the field of construction robotics, could be successfully surpassed through EU finance.

Robotics in construction – market perspective

Construction robots are about better products and processes. Building robots bring higher efficiency to the entire activity of construction of buildings, a lot of satisfaction for beneficiaries, better environmental protection, durability and more accurate predictability of the whole works. Thus the entire building activity and the

processes involved will lead to high performance in the industry. When considering best value in homebuilding, it does not refer to finding the lowest cost. Quality and durability are essential things to be considered. However the urbanisation tendency brought the demand for fast and efficient building processes. Building robots meet three main requirements, namely performance, durability and cost efficiency for the entire period of use. There is a great demand for affordable and sustainable constructions especially for individuals generated by the tendency of urbanisation. According to a report by Jones Land La Salle (2010), the advent of robotics in construction in 2010 was a milestone for mankind throughout the world because most of the population lived in cities. The phenomenon is estimated by the World Health Organization that will evolve toward that year ie nearly 60% of the population will live in cities by 2030, and by 2050 over 70% of the population will be concentrated in towns.

The aim of new construction robots is to reduce one-tenth of the building time for a complex building products such as a high-rise building (Linner, 2013). Robotics can offer a durable and strategic method to build, efficiently and in a shorter time, quality homes. The field of Construction Robotics has got an increased importance in the last two decades among the research areas for Robotics. The Japanese entities, the leaders in the field of Robotization and Automation in Construction, in the 90s, had as main focus the development of new robotic systems and in the automation of existing machinery. They intended to automate construction processes in both the house building and civil construction. Unfortunately, due to the "bubble economy" crisis in Japan as well as due to unfulfilled expectations, the RAC was strongly reduced in the following years. Just a few construction robots succeeded to enter the market. Nowadays, the tendency is again reversed and new research area has been initiated. The present research activities in the field of RAC focus on new technologies (both software and hardware).

It includes components such as: sensors, automated inventory, human operator's field safety and security etc. The worldwide industrial robots sales value, including industry software and engineering was in 2011 of US $ 25.5 billion out of which Europe represents almost 1/3 of industrial robots worldwide (according to European Robotics market 2012). Japan and Korea are leaders on the worldwide industrial robots in construction market so Asia remains in this domain the biggest market in the world. Balaguer and Abderrahim (2008: 001-002) consider it is precisely the specific of the construction environment the factor that acts as a powerful barrier in the implementation of RAC. The domain is characterised by using heavy objects, elements with big tolerance, low standardisation level, average industrialisation and pre-fabrication and the actors are insufficiently coordinated: architects, builders, suppliers etc.). Due to these characteristics it is very difficult to increase the level of automation and increase productivity in this domain. Table 2 shows the most important market barriers for this implementation process, ranking from 1- most significant to 7 least significant (Mahbub, 2008: 236).

From the perspective of the implementation, according to the same author (Mahbub, 2008) the main barriers in construction robotics are: R&D Innovation Cost is very high as it includes an increase in capital intensity and highly qualified workplace; high costs for updating the existing technology to the latest state of the art; training costs for using technology and costs related to the tailoring of the construction operations; incompatibilities with current practices and operations; the needed technologies are either very difficult to find, either do not exist; psychological barriers referring the acceptance of the new technologies. Robotization implies a complete restructuring of the

organizational structure and of workforce. These changes will lead to different relationship between players in the industry.

Table 2: Barriers to market

Ranking	Barriers
1	High initial costs/ Financial Commitment from end-users
2	The fragmentation characteristic of the market
3	The difficulty to use and necessary adaptation process of the new technology
4	Incapability with the current processes and practices in the construction industry
5	Low technology literacy of the participants to the construction process, need for specific training and even for different skills and competences
6	Unavailable locally and difficult to obtain
7	Not accepted by workers

Source : Mahbub, 2008: 23

The Study on "The cost of non-Europe: the untapped potential of the European Single Market" by London Economics and PricewaterhouseCoopers EU Services (April 2013: 328-383) shows other important factors that discourage innovation in the construction industry: construction companies rely on suppliers for innovation instead of developing knowledge themselves, or in partnership with specialist R&D organisations; it is very hard to find a replicable solution; the construction domain involves projects that are very different from each other in terms of function (residential/non-residential/civil), organisation (simple residential/complex non-residential), implementation and execution (design/build/operate/own/transfer), and geographical and historical circumstances; customer demand in the construction industry may be a driver as it may sometimes be an obstacle as well to innovation; regulations, as legislation, standards and norms may shape the development of new products, materials and behaviours; hidden innovation, as many innovative activities in the construction sector are difficult to track as they may involve organisational innovation that is not based on cutting-edge research, and often occur at the company-consultant-client interface rather than in R&D labs.

The term "robotics building" appeared after about 30 years; then in Japan they have been researched and developed over 550 systems that include both robots realization of construction, operations and automated systems without human manipulation. North America, although pretty much involved in this industrial branch, developed through cooperation between Japanese universities and construction companies in the robotics innovative technologies in construction. One example is the system introduced in the Netherlands by a major European construction company; "BAM" .This was more like a mechanized construction system. A particularity of the system is the high ratio of prefabrication. Most of these systems is represented by prefabricated interior walls, prefabricated concrete façades – sometimes with the glazings included – and all these are

supplied on the construction site and will be installed by specific workers. Except for few individual projects, in Europe construction robotization was on a smaller scale and has been usually focused on specific areas of construction.

There is no value chain which is universally accepted and applied by the construction industry. This may be due to the complexity and fragmentation of the sector's supply chain. Like in any other industry, the value and complexity of work pieces or products rises along the value chain. We may identify two main categories of stakeholders: internal stakeholders and external stakeholders. The internal stakeholders are generally members of the project consortium or are financial service providers. The external stakeholders are those who are affected significantly by the construction project. According to a Report by London Economics and PricewaterhouseCoopers EU Services, called "The cost of non-Europe: the untapped potential of the European Single Market" (Final report, April 2013, p. 330) there are the following typical internal stakeholders: Users : end or intermediate users of the built premises; Designers: the authors of the architectural and technical design; General contractors: companies that are specialised in building processes and technical aspects of building; Manufacturers : producers of parts and elements used in construction; Distributors : commercial/technical intermediaries between manufacturers and contractors; Suppliers: firms that provide materials to manufacturers; Service providers: firms that are totally or partly in charge of the exploitation and/or maintenance of the building; Inspection, certification and regulatory body: they ensure the implementation and enforcement of the legislation in the field.

Among the external stakeholders we may mention: communities; social services; research organizations and universities; trade and industry; local residents; real state owners; inspection and certification organizations; political organizations; governmental authorities etc. From the perspective of the EC, the construction sector is extremely fragmented and it includes a high number of SMEs with significant differences in terms of performance between Member States. The sector still faces the difficulty of disseminating and applying best practices from a country to another. In these conditions "*better value-chain integration would significantly increase the scope for spill-over innovation effects from collaboration*". Even if there is a proven need and it could be marketable, the immediate realisation of construction robots in Europe is, in our opinion, still hard to achieve as it needs massive adaptation of technology, of structures and products. A combination of short-term funding, long-term funding of industry consortia representing the whole value chain, in combination with innovation and technology transfer strategies, can create in a step-by-step approach and by the combination of short-term and long-term development programs, and economically feasible approaches for automated/robotic on-site construction.

Relationship of the robotics and automation in construction to other Domains and Markets

Technology providers, such as mechatronics and robotics manufacturers, may take into consideration the opening of new markets in the construction industry. Also the concepts and technologies developed and tailored for construction industry could be diffused into other manufacturing industries. The construction industry could become a testing bed for future manufacturing systems in general (Linner, 2013). An important change in the production technology comes with a necessary change in organisation and administration of the entities applying it, in the product concept, in the informational

networks within the company. An increased product complexity generates the need and demand for new manufacturing technology.

Conclusions

Worldwide, construction of buildings industry represents a unique economic activity and which at the moment is among the largest industrial employers. Cities are becoming more and more important in the European, but also in the global economy. Cities will absorb most of the demographic growth of the world. The automated and robotic construction methods will also address this policy element as the space of the city can be better used by building high sustainable buildings with lower emissions and optimal use of resources. When we talk about sustainability and durability in the field of construction, we must consider as well environmental, social and cultural aspects. More concretely, it involves areas such as design and management of constructions, of materials and their performance, of the resources and of the waste. These should be considered under the wider umbrella of urban development. Although there are still significant barriers that have been briefly presented above, the automated and robotic construction methods represent the best answer to nowadays construction area challenges.

Human capital is one of the basic factors of economic growth in the information, knowledge-based economy as its level of usage determines the innovation component. The economy of post-industrial society is based on using intellectual resources so that organizations become more and more innovative. Innovation area does not include only new products and technologies but also new methods and methodologies of organizing processes. Automation and robotization in construction will set new benchmarks for creating international, multidisciplinary teams able to work efficiently. The teams will be made of international standard specialists with already proven results. They will work together in order to offer a new solutions to the development of tomorrow's cities. New jobs and new occupational standards will appear in a high demand industry (the building industry). Thus, many of the societal challenges are addressed by implementing construction robots technology as it implies: a new operational and organizational structure; a higher productivity – as related to tasks and machines; a higher efficiency – from both construction products and processes; a new approach to health and safety – as it reduces the number of accidents and injuries, and also allows the reintegration of construction workers which have discontinued their work due to working incidents. The stimulation needed for this development to happen comes from financing the European R&D and innovation in the field of construction robotics by European Commission as well as by major contractors.

The implementation of automation and robotics in the construction industry is mainly influenced by the characteristics and the specific of the industry itself as well as by companies' attributes, parallel to variable considerations. There is no value chain which is universally accepted and applied by the construction industry. This may be due to the complexity and fragmentation of the sector's supply chain. Like in any other industry, the value and complexity of work pieces or products rises along the value chain. We may identify two main categories of stakeholders: internal stakeholders and external stakeholders. The internal stakeholders are generally members of the project consortium or are financial service providers. The external stakeholders are those who are affected significantly by the construction project. The instant realization of construction robots, through coordinated R&D and technology transfer is difficult to achieve as the approach necessitates a co-adaptation of manufacturing technology, organizational structures and

products and thus a radical change of the whole industry. A combination of short-term funding, long-term funding of industry consortia representing the whole value chain, in combination with innovation and technology transfer strategies, can create in a step-by-step approach and by the combination of short-term and long-term development programs, and economically feasible approaches for automated/robotic on-site construction. Technology vendors - especially those in the branch of robotics in construction, building industry seek opportunities to promote their new ideas especially as these concepts and innovative technologies may find later broadcast in other branches of manufacturing industries. The automation of the building process should bring following benefits: creation of high value built environment by fast availability; fast compensation of high upfront cost; minimization of disturbance of functional capability of surrounding city environment; higher degree of capacity utilization of means of production.

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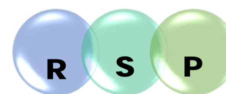

CEPOS NEW CALL FOR PAPERS 2017

7TH INTERNATIONAL CONFERENCE AFTER COMMUNISM. EAST AND WEST UNDER SCRUTINY

Craiova (Romania), House of the University, 24-25 March 2017

Dear Colleagues,

We are delighted to invite you to participate in the Fifth International Conference AFTER COMMUNISM. EAST AND WEST UNDER SCRUTINY in Craiova, Romania, 24-25 March 2017. More than two decades after, an event is both history and present. The annual conference organized by CEPOS involves both the perspectives of the researches in the field of Communism and Post-Communism: research experiences and scientific knowledge.

Like a "pointing puzzle", 25 years after the fall of communism, the conference panels explore emotional detachments, but also a peculiar involvement creating and exploiting the inter-disciplinary developments of the East-West relations before and after the crucial year 1989 in the fields such as: political sciences, history, economics and law.

The conference will be hosted by the University House and during two intense and exciting days, participants all over the world (professors, professionals, doctoral and post-doctoral researchers) are invited to raise the issue of the study of recent history of the former communist space in connection with the Western world. We are confident that all of us will focus during these two days on what is important to move the research in the field forward. We dear to state that we even bear the moral obligation to do that.

Best regards,

The Board of Directors of CEPOS 2017 Conferences and Events Series

PROPOSED PANELS for CEPOS CONFERENCE 2017

Center of Post-Communist Political Studies (CEPOS) proposes the following panels:
-Communism, transition, democracy;
-Post-communism and colective memory;
-Politics, ideologies and social action in transition;
-Revolution and political history;
-Political culture and citizen participation
-Law, legal studies and justice reform;
-Constitution(s), legality & political reforms;
-Political parties, electoral systems and electoral campaigns;
-Security and diplomacy in national and Euro-Atlantic environment;
-Rights, identities policies & participation;
-Education, media & social communication;
-Administrative history and governance within South-Eastern Europe during transition;
-Political leadership, democratization and regional security;
-Comparative policies, sustainable growth and urban planning;
-Knowledge transfer and competitiveness in regional economies;
-Global environment and cultural heritage;
-Integration, identity, and human rights in European systems;
-Religion, cultural history and education;
-Media, communication and politics;
-Discourse, language and social encounters;
-Bioethics and transition challenges;

ABSTRACT SUBMITTING (SEE CEPOS CONFERENCE 2017 REGISTRATION FORM on cepos.eu)
The proposals must be sent in English and must contain the title of the paper, the abstract (no more than 300 words) and a short presentation of the author(s) (statute, institutional affiliation, short list of relevant scientific contributions).

DEAD-LINE FOR SUBMITTING A PROPOSAL**: 20 FEBRUARY 2017**
Proposals must be submitted until 20 February 2017 at the following addresses:
Center of Post-Communist Political Studies (CEPOS) cepos2013@gmail.com, cepos2013@yahoo.com

CONFERENCE VENUE
Casa Universitarilor/University House (57 Unirii Street, Craiova, Romania).
You can view the Conference location and a map at the following address:
http://www.casa-universitarilor.ro/
- More information about the Conference venue can be found at the following address: http://www.ucv.ro/campus/puncte_de_atractie/casa_universitarilor/prezentare.php'
- More photos of the conference room can be viewed at
http://www.ucv.ro/campus/puncte_de_atractie/casa_universitarilor/galerie_foto.php

CONFERENCE PAST EDITIONS
More information, photos and other details about the previous editions of the Conference

and CEPOS Workshops, Internships, and other official events organized in 2012-2016 are available on:
- CEPOS official website sections
Past Events available at http://www.cepos.eu/past.html
Foto Gallery available at http://www.cepos.eu/gallery.html) - CEPOS FACEBOOK ACCOUNT:
https://www.facebook.com/pages/Center-of-Post-Communist-Political-Studies-CEPOS/485957361454074

CONFERENCE INTERNATIONAL INDEXING OF THE PAST EDITIONS

CEPOS Conference 2016
The Sixth International Conference After Communism. East and West under Scrutiny (Craiova, House of the University, 8-9 April 2016) was evaluated and accepted for indexing in the following international databases, catalogues and NGO's databases:
- ELSEVIER GLOBAL EVENTS
http://www.globaleventslist.elsevier.com/events/2016/04/6th-international-conference-after-communism-east-and-west-under-scrutiny/
- Oxford Journals – Oxford Journal of Church & State
http://jcs.oxfordjournals.org/content/early/2016/02/06/jcs.csv121.extract
- Conference Alerts
http://www.conferencealerts.com/country-listing?country=Romania
- Conferences-In
http://conferences-in.com/conference/romania/2016/economics/6th-international-conference-after-communism-east-and-west-under-scrutiny/
- Socmag.net
http://www.socmag.net/?p=1562
- African Journal of Political Sciences
http://www.maspolitiques.com/mas/index.php?option=com_content&view=article&id=450:-securiteee-&catid=2:2010-12-09-22-47-00&Itemid=4#.VjUI5PnhCUk
- Researchgate
- https://www.researchgate.net/publication/283151988_Call_for_Papers_6TH_International_Conference_After_Communism._East_and_West_under_Scrutiny_8-9_April_2016_Craiova_Romania
- World Conference Alerts
http://www.worldconferencealerts.com/ConferenceDetail.php?EVENT=WLD1442
- Edu events
http://eduevents.eu/listings/6th-international-conference-after-communism-east-and-west-under-scrutiny/
- Esocsci.org
http://www.esocsci.org.nz/events/list/
- Sciencedz.net
http://www.sciencedz.net/index.php?topic=events&page=53
- Sceince-community.org
http://www.science-community.org/ru/node/164404/?did=070216

CEPOS Conference 2015
The Fifth International Conference After Communism. East and West under Scrutiny (Craiova, House of the University, 24-25 April 2015) was evaluated and accepted for indexing in 15 international databases, catalogues and NGO's databases:
- THE ATLANTIC COUNCIL OF CANADA, CANADA
http://natocouncil.ca/events/international-conferences/
- ELSEVIER GLOBAL EVENTS LIST
http://www.globaleventslist.elsevier.com/events/2015/04/fifth-international-conf
- GCONFERENCE.NET
http://www.gconference.net/eng/conference_view.html?no=47485&catalog=1&cata=018&co_kind=&co_type=&pageno=1&conf_cata=01
- CONFERENCE BIOXBIO http://conference.bioxbio.com/location/romania
- 10 TIMES http://10times.com/romania
- CONFERENCE ALERTS http://www.conferencealerts.com/country-listing?country=Romania
- http://www.iem.ro/orizont2020/wp-content/uploads/2014/12/lista-3-conferinte-internationale.pdf
- http://sdil.ac.ir/index.aspx?pid=99&articleid=62893
- NATIONAL SYMPOSIUM http://www.nationalsymposium.com/communism.php
- SCIENCE DZ http://www.sciencedz.net/conference/6443-fifth-international-conference-after-communism-east-and-west-under-scrutiny
- ARCHIVE COM http://archive-com.com/com/c/conferencealerts.com/2014-12-01_5014609_70/Rome_15th_International_Academic_Conference_The_IISES/
- CONFERENCE WORLD http://conferencesworld.com/higher-education/
- KNOW A CONFERENCE KNOW A CONFERENCE
http://knowaconference.com/social-work/
- International Journal on New Trends in Education and Their Implications (IJONTE) Turkey http://www.ijonte.org/?pnum=15&
- Journal of Research in Education and Teaching Turkey
http://www.jret.org/?pnum=13&pt=Kongre+ve+Sempozyum
CEPOS CONFERENCE 2015 is part of a "consolidated list of all international and Canadian conferences taking place pertaining to international relations, politics, trade, energy and sustainable development". For more details see
http://natocouncil.ca/events/international-conferences/

CEPOS Conference 2014
The Fourth International Conference After Communism. East and West under Scrutiny, Craiova, 4-5 April 2014 was very well received by the national media and successfully indexed in more than 9 international databases, catalogues and NGO's databases such as:
American Political Science Association, USA, http://www.apsanet.org/conferences.cfm;
Journal of Church and State, Oxford
http://jcs.oxfordjournals.org/content/early/2014/01/23/jcs.cst141.full.pdf+html;
NATO Council of Canada (section events/ international conferences), Canada,
http://atlantic-council.ca/events/international-conferences/
International Society of Political Psychology, Columbus, USA,
http://www.ispp.org/uploads/attachments/April_2014.pdf
Academic Biographical Sketch, http://academicprofile.org/SeminarConference.aspx;

Conference alerts, http://www.conferencealerts.com/show-event?id=121380;
Gesis Sowiport, Koln, Germany, http://sowiport.gesis.org/; Osteuropa-Netzwerk, Universität Kassel, Germany, http://its-vm508.its.uni-kassel.de/mediawiki/index.php/After_communism_:_East_and_West_under_scrutiny_:_Fourth_International_Conference
Ilustre Colegio Nacional de Doctores y Licenciados en Ciencias Politicas y Sociologia, futuro Consejo Nacional de Colegios Profesionales, Madrid, http://colpolsocmadrid.org/agenda/.

TRANSPORT
The 7th International Conference "After communism. East and West under Scrutiny" (2017) will be held in Craiova, a city located in the South-Western part of Romania, at about 250 km from Bucharest, the national capital.
The airport of Craiova (http://en.aeroportcraiova.ro/) has flights to Timisoara, Dusseldorf, Munchen, Ancone, Rome, Venezia, London, Bergamo etc.
Other airports, such as Bucharest (Romania) (http://www.aeroportul-otopeni.info/) is located at distances less than 240 km from Craiova and accommodate international flights.
Train schedule to Craiova can be consulted at InterRegio CFR (http://www.infofer.ro/) and SOFTRANS (http://softrans.ro/mersul-trenurilor.html).

ACCOMMODATION
Rooms can be booked at:
Hotel Royal, http://www.hotelroyalcraiova.ro/
Hotel Meliss, http://www.hotelmeliss.ro/
Hotel Lido, http://www.lido-craiova.ro/
Hotel Europeca, http://www.hoteleuropeca.ro/en/

CEPOS CONFERENCE 2017 FEES AND REGISTRATION REGISTRATION DESK
The Conference Registration Desk will be opened from Friday, 24th of March 2017 (from 08.00 a.m. to 18.00 p.m.) until Saturday 25th of March 2017 (from 08.00 a.m. until 14.00 p.m.), for registration and delivery of conference bag with documents to participants.
The Conference Registration Desk is located in the lobby of the University House Club, 1st Floor.

REGISTRATION FEES
90 euros/paper can be paid directly via bank transfer on CEPOS Bank account as follows:
Details for online payment
Banca Romana pentru Dezvoltare (BRD)
Owner: ASOCIATIA CENTRUL DE STUDII POLITICE POSTCOMUNISTE
Reference to be mentioned: CV taxa participare si publicare CEPOS
Account Number: RO64BRDE170SV96030911700 (RON)

MEALS AND OTHER ORGANIZING DETAILS
The registration fee covers:
* Conference attendance to all common sessions, individual and special panels

* Conference materials (including a printed version of the Book of Abstracts of the Conference)
* Conference special bag - 1 for every single fee paid, no matter the number of authors/paper
* Coffee Breaks-March 24, 2017 – March 25, 2017. During the two days conference, 4 coffee breaks are offered.
* Welcome reception (March 24, 2017)
* Lunch (March 24, 2017) offered in the University House Mihai Eminescu Gala Room
* A Festive Gala Dinner and Cocktail (March 24, 2017) offered in the University House Mihai Eminescu Gala Room
* A Free Cocktail Buffet will be served from 19:30 p.m. to 21.30 p.m.
* A Free Entrance Voucher is provided inside of each Conference Bag.
* Lunch (March 25, 2017)
* Certificate of attendance (offered at the end of the conference March 25, 2017)
* Publication of the Conference Papers in the International Indexed Journal Revista de Stiinte Politice. Revue des Sciences Politiques (previous publication of the 2016 Conference papers is available at http://cis01.central.ucv.ro/revistadestiintepolitice/acces.php (RSP issues/ 2016)
* One original volume of the International Indexed Journal Revista de Stiinte Politice. Revue des Sciences Politiques (where the personal conference paper was published) will be delivered to the authors (an additional fee of 10 euros is required for the mailing facilities)
* Computer & Internet Facilities. There is available videoproiector and connection to Internet services.
* Language. The official language of the Conference will be English. The Organizing Committee does not provide simultaneous translation.

NEW! FREE SOCIAL AND CULTURAL PROGRAMME OF THE CEPOS CONFERENCE 2017

* Participants in CEPOS CONFERENCE 2017 have free acces to the Social and Cultural Program of the Seventh Edition of the International Conference After Communism. East and West under Scrutiny, Craiova, 24-25 March 2017: including free guided tours of the:

Museum of Arts Craiova http://www.muzeuldeartacraiova.ro/
Oltenia Museum (all sections included):
http://www.muzeulolteniei.ro/index.php?view=content&c=26
Casa Baniei http://www.muzeulolteniei.ro/index.php?view=content&c=26

CERTIFICATES OF ATTENDANCE

Certificates of attendance will be offered at the end of the conference on Saturday, March 25, 2017

PUBLISHING THE PAPERS IN THE INTERNATIONAL INDEXED JOURNAL REVISTA DE STIINTE POLITICE. REVUES DES SCIENCES POLITIQUES

After the reviewing process, the conference papers will be published in Revista de Stiinte Politice/Revue des Sciences Politiques.
The whole text of the papers must be written in English and delivered until April 3, 2017

at the following addresses:
Center of Post-Communist Political Studies (CEPOS) cepos2013@yahoo.com, cepos2013@gmail.com
Important note: All conference materials presented at the:
- Second International Conference After Communism. East and West under Scrutiny (Craiova, House of the University, 2-3 March 2012) were published in no. 33-34, 35 and 36/ 2012 of the Revista de Stiinte Politice. Revues des Sciences Politiques (RSP).
See the full text (free acces) at the following address:http://cis01.central.ucv.ro/revistadestiintepolitice/acces.php
- Third International Conference After Communism. East and West under Scrutiny (Craiova, House of the University, 5-6 April 2013) were published in no. 37-38, 39, 40/ 2013 of the Revista de Stiinte Politice. Revues des Sciences Politiques (RSP).
See the full text (free acces) at the following address:
http://cis01.central.ucv.ro/revistadestiintepolitice/acces.php
-Fourth International Conference After Communism. East and West under Scrutiny (Craiova, House of the University, 4-5 April 2014) were published in no. 41, 42, 43, 44/ 2014 of the Revista de Stiinte Politice. Revues des Sciences Politiques (RSP).
See the full text (free acces) at the following address:
http://cis01.central.ucv.ro/revistadestiintepolitice/acces.php.
- Fifth International Conference After Communism. East and West under Scrutiny (Craiova, House of the University, 24-25 April 2015) were published in no. 45, 46 (pending publication -47 and 48/ 2015 of the Revista de Stiinte Politice. Revues des Sciences Politiques (RSP).
- Sixth International Conference After Communism. East and West under Scrutiny (Craiova, House of the University, 8-9 April 2016) are published in no. 49, 50, 51, 52/ 2016 of the Revista de Stiinte Politice. Revues des Sciences Politiques (RSP).

See the full text (free acces) at the following address:
http://cis01.central.ucv.ro/revistadestiintepolitice/acces.php.

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Statistics June, 2015

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https://scholar.google.com/citations?user=geaF_FgAAAAJ&hl=ro

ProQuest 5000 International
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Birmingham Public Library, United Kingdom
http://www.bplonline.org/virtual/databases/journals.as/px?q=R&p=36

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Miami University Oxford, Ohio, USA
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German National Library of Science and Technology
https://getinfo.de/app/Revista-de-%C5%9Ftiin%C5%A3e-politice-Revue-des-sciences/id/TIBKAT%3A590280090

Bibliotek Hamburg
http://www.sub.uni-hamburg.de/recherche/elektronische-angebote/elektronische-zeitschriften/detail/titel/144583.html

Sabre Libraries of University of Sussex, University of Brighton and Brighton and Sussex NHS
http://sabre.sussex.ac.uk/vufindsmu/Record/1584224X/Details

University of Southern Denmark
http://findresearcher.sdu.dk:8080/portal/en/journals/revista-de-stinte-politice%28ca92579a-2621-46ec-946f-21e26f37364d%29.html

Edith Cowan Australia
http://library.ecu.edu.au:2082/search~S7?/.b2071921/.b2071921/1%2C1%2C1%2CB/marc~b2071921

University College Cork, Ireland
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Region Hovedstaden Denmark

http://forskning.regionh.dk/en/journals/revista-de-stinte-politice%2811468a3a-a8be-4502-b8d6-718255c47677%29.html

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York University Library, Toronto, Ontario, Canada
https://www.library.yorku.ca/find/Record/muler82857

The University of Chicago, USA
https://catalog.lib.uchicago.edu/vufind/Record/sfx_1000000000726583

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http://search.wellcomelibrary.org/iii/encore/search/C__Scivil%20law__Orightresult__X0;jsessionid=86D8DE0DF1C54E503BEF1CB1168B6143?lang=eng&suite=cobalt

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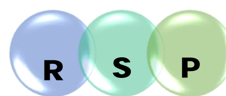

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